HOUSE OF REPRESENTATIVES—*Wednesday, September 24, 1986*

The House met at 11 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Almighty God, give us the will that we lose not the desire for the gifts of the spirit, kindness, and compassion. We recognize that our world is confused and our lives at times bewildering and we can miss our capacity for love. May Your spirit encourage and renew our spirits that in spite of disappointments or lack of appreciation we will continue doing what You would have us do—seeking justice, loving mercy, and walking humbly with You. This we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate disagrees to the amendments of the House to the bill (S. 2638) "An act to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such Department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes," agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. GOLDWATER, Mr. THURMOND, Mr. WARNER, Mr. HUMPHREY, Mr. COHEN, Mr. QUAYLE, Mr. WILSON, Mr. DENTON, Mr. GRAMM, Mr. BROYHILL, Mr. NUNN, Mr. STENNIS, Mr. HART, Mr. EXON, Mr. LEVIN, Mr. KENNEDY, Mr. BINGAMAN, Mr. DIXON, and Mr. GLENN to be the conferees on the part of the Senate.

The message also announced that the Secretary of the Senate be directed to request the House to return to the Senate the bill (H.J. Res. 686) "Joint resolution to designate August 12, 1986, as 'National Civil Rights Day'."

AUTHORIZING RELEASE OF RESTRICTIONS ON CERTAIN PROPERTY CONVEYED FOR AIRPORT PURPOSES

Mr. MINETA. Mr. Speaker, I ask unanimous consent that the Committee on Public Works and Transportation be discharged from further consideration of the bill (H.R. 5379) to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

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

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, I shall not object, but under my reservation I yield to the distinguished chairman of the Aviation Subcommittee, the gentleman from California [Mr. MINETA], for an explanation of his request.

Mr. MINETA. Mr. Speaker, H.R. 5379, which is sponsored by our colleague from Virginia, Mr. BATEMAN, would release the Newport News Airport from a restriction in the deed of airport property from the Federal Government. The restriction requires that the land be used exclusively for airport purposes. A release from the restriction is needed to permit construction of a road to link a residential and commercial development adjacent to the airport to the main highway in the area.

H.R. 5379 imposes two conditions on the release from the deed restriction. First, the airport must receive fair market value for the land conveyed, and, second, the proceeds from the sale of land must be used for airport purposes. These types of conditions have been imposed in most other legislation releasing airports from deed restrictions.

In addition to these conditions, we have received satisfactory assurances that the construction of the road will not interfere with operations at the airport. In these circumstances I see no reason why the release should not be granted and I urge my colleagues to support H.R. 5379.

Mr. HAMMERSCHMIDT. Mr. Speaker, further reserving the right to object, I rise in support of this bill that would release the Peninsula Airport at Newport News, VA, from certain deed restrictions.

It is my understanding that this action is needed to allow a development company to obtain a right-of-way across airport property. Evidently, the developer is constructing several buildings on property it already owns and needs a right-of-way from the main road across airport property. This bill would allow the airport to provide that right-of-way.

In the past, our committee has required a deed restriction removal bill such as this one to meet two criteria. It has to ensure that the airport receives fair market value for the property sold or leased. And the money received for the property must be used for airport purposes.

I am pleased to say that the bill before us today meets both of these criteria. Therefore, I support this bill and urge my colleagues to do the same.

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

Mr. HAMMERSCHMIDT. I yield to the gentleman from Virginia.

Mr. BATEMAN. Mr. Speaker, I would like to thank the distinguished chairman of the committee, the gentleman from New Jersey [Mr. HOWARD], the chairman of the subcommittee, the gentleman from California [Mr. MINETA], and the ranking minority members of the Public Works and Transportation Committee, the gentleman from Kentucky [Mr. SNYDER], and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] for bringing this bill promptly to the floor. It is a matter of great importance to my area.

As stated by the distinguished gentleman from California [Mr. MINETA] this approval, while not allowing directly an airport activity, is incredibly significant to the viability of this airport. The Federal Aviation Administration has no objection to this congressional authorization of the conveyance of the right of way, and I very much thank my colleagues for expediting and bringing this matter to the floor.

Mr. HAMMERSCHMIDT. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The Clerk read the bill, as follows:

H.R. 5379

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding section 16 of the Federal Airport Act (as in effect on May 14, 1947), the Secretary of Transportation is author-

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

ized, subject to section 4 of the Act of October 1, 1949 (50 U.S.C. App. 1622c) and subsection (b) of this section, to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance dated May 14, 1947, under which the United States conveyed certain property in Newport News, and York County, Virginia, to the Peninsula Airport Commission for airport purposes.

(b) Any release granted by the Secretary of Transportation under subsection (a) of this section shall be subject to the following conditions:

(1) The Peninsula Airport Commission shall agree that in leasing or conveying any interest in the property which the United States conveyed to such Commission by the deed described in subsection (a), the Commission will receive an amount for such interest which is equal to the fair lease value or the fair market value, as the case may be (as determined pursuant to regulations issued by the Secretary).

(2) Any amount so received by the Peninsula Airport Commission shall be used by the Commission for the development, improvement, operation, or maintenance of a public airport.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MINETA. 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 California?

There was no objection.

THE WOMEN POW'S

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

Mr. MONTGOMERY. Mr. Speaker, tens of thousands of our military service personnel have been held as prisoners of war during this century in conflicts around the world. Many Americans remain unaware of a special group among this number.

It is my great privilege today to remind my colleagues of the courageous deeds of these too often overlooked and forgotten former POW's—I speak of the Army and Navy nurses who became captives of the Japanese during World War II and one Army nurse who was a POW in Germany.

When Pearl Harbor was bombed in December 1941, 105 Army and Navy nurses were serving in the Philippines and on Guam. They remained on the islands, risking their lives and their freedom in order to provide nursing care to wounded U.S. soldiers, sailors, and civilians. Most became prisoners of war for periods ranging from 6 months to almost 4 years.

Held in internment camps in the Philippines and in prisons in Japan, they suffered through the harshest of conditions, including malnutrition and disease. Even in the face of tremendous adversity and with very limited resources, they continued to care for their fellow POW's.

Six of these former POW's from across the country are in Washington today and on Capitol Hill for a series of tributes in their honor. I think it only fitting that we offer our gratitude to these American female heroes for their courage, for their sacrifices, for their endurance, and for their devotion to this country. I wish these ex-prisoners of war a wonderful day in our Nation's Capital. They are a source of great inspiration and pride for all who desire and enjoy freedom.

Mr. Speaker, these and all former POW's have some very understanding friends in the Congress. That this great body appreciates their experiences is evidenced by the benefit package developed to address their health care concerns and to compensate them for disabilities they suffered as a result of captivity. We are proud of our former POW's, and we can be justly proud of our record of providing essential programs for them.

THE MAD DASH TO ADJOURNMENT

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

Mr. PORTER. Mr. Speaker, its showtime. Time for the mad dash to adjournment. In 2 or 3 weeks, we will carry another $200 billion deficit across the finish line.

Today, we slam through a reconciliation bill with a sticker price of $15 billion in savings. But at best its really worth a fraction of that amount, maybe $6 billion.

Tomorrow we slam through the CR—not just any CR, but the biggest one ever, with all 13 appropriations bills and a slew of unauthorized funds attached. And this CR is several billion over the generous allocation permitted in the phony numbers budget resolution.

Then, undoubtedly we will table the sequester resolution and pretend that we met the Gramm-Rudman target. Then we'll passs the tax reform bill, maybe the Superfund bill. We'll up the debt ceiling, and then we'll go home.

In our wake, Mr. Speaker, will be still another $200 billion gift to our children—a testament to the disgraceful and continuing failure of the greatest deliberative body in the world to address the real crisis of our times.

NEW LEGISLATION WOULD MAKE COURT-ORDERED RESTITUTION A NONDISCHARGEABLE DEBT

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, first of all, I would like to congratulate the gentleman from Mississippi [Mr. MONTGOMERY] for pointing out the distinguished careers of these women who had been POW's.

But the real reason I am taking the well this morning, Mr. Speaker, is that today I am introducing legislation to amend the Federal Bankruptcy Code that will make it harder to shirk court-ordered restitution payments.

The Willful Injury and Drunk Driving Act of 1986 will amend the U.S. Bankruptcy Code to include court-ordered restitution as a nondischargeable debt in chapter 13 bankruptcies. When Congress amended the Bankruptcy Code's chapter 7 statutes, it neglected to do the same for chapter 13.

This difference creates gross inequities in court decisions. Courts have ruled that under chapter 13 defendants are not liable for debts as a result of damage awards from convictions such as drunk driving or rape, because the law does not specifically list court-ordered restitution as a nondischargeable debt.

I can't believe Congress meant to create this loophole in chapter 13. Convicted drunk drivers or rapists should not be let off the hook and avoid paying restitution that was ordered by the court. Join me in making sure that chapter 13 is the Bankruptcy Code is not a haven for convicted offenders.

□ 1110

CONTRA AID DOES NOT BELONG IN THE CONTINUING RESOLUTION

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

Mr. LAGOMARSINO. Mr. Speaker, we are today confronted with a situation, which we were recently promised, would not occur. The Democratic leadership of this House gave us their word that action and negotiation on Contra aid appropriations would be honest and straightforward. That is something we Republicans understand and appreciate.

What we do not understand is their current machinations. It now appears that they do not intend to abide by the support the Contra aid bill received in both Houses.

If the Democratic leadership gets their way, they will put Contra aid ap-

propriations on the continuing resolution [CR]. Because the CR is so flawed the President will undoubtedly veto it. The Democrats believe they can stall the President's animosity toward the CR by placing the much needed Contra aid dollars on the very bill President Reagan has vowed to kill. The Democrats have never wanted to assist the freedom fighters in Nicaragua.

This is all nonsense. The Contra aid debate has already taken place. Its merits have been batted back and forth for hours, and the issue has been settled. Thousands of freedom-seeking Nicaraguans are counting on our sense of responsibility.

Failure to pass this bill will have critically deleterious effects on the situation in Nicaragua. A return to totalitarian rule of the Nicaraguan people will be inevitable. Suppression of the free press, churches, minority groups, labor unions, and the social fabric itself will escalate. It will be an unmistakable sign to the Sandinista dictatorship: The United States does not now, or will it in the future, support the true desires of the Nicaraguan masses. Daniel Ortega, comrade of Fidel Castro, will then move quickly to consolidate his revolution.

Furthermore, failure to pass this bill will have worse implications throughout the hemisphere. It would send a sign to our neighbors that we no longer choose to exercise leadership in this hemisphere, our hemisphere. It will be a tacit admission that the Cuban Government is more interested, effective, and active in our hemisphere. And it will allow, by default, the growth of a situation in our own backyard that we may never again be in a position to stop.

Mr. Speaker, I urge all Members who have a sense of responsibility and moral fiber, to remain true to their original vote. I ask all members to bar this effort to place Contra aid appropriations on the continuing resolution.

TAX REFORM: A TRUST BETRAYED?

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

Mr. MARLENEE. Mr. Speaker, how many of my colleagues would have supported the breakup of the telecommunications industry? I believe the answer would be none.

Yet right now we have a number of Congressmen who will have to accept the responsibility for the breakup of a tax system, a system that generated investments, that generated job creation, that generated the incentive for providing for people's own retirement.

There is no action, no action that elicits more anger than a trust betrayed. Make no mistake about it, by passing so-called tax reform, we are betraying agriculture, we are betraying small business, we are betraying those who would provide for their own retirement, we are betraying the property owner.

Like the breakup of the telephone industry, once it is done there will be no fixing it. I just hope that we are not breaking up the American dream.

I urge my colleagues to vote against the so-called tax reform.

ENSURING QUICK ESTABLISHMENT OF A NATIONAL ORGAN REGISTRY

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

Mr. FLORIO. Mr. Speaker, today I am introducing legislation which would require hospitals to establish protocols for organ procurement and to establish national standards for the 110 organ procurement agencies in this country. On September 10, Senator GORE introduced similar legislation in that body, cosponsored by Senators MITCHELL, HEINZ, and KENNEDY.

Two years ago many of us envisioned a fully functioning national organ registry in place by this time as a result of the enactment of the National Organ Transplant Act of 1984. Instead, we have seen our hopes for the quick establishment of the national network included with a vast study of the ethical and moral implications of large scale organ transplantation.

Although the conferees working on the National Organ Transplant Act instructed that implementation of the National Registry not be tied to this study, the Department of Health and Human Services tied its creation to the results of this study. Only within the past few weeks has that study been completed. And only now will the National Organ Registry move toward reality.

There is a tiny child today, a little girl, virtually living at Children's Hospital in Philadelphia. Her name is Julianne McLaughlin. She is a very sick little girl. She is 17 months old and is in need of a liver transplant.

My bill would force the Department of Health and Human Services to move quickly toward the establishment of a National Registry.

Mr. Speaker, if we are to give children like Julianne McLaughlin and hundreds of thousands of other Americans a real chance of saving their lives through organ transplants we have to do one thing. We have to make sure that each person in need has access to all of the potential donor lists in the country and that they are provided with those organs by strict order of need and not by other considerations.

CROSSING THE WIRES AT THE TRAFFIC LIGHTS

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

Mr. DANNEMEYER. Mr. Speaker, our trade deficit has reached a record of $18 billion on a monthly basis. As this Member has been urging the House, the policy of dollar depreciation is counterproductive and dangerous. Not only will it fail to redress our trade balance, but it may make the deficit worse.

A depreciating currency crosses the wires at the traffic lights. It gives the green signal to importers, telling them to accelerate before it is too late, while sending the red signal to exporters, telling them to decelerate. Indeed, importers can increase their profits by accelerating imports because if they wait longer, the same amount of imports will cost them more dollars. Exporters can increase their profits by slowing down the repatriation of their receipts because if they wait longer, their foreign earnings will convert into more dollars.

Now that our dollar has lost 50 percent of its value in terms of the yen, thanks to the efforts of our Treasury Department, we have to ship twice as much to Japan in payment for the same amount of imports as a year earlier. Our terms of trade vis-a-vis much of the world has worsened in the same proportion.

Are the dollar debasers contrite, and do they admit that they have erred? Far from it: They are getting ready to step up their efforts to beat down the foreign exchange value of the dollar even more.

Mr. Speaker, the policy of dollar degradation is insane, and it invites disaster. The alleged benefits of a weak and depreciating dollar are a myth. There is no substitute for a strong and stable dollar, one based on a fixed metallic standard.

NATIONAL BURN AWARENESSS WEEK

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

Mr. HUTTO. Mr. Speaker, yesterday I introduced, along with my distinguished colleague Mr. PEPPER, a resolution designating the week of February 9, 1987, as "National Burn Awareness Week."

Burn injuries continue to be one of the leading causes of death in the United States, which has the worst burn problem of any industralized nation in the world. Of the 2 million people who are the unfortunate victims of burn injuries each year, 70,000 are hospitalized and another 12,000

die. Even more tragic is the fact that children, the elderly and the disabled represent a majority of burn victims, with a death rate five times that of any other group.

Each year millions of dollars are spent trying to remedy the effects of burns and burn-related incidents. However, studies have proved that approximately 75 percent of all burns could be prevented if Americans were properly educated in burn prevention methods. This resolution provides for a public awareness program designed to familiarize the public with these techniques.

I ask my colleagues to support this resolution by cosponsoring "National Burn Awareness Week." Let this be another step in the effort to eradicate unnecessary burn injuries that exact such a tremendous toll of human life, suffering, disability, and financial loss in our country.

WORLD TRADE AGENDA SET IN URUGUAY

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

Mr. ALEXANDER. Mr. Speaker, to most Americans discussing international trade is about as interesting as watching paint dry. However, the trade talks which just concluded last week in Uruguay may be an exception because an agenda was set for debate among member nations to the General Agreements on Tariffs and Trade [GATT] that will rewrite the rules for world trade over the next several years. It is uncertain now, but our lives will surely be affected by the decisions made there.

Much of the income of my State of Arkansas, from sales of products, comes from international trade. Thus, the economic futures of towns with names like Osceola, Piggott, Jonesboro, and Gillett depend upon the outcome of the world trade talks.

Over the next decade our Nation's economy will move ever more rapidly from a local-national competition to a national-international economy. What was once a dull issue is brightened by the importance of the trade talks as we watch the value of our products and goods decided at the international bargaining table.

My congratulations to Ambassador Clayton Yeutter, who represented the United States at the talks, for including agriculture on the agenda and for a job well done. During the last 5 years we have seen the importance of agricultural sales as the merchandise trade deficit has increased to $160 billion in part because of the decline of agricultural sales.

As soon as the agenda is made available I will attempt to secure copies for all Members of Congress.

□ 1120

THREE-YEAR RECOVERY RULE

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

Mr. HOYER. Mr. Speaker, the conference report on the tax bill which is before this House contains over 350 transition rules which provide over $10 billion in tax breaks to almost every interest group under the Sun.

Three hundred and sixty million dollars in construction projects including the Merrill Lynch skyscraper, have been exempted for one Senator.

The steel industry has received over $520 million in exemptions which allows them to retain the investment tax credit for an additional 15 years.

The tax report provides for a 10-percent excise tax on money withdrawn from any corporate pension fund. Phillips Petroleum, which is planning to reallocate $1 billion from its pension fund has received an exemption from this provision, at a cost to the Treasury of $100 million.

Mr. Speaker, these are just a small sampling of exemptions crammed into this report. And I do not mean to judge whether they are good or bad. I do mean to point them out so that this country's 12 million police officers, teachers, firemen, and local government workers; and our fighting men and women; and our 3 million Federal workers; all of whom contribute to their retirement, will know just where they stand.

They are the only group to suffer a retroactive attack on their personal income. The newly retired Customs drug enforcement officer on average will have to pay an additional $2,500 in taxes in the first year alone as a result of this conference agreement. In the meantime, Phillips Petroleum will get a $100 million tax break. Something is wrong here. And it is wrong for 20 million average Americans.

Let's send this bill back to conference to remove this unfair retroactive provision.

STALEMATE BETWEEN USX AND THE UNITED STEELWORKERS OF AMERICA—NEGOTIATIONS MUST RESUME

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

Mr. VISCLOSKY. Mr. Speaker, today marks the 55th day of the shutdown of USX's steel operations.

For 55 days the communities in which USX facilities remain have been savaged. Gary, IN—the very name evokes thoughts of steel—is a case in point.

Gary and its surrounding environs are losing $808,000 daily in payroll. Further, revenues for local communities have declined, small businesses struggle and the hardship on families is unremitting.

I acknowledge that sharp and fundamental differences between labor and management exist, including over the issue of contracting out. Nevertheless, this issue and others have been successfully resolved in other steel negotiations.

I also appreciate the concern of both parties about creating false expectations by simply resuming negotiations for the sake of appearances. However, expectations will never be met, and progress never made, if the talks remain suspended. Public disappointment over unmet expectations is a risk we must all take.

I, therefore, again, for the fourth time, call on David M. Roderick and Lynn R. Williams to jointly avail themselves of the services of the Federal Mediation and Conciliation Service in order to facilitate meaningful negotiations so that all can work again.

TAX BILL WILL HAVE SEVERE CONSEQUENCES IN THE LONG RUN

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

Mr. HUBBARD. Mr. Speaker, this morning's news includes:

> President Reagan, acknowledging that final congressional approval of tax revision is not assured, yesterday stepped up the pressure on reluctant House Members to approve the package when it comes to the floor, possibly Thursday.

One reason supporters of the Rostenkowski-Packwood, 925-page tax overhaul bill are concerned they do not have the votes to pass this major tax bill is that a growing number of House Members are hearing from their constituents who oppose many portions of the tax bill.

One House Member from central Michigan is quoted today as saying his constituents' telephone calls are 10 to 1 against the tax bill.

The results of the tax bill, if passed, will be a worsening of our economy and an adding to our staggering Federal debt.

I predict 1 year from today those who vote against this tax bill will be those who can proudly say they are not responsible for the bill's severe consequences to our Nation's economy and the increasing Federal debt.

UPDATE ON THE TWA STRIKE

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

Mr. SLATTERY. Mr. Speaker, it has now been 5 months ago since 6,500 members of the International Federation of Flight Attendants struck TWA; 5,000 of them are still unemployed. TWA has partially replaced them with about 2,000 novice flight attendants, who have gone through far less training than the veteran IFFA members.

The FAA approved TWA's cutting the flight attendants' training period from 5 weeks to 18 days. The FAA also approved TWA's cutting the in-air training time for flight attendants to 2½ hours, below even the legal minimum specified by Federal regulations. Seven hundred safety violations by TWA were filed with the FAA during the 2 months of the attendants' strike. There were two emergency evacuations. But the FAA found no discrepancies.

Mr. Speaker, the FAA is entrusted to protect the public. Labor-management problems can result in unnecessary safety risks to airline passengers. The FAA should justify its handling of this matter. And TWA should negotiate in good faith with the flight attendants.

IMMIGRATION REFORM IS AS VITAL TO THE COUNTRY AS TAX REFORM

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

Mr. LUNGREN. Mr. Speaker, we have heard a lot of talk on both sides of the aisle about the upcoming tax reform bill. A lot of it has been criticism, some suggesting or heralding the day it is going to be here.

Obviously, most Members feel we are going to have a vote on that. Whether they feel they are for it or against it, they want to make their own feelings known.

I just wonder why we are not hearing as much about immigration. Immigration is something that is as vital to the country as tax reform. Immigration is a problem which has plagued this country for too long a period of time. Immigration is a situation that is getting worse and worse and worse as we sit here and talk in the Halls of the Congress.

We are now apprehending, in the San Diego area alone, one illegal alien every 30 seconds. Those are the people that we are fortunate enough to catch.

Many others, perhaps two to four successful illegal entries, are made for every apprehension that we have.

We only have less than 2 weeks left in this Congress. It is my hope that we might deal with immigration by that time.

If we do not deal with it by that time, the American people will hold us accountable, and in fact, Mr. Speaker, they ought to hold us accountable.

EASE INTEREST RATES FOR INDEBTED FARMERS

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

Mr. WORTLEY. Mr. Speaker, the sky isn't falling, but interest rates sure are. Home mortgages are again in the single digits and the automobile companies are offering financing as low as 2.4 percent.

But many of our hard-pressed farmers are not enjoying the decreased costs of borrowing money. Today, farmers who borrow from the Farm Credit System banks are finding that interest rates are neither competitive nor reasonable.

I find this situation shocking. At a time when farmers are facing decreasing land values and depressed commodity prices, having to borrow money at excessive rates is equivalent to being hit when you're already down.

I believe Congress should stand by the farmers, and I have joined with the chairman of the Agriculture Subcommittee on Credit in introducing legislation that will ensure that farmers have access to loans at competitive and reasonable interest rates. The bill would take the authority to set interest rates for Farm Credit System banks away from the Washington regulators and give it to the farmer-elected boards of directors of the banks.

It makes little economic sense to keep System rates at noncompetitive levels. This will only drive out the most financially secure borrowers reducing the size and quality of the System's loan portfolio. More importantly, it makes no sense to shoulder struggling farmers with high interest rates that don't reflect the rest of the market. I urge my colleagues to consider and approve this legislation.

MESSAGE FROM THE SENATE

The SPEAKER pro tempore laid before the House the following message from the Senate:

Ordered, That the Secretary of the Senate be directed to request the House of Representatives to return to the Senate the bill (H.J. Res. 686) entitled "Joint resolution to designate August 12, 1986, as 'National Civil Rights Day'.".

The SPEAKER pro tempore. Without objection, the request of the Senate is agreed to.

There was no objection.

RESIGNATION AS CONFEREE AND APPOINTMENT OF CONFEREE ON S. 2638, DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1987

Mr. NICHOLS. Mr. Speaker, I ask unanimous consent that, with respect to the Senate bill (S. 2638), the gentleman from Colorado [Mr. KRAMER] may be excused from further service as an exclusive conferee, solely for the consideration of title IX of division A of the Senate bill and sections 213, 1025, 1026, 1048, and title IX of division A of the House amendment, and that the Speaker may be authorized to appoint an additional exclusive conferee, solely for the consideration of title IX of division A of the Senate bill and sections 213, 1025, 1026, 1048, and title IX of division A of the House amendment.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama? The Chair hears none and, without objection, appoints the following conferee to fill the existing vacancy: Mr. DAVIS.

There was no objection.

The SPEAKER pro tempore. The Clerk will notify the Senate of the change in conferee.

PROVIDING FOR CONSIDERATION OF H.R. 5300, OMNIBUS BUDGET RECONCILATION ACT OF 1986

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 558 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 558

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, and the first reading of the bill shall be dispensed with. All points of order against the bill and against its consideration are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed 3 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget, the bill shall be considered as having been read for amendment under the 5-minute rule. The first group of amendments printed in the report of the Committee on Rules on this resolution shall be considered as having been adopted in the House and in the Committee of the Whole, subject to amendments made in order by the following sentence. No other amendment to the bill shall be in order except the second group of amendments printed in the report of the Committee on Rules on this resolution, said amendments shall be considered only in the order listed, and if offered by the Member indicated or his designee, in said report, said amendments shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole, each of said amendments shall be debatable for not to exceed the time indicated in the report of the Committee on Rules on this resolution, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto, and all points of order

against said amendments are hereby waived. 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, which may not contain instructions. If section 3003 of the bill (incorporating the text of H.R. 1), as inserted by the first group of amendments printed in the report of the Committee on Rules on this resolution, is not stricken during the consideration of the bill, the clerk shall, in the engrossment of the bill H.R. 5300, strike section 3003 and insert in lieu thereof a new section 3003 containing the actual text of the bill H.R. 1 as passed by the House, with appropriate correction of section numbers, punctuation marks, and cross references.

The SPEAKER pro tempore (Mr. NATCHER). The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. LATTA], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 558 is a modified closed rule providing for consideration of one of the most imperative pieces of budget related legislation that we must consider before the adjournment of this Congress: H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

This rule provides for 3 hours of general debate on the reconciliation bill and waives all points of order against consideration of the bill and against the bill. Finally, the rule provides for the disposition of some nine separate amendments either by operation of the rule or by making in order amendments by specific Members on specific issues.

All of the amendments made in order under this rule are printed in the report on the rule. The first group of amendments so listed includes those amendments which shall be considered to be adopted upon adoption of the rule. Three of these amendments add language to the text of H.R. 5300, and four amendments strike certain narrow provisions in H.R. 5300.

Included in the three amendments which add provisions to the bill upon adoption of the rule are the Budget Committee perfecting amendment and a Ways and Means Committee substitute. Together, Mr. Speaker, these two amendments represent the results of successful bipartisan House and Senate efforts to put together a package of additional savings to ensure that this reconciliation bill will achieve sufficient savings to meet the fiscal year 1987 Gramm-Rudman-Hollings deficit target. Together, these provisions will achieve more than $15 billion in fiscal year 1987 deficit reduction when scored against the Gramm-Rudman-Hollings baseline. These provisions are the heart of this reconciliation bill.

The third amendment adding language to the bill is a technical amendment requested by the Ways and Means Committee. This amendment refines the provisions dealing with State health insurance risk pools.

Mr. Speaker, in contrast with the amendments I have just discussed, which add all of the new package of savings to the reconciliation bill, this first group of amendments also includes amendments which strike language in the bill. At the outset, Mr. Speaker, I would note that each of the matters stricken from the reconciliation bill by operation of this rule address narrow issues, are provisions which would not reduce the deficit, and are all in fact extraneous to the reconciliation process.

The matters stricken upon adoption of this rule include the following:

Provisions in the Agriculture Committee title granting the Department of Agriculture authority to reduce the frequency of inspections in meat processing plants;

Provisions in the Merchant Marine and Fisheries Committee title dealing with the national defense reserve fleet;

Provisions in the Public Works Committee title calling for an Army Corps of Engineers study for a hydroelectric dam project in California; and

Provisions in the Public Works Committee title which have the effect of moving several transportation-related trust funds off budget.

Again, Mr. Speaker, I would note that in the case of each matter stricken by operation of this rule, the issues were extraneous to reconciliation, and subject to significant controversy and/or claims of jurisdiction by more than one committee of the House of Representatives.

The fourth amendment which strikes provisions upon adoption of the rule has been the source of some controversy over the last couple years. The provisions in question have the effect of taking the highway trust fund, the airport and airway trust fund and the inland waterways trust fund out of the unified budget. Put another way, Mr. Speaker, these trust funds are moved off budget by these provisions.

As the record of debate on this issue will detail, Mr. Speaker, this Member appreciates the concerns expressed by our colleagues who oversee these trust funds. However, the removal of these items from the budget or their exemption from Gramm-Rudman-Hollings serves only to undermine our overall budget balancing objectives. Following the recommendations of the chairman of the Committee on the Budget, Mr. Speaker, the Rules Committee opted to delete these provisions by operation of the rule.

In addition to the seven amendments I have just discussed, which are all deemed to be adopted upon adoption of this rule, Mr. Speaker, this rule also makes in order a second group of two amendments which are made in order during consideration of the bill for amendment.

The first of these two amendments is an amendment by Representative RODINO, of New Jersey, the distinguished chairman of the Committee on the Judiciary. The Rodino amendment is not amendable and is debatable for up to 30 minutes, equally divided by Mr. RODINO and a Member opposed thereto. The Rodino amendment would strike provisions in the Merchant Marine and Fisheries Committee title of the bill which amend the Ship Mortgage Act. Since the provisions may have the effect of amending the Bankruptcy Code, which is within the jurisdiction of the Judiciary Committee, this amendment was made in order.

The other amendment in this second group is an amendment by Representative WYLIE, the ranking minority member on the Committee on Banking, Finance and Urban Affairs, or his designee. The Wylie amendment is not amendable and is debatable for up to 30 minutes, equally divided by the proponent of the amendment and a member opposed thereto. The Wylie amendment would strike from the bill the text of H.R. 1, the Housing Act of 1986, which was passed by this Chamber earlier this year. Mr. Speaker, the housing bill is brought into reconciliation as part of the Budget Committee perfecting amendment which is adopted upon adoption of this rule. Because of the controversy over adding an authorization measure of this size to reconciliation, this amendment is made in order so the membership of the House can have an up-or-down vote on the propriety of including a housing authorization bill in reconciliation.

Finally, Mr. Speaker, the rule provides that after the bill has been considered for amendment and it is reported back to the House, no intervening motion to final passage, other than a motion to recommit, without instructions, shall be in order.

Mr. Speaker, the Budget Committee started off this budget year more than 8 months ago committed to meeting the Gramm-Rudman-Hollings deficit target and avoiding the imposition of the mindless and crippling cuts of a Gramm-Rudman-Hollings sequestration order. We adopted a budget resolution that met the target of $144 billion and started work on the reconciliation package that would implement that budget. The Budget Committee reported H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, in

July, but it soon became apparent that because of less favorable economic conditions than anticipated and because of the Gramm-Rudman-Hollings scorekeeping rules, the savings contained in that bill would not be sufficient to avoid sequestration. So the Budget Committee redoubled its efforts. Since Congress returned from the August recess, we have engaged in a continuous effort to put together a package of additional savings. Democrats and Republicans worked together in this effort. House Members worked with Members of the other body, and Members of both bodies worked with the administration.

The end result is the deficit reduction package that this rule would make in order. It is a package which has bipartisan and bicameral support on the essentials, although there are still some details on which there are differences which must be worked out in conference. It is a package which we believe the administration will be able to support when all is said and done. But most importantly, it is a package, which, if it is signed into law, will reduce the deficit below the $154 billion level which would trigger the whole sequester process.

This package will reduce the deficit by $15.1 billion in fiscal year 1987. It is comprised of provisions within the jurisdiction of 12 House committees. I will not take the time to describe the provisions now, as that will be covered during general debate on the bill. I do, however, want to express my appreciation to all of the committees involved for the cooperation that they gave in putting together this package under extremely difficult circumstances and in a short amount of time. I also want to point out the tremendous job that was done by the chairman of the Budget Committee, BILL GRAY, and the ranking minority member of the Budget Committee, Mr. LATTA, in making sure that we have a package that can be enacted before the sequestration deadline and that will reduce the deficit below the sequestration trigger level.

Finally, Mr. Speaker, I just want to point out that all of the work that has been done on the budget this year, all of the pain that has been required in cutting programs that are near and dear to our hearts, will be for naught if we do not enact this reconciliation bill. The clock is ticking. On October 6 CBO and OMB will issue the second and final report on the deficit situation. If we have not enacted this bill by that time, they will certainly estimate that the deficit exceeds the Gramm-Rudman target by at least $20 billion. We will then be faced with a vote to either order a sequestration of more than $20 billion or defeat the sequestration order and go home in shame because we were totally unable to live up to the pledge we took last year to reduce the deficit. There is no real choice. There will be no second chance. We have to adopt this reconciliation package today. I urge the adoption of this rule so we can get on with doing so.

□ 1135

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

Mr. Speaker, I am not going to take the time of the House to go over the various items that have already been mentioned by the gentleman from South Carolina, but I do that to emphasize that this is a must piece of legislation, unless we are going to have sequestration. And I have not talked to too many of my colleagues who want to see that happen.

We are right up against a deadline, so we have to pass this rule, and then we are going to have to pass the bill.

I might also point out, as I see the chairman of the Budget Committee over there, that this is a bipartisan effort to try to get something passed in this Congress, even though I am not totally in agreement with what is contained in the reconciliation bill. I would have much preferred to have seen some meaningful reductions in expenditures rather than the asset sales and the user fees that we find contained in the reconciliation bill.

But coming to the rule itself, I support this rule. It is a 3-hour rule for general debate, followed by only two motions to strike, and each debatable for only 30 minutes. Thus, the debate time is going to be a total of 4 hours. And even if recorded votes are demanded on the motions to strike, the entire consideration of this mammoth bill cannot take much longer than 5 hours after the rule is adopted.

Mr. Speaker, the procedure embodied herein represents, as I mentined earlier, a bipartisan effort. Upon the adoption of this rule—and I want to stress that—upon the adoption of this rule, the House will be deemed to have approved or added several provisions to the bill and also to have removed several others.

□ 1145

There are four items which will be deemed to have been stricken from the text upon the adoption of the rule. They were pointed out by the gentleman from South Carolina.

First is the provision dealing with the Agricultural Meat Inspectors; second, a provision dealing with the National Defense Reserve Fleet; third, a provision providing for a study of a dam in California; and fourth, a provision which would have taken the transportation trust funds off budget

We have had that debated several times and that will be stricken upon the adoption of this rule. In addition, Mr. Speaker, there are only two items which will be deemed to have been incorporated into the text of the bill upon the adoption of the rule. The two items added are, first, a Budget Committee perfecting amendment including Conrail and a Ways and Means substitute for title X, and, second, a Ways and Means Committee technical amendment.

Mr. Speaker, the House will have an opportunity to vote on two motions to strike, and that is all. The first motion to strike may be offered by the gentleman from New Jersey [Mr. RODINO]. It would strike the bankruptcy provisions in the Merchant Marine and Fisheries title. The second motion to strike could be offered by the gentleman from Ohio [Mr. WILEY] or his designee. It would be a motion to strike the provisions of H.R. 1, the Housing Act, which has been added to this bill.

I might digress for just a moment to once again point out to the Members of the House it was not the Budget Committee that came up with these various changes that are incorporated in this bill. Under the act, the Budget Committee merely has a ministerial job to do of taking the recommendations made by the various committees and putting them together. Then we went to the Rules Committee with that package, and the Rules Committee has made certain recommendations that we have already pointed out.

Mr. Speaker, the rule is almost as notable for what it does not allow as for what it allows. The rule does not allow any amendments to the Conrail sale provisions. It does not allow an amendment to raise the gasoline tax, for example, or to increase cigarette taxes.

Mr. Speaker, the time has come when we must take some action on budget reconciliation if we are to avoid the across-the-board cuts under Gramm-Rudman. Certainly this is not the rule I would have preferred, had I had the votes in the committee to craft it otherwise. Nor is the bill itself that we will be debating, the reconciliation bill, the bill I would have preferred had I had the votes to have crafted that reconciliation bill the way I wanted it.

I did not have the votes. We had to work with the Senate, and I might say at this juncture that what we bring to this House today has the assurance from OMB that we will meet the numbers required to prevent sequestration.

We had with us during our negotiations Mr. Miller from OMB who agreed to the numbers that we will be presenting later on in the reconciliation bill. So have no fear of sequestration if we pass this legislation.

Mr. Speaker, as I say, the effort here is a compromise effort and it is possible to do the things that I have outlined if we adopt this rule and then pass the bill.

Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding me this time.

Mr. Speaker, I think we ought to understand as a body that what we are really doing in adopting this rule is saying that we are going to put all of this material into the reconciliation bill. Now I do not know how many Members of the House have really read this report and know what it is we are doing, but I doubt that it is very many because this particular report has only been available on the House floor for about a half hour. When I got mine a few minutes ago, the pages were still warm from it coming off the copying machine. I sure hope we did not burn up a copying machine as a part of the whole process as well, but one thing I am assured of is nobody really knows what it is we are doing out here right now. We are doing some awfully interesting things.

Mr. Speaker, we are adopting a closed rule which says if you take all of this you adopt it out here without even having a chance to amend it. It seems to me that at the very least if we are going to bring some package like this to the floor, there ought to be an opportunity for Members to work their will on it, but that is not going to happen.

We are basically being given a take-it-or-leave-it proposition here and we are being told that you have got to do it to keep sequestration from taking place. Sequestration was supposed to be a discipline on us. We were supposed to be disciplining ourselves to cut spending. There is absolutely nothing in what we are doing here that is going to cut any spending. I say we ought to leave this process because it is a total phony.

We are told we have got $15 billion in savings in this bill. That is a complete phony, my friends. This is, as one of the Members in the other body described it, "A complete smoke and mirrors operation; you cannot see the mirrors for all the smoke." That is exactly right because what we are doing is we are selling off national assets and we are claiming that as savings. We are doing what is probably the equivalent, as one of the staff members on our side put it, of saying that we are going to accept as money coming into the Government money that is "thrown over the transom late at night." Most of what we have in here is just completely unacceptable.

In going through the bill, I found one interesting little item for instance. Back here in the bill we have a little item about revenue sharing. What do I find out we are doing in the revenue sharing area? Well, we are transferring deficit from next year back to this year as though the deficit accumulated this year does not have any meaning to us any more, we will just transfer it back. We go from October 1 back to September 30. It is still add-on deficit as though what the accumulation of deficit overall is not what we are really all about. It is a total phony. Mandrake the Magician would be proud of this bill.

What we have done is we have reduced the deficit in the process here with no reductions at all in spending. That is a great trick but it is totally all illusion. I say we ought to reject this rule, we ought to reject the reconciliation bill that it brings to us. Both make a mockery of the whole process of deficit reduction.

This is not budget reconciliation; this is not a budget reconciliation process. This is a congressional abdication process. We are just walking away from our obligations to get spending under control. We are actually bringing before us a bill that is called a "budget reconciliation bill" where we were supposed to achieve spending savings and it actually increases spending.

The bill we will have before us has user fee increases in it. It sells off national assets, but when you get to spending, it actually increases spending by about $1.8 billion.

If you like political charades, if you like political phoniness at its worst, you will like this process and you will like the bills we are about to consider. If you want to vote for real deficit reduction, you ought to vote "no" and reject this process.

The gentleman from South Carolina said in his remarks, "If we do not go through with this process we have the likelihood that we will go home in shame." I would suggest that if we adopt this process we should be ashamed, but we probably will not be.

Mr. DERRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. I thank the gentleman for yielding me this time.

Mr. Speaker, the rule before us contains a provision which will speedup fourth quarter general revenue sharing payments by 5 days so that they will be counted against this year's outlays rather than next year's outlays. The apparent purpose of this move is to load that $680 million on top of this year's $230 billion deficit in order to make it appear that we are getting closer to next year's Gramm-Rudman deficit target. This is gimmickry of the worst kind and, it is going to cost the American taxpayer at least a half million dollars.

General revenue sharing has always been financed with borrowed dollars. It has already added $83 billion to the Federal debt in the past 14 years. By speeding up this one payment the Federal Government is going to have to start paying the interest on that $680 million before it would otherwise have to. The cost for borrowing this money 5 days early will be $500,000 to $600,000.

Some might say that this is only a drop in the bucket—but I submit that it is not an insignificant drop in the bucket—especially when the fact is that we are unnecessarily spending money in a desperate effort to create the illusion that we are reducing Federal expenditures.

Is this what Congress had in mind when it passed the Deficit Reduction Act? Isn't it ironic that we are wasting a half a million dollars trying to fool the taxpayer into believing that we are getting the deficit down, when in fact we are actually increasing it? I suspect that the American taxpayer will not be fooled for long.

□ 1155

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 6 minutes to the gentleman from Pennsylvania [Mr. GRAY], the distinguished chairman of the Committee on the Budget.

Mr. GRAY of Pennsylvania. Mr. Speaker, I rise in support of the rule for consideration of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

Adoption of this rule will enable us to complete the reconciliation process quickly. I appreciate the accommodations made by the Committee on Rules in honoring my request on behalf of the Committee on the Budget in putting this rule together.

By making in order the perfecting amendment of the Committee on the Budget, this rule recognizes the efforts of both the majority and minority to achieve a compromise which will serve to reduce the Federal deficit in a manner which will avoid sequestration in fiscal year 1987.

I would like to describe, Mr. Speaker, how this package evolved. First of all, in August, when the snapshot was taken, it was believed that the average for 1987 was $164 billion. Thus, there was a need for a $10-billion deficit reduction package so that we could avoid sequestration and get down under the threshold.

That sequestration in August was believed to be about $19 billion, which would result in about $9 billion in outlay reductions in national security and $9 billion in domestic programs. It was believed at that time that we could put together a $10-billion deficit reduction package made up primarily of the 1987 budget, including some revenues of about the same size as the President's. However, when we returned in September, it became clear that a $10 billion package would not do the job and avoid sequestration.

We also found that there was a mood here on Capitol Hill that there

were those who were not prepared to make deep cuts in spending, nor were they prepared to make decisions with regard to raising revenues. Thus, what we were faced with was a situation that was compounded by three realities:

First, sequestration was no longer $19 billion, but it was $24 billion in outlays; and therefore, we had to get to the threshold by October 1, to avoid sequestration of $12 billion in defense spending, $12 billion in domestic and outlays, which is about $50 billion in budget authority.

Second, we were faced with the problem that we must have Presidential support and the signature of the President in order for it to become law before October 1. The President has made it very clear that he would not support cuts in spending in Pentagon programs or foreign assistance, nor would he support revenues even of the magnitude in his own budget submitted to the Congress for fiscal year 1987.

Third, the other problem we faced was the clear fact that we only had a limited number of legislative days in which to come up with a package large enough to reduce the deficit within a very narrow time frame of about 15 legislative days.

What we did was to put together a package on the House side, and I might add, bipartisanly. I must commend the gentleman from Ohio [Mr. LATTA] and the Members of the minority side who worked to put together this package.

What we came up with was a package that consists primarily of asset sales, user fees, as well as some changes in accounting procedures, as pointed out by the gentleman from Pennsylvania [Mr. WALKER]. But it was done within the context of the three realities we faced.

I want to commend the gentleman from Ohio [Mr. LATTA], who went to the other body, shared it with them; and as a result, the other body came and asked us to work bicamerally together on a bipartisan package, including the White House.

As a result, with White House representation, bipartisan leadership of both the other body and the House, we worked for several hours and came up with an agreed $13 billion worth of deficit reduction, which could be signed off on by the administration in order for us to avoid sequestration.

This package before you today represents the best effort in light of those three circumstances. Would this Chair prefer something else? Yes, but we did not have the time nor do we have the Presidential support in order to implement something else.

The President says, "Take it all out of domestic! Do not touch foreign assistance! Do not touch the Pentagon!" Everyone here knows that this body is not going to vote to cut $15 billion out of domestic spending.

So, why are we going to sit here and talk about being prepared to make spending reductions when the only spending reduction that the administration will sign off on is a domestic one? There are no votes on that side of the aisle, for that! There are no votes on this side of the aisle for that! Certainly 40 days, or so, before an election are we going to vote to cut $15 billion spending—you know it, and I know it. So, this represents probably the best effort. It is not, perhaps, what I would like. It is temporary. It gets us under the threshold of $154 billion. It does not address the long-term problem of structural changes in order to bring the deficits down, but I say to my colleagues, support the rule. Support this reconciliation package. It is the best, considering the three realities that we face.

Again, I would like to thank the members of the Committee on the Budget, and particularly the minority side. While the package before us may not be ideal and may not be the ideal response to this Nation's deficit problem, it does answer our present need.

Failure to act now runs a much higher risk.

Mr. LATTA. Mr. Speaker, I yield 6 minutes to the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Speaker, I rise to express my disappointment and dismay that the Rules Committee did not make in order my amendment to authorize the imposition of Coast Guard user fees on recreational boaters. I think that the House should have had an opportunity to vote this issue up or down. But most particularly, I think we are missing a good bet in our efforts to plug the sea of red ink in which our ship of state is sinking.

Mr. Speaker, as the press across this country have editorialized for weeks, we are using every possible blue smoke and mirror mechanism available to us in order to avoid a Gramm-Rudman-Hollings sequestration. If we were honest with ourselves, and with each other, we would have to admit that a good part of the alleged savings in this reconciliation bill are imaginary. Oh, they may look good on paper. And maybe some of them will even stand up to the Congressional Budget Office's analysis. But when we get around to finally auditing the books, those savings aren't going to appear. And we will be in even worse shape next year, when we try to meet the even more stringent 1988 deficit target.

The crying shame here, Mr. Speaker, is that we could—and should—be collecting about $100 million a year in Coast Guard user fees from recreational boaters who use U.S. waterways. Every year, the Coast Guard spends well over $150 million a year providing nonemergency search and rescue services and aids to navigation to recreational boaters. And that's just the operating cost—it doesn't even begin to count in the cost of all the helicopters, patrol boats, cutters, Falcon jets, C-130's, radars, communications equipment, and other resources that the Coast Guard brings to bear when a boater gets into trouble.

What we are talking about is an $18-a-year fee, about one-third the cost of a new pair of deck shoes. This fee, which would raise about $100 million, would be desposited directly into the Coast Guard's operating expense account, and be available only to provide search and rescue services in nonemergency situations, plus aids to navigation for recreational boaters. What could be more fair?

The boaters complain that they already pay various fees and taxes. And of course they do, just like everyone else in this country.

But the best analogy is to motorists. We all pay a Federal tax on gasoline, that goes into the Highway Trust Fund. But when a car breaks down, we don't look to the Federal Government to tow it in. We either belong to the Triple-A, or to one of the other auto clubs, or we accept the inevitability of being gouged by some unscrupulous tow truck driver who takes advantage of motorists in trouble.

Now, my informal survey shows that people are paying more than $18 a year to belong to those auto clubs. And I can't understand why boaters insist on getting a free ride from the General Treasury. This $18-a-year fee would ensure the continuation of these essential Coast Guard services. It's an insurance policy. And it's one that should have been paid for a long time ago.

Mr. Speaker, at a time when we are talking about percentage cuts in programs like maternal and child health, education, Medicare, higher education, and programs for the elderly and handicapped, I have a difficult time explaining why 234 million Americans should pay for all—that's 100 percent—of the cost of providing Coast Guard services for some 6 million recreational boaters who may run out of gas on a Sunday afternoon.

Let's keep on towing—but it shouldn't be a free ride.

□ 1205

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, I rise in opposition to this rule this morning.

My reason is that I, too, have a difficult time understanding the decision that the Rules Committee made in striking the meat inspection improve-

ment bill from this legislation. This was an act that had the unanimous support of the House Agriculture Committee. We have a letter and I have a letter before me to the chairman, signed by the chairman and the ranking Member of the House Agriculture Committee.

The OMB and CBO have both agreed that this bill saves $1 million a year the first year, $4 million the second, and then $14 million a year into perpetuity.

It is my understanding this is a reconciliation bill, and in reconciliation, we should be looking at spending cuts.

I want to associate myself with the chairman, the gentleman from Pennsylvania [Mr. GRAY], in total. The gentleman is right on the mark in what he said.

I am here today to ask my colleagues in the House to vote down the rule and send it back to the Rules Committee and let us have an opportunity to find $14 million in savings and make some needed improvement to the Meat Inspection Act.

I would like to ask either the gentleman from South Carolina or the gentleman from Ohio if they could enlighten me as to why, in a reconciliation bill, they turned down a spending reduction bill that has come from the House Agriculture Committee, presented to the Rules Committee; no objection, in fact supported by the Budget Committee, but unilaterally it was decided to strike that savings. Could somebody enlighten me as to why?

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

Mr. STENHOLM. I yield to the gentleman from South Carolina.

Mr. DERRICK. Mr. Speaker, let me say this to the gentleman, that I personally agree with the Meat Inspection Improvement Act. As to why it was deleted, it was a bipartisan act on the part of the Rules Committee.

You know, from time to time in these reconciliation bills, we do have extraneous matters, and this is one.

I questioned whether it belonged in the Reconciliation Act to begin with, whether that was the proper place for it; but be that as it may, it was a bipartisan act and that is the reason it was struck.

Mr. STENHOLM. Mr. Speaker, I thank the gentleman for that enlightenment.

Mr. LATTA. Mr. Speaker, will the gentleman yield to me?

Mr. STENHOLM. I am happy to yield to the gentleman from Ohio.

Mr. LATTA. Mr. Speaker, let me say that I also was one of those individuals who supported the gentleman's position in the Rules Committee, but there just were not the votes there to do what the gentleman would like to have done.

Mr. STENHOLM. It is another one of these things in which we have the overwhelming majority of the votes, but we seem not to have the votes to do it.

Again, I close my plea to the House, I would agree that there is some merit as to what we ought to have in reconciliation and what we ought not to, but it would seem to me the fair way to have handled this question would have been to allow a vote, to allow the will of the House to be expressed as to whether this $14 million in cuts is one that we should have.

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

Mr. LATTA. Mr. Speaker, I yield 2 minutes to the gentleman from New Hampshire [Mr. GREGG].

Mr. GREGG. Mr. Speaker, I thank the gentleman from Ohio.

I rise in opposition to this rule.

I also rise in opposition to the reconciliation package. I believe the rule is inappropriate because of the amount of material which is put into the reconciliation package by passage of the rule.

I believe the reconciliation package itself, as has been discussed here, is an obfuscation of reality. As have been noted, it is filled with smoke. In fact, it has so much smoke and fog within it that I should think we would issue everybody in this House a fog light so that we do not bump into each other as we try to debate it this afternoon.

As we look down the list of items which are alleged to be savings, you have a hard time finding anything that is really substantial and anything that is hard. One wonders how many times we can sell Conrail and how many budget resolutions we are going to give credit for selling it and at what price we are going to level it out at.

You have the additional IRS personnel for raising $2.4 billion. That is a very questionable item as to whether or not we are going to raise that type of money from those additions.

More importantly, we have this accounting change for the revenue-sharing issue, which is clearly an attempt to obfuscate reality and an attempt simply to avoid the issue of spending money. The revenue-sharing money is going to be spent. It is simply going to be credited to this year's deficit instead of next year's deficit.

We are making a mistake, in my opinion, in rushing to try to attempt to avoid sequestration by passing something like this. It is a trip to fantasy island and it is in no way going to resolve the very serious budget problems we have as a Congress.

Mr. LATTA. Mr. Speaker, I yield myself 30 seconds.

Since the gentleman who just spoke mentioned Conrail, this happens to be a part of the bill and in this bill are the provisions for the sale of Conrail. They have the authority now if this legislation passes to sell Conrail, which they have not had before.

Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Speaker, I thank the gentleman for yielding.

I rise to make the point that this rule makes in order an amendment to be offered by the gentleman from Ohio [Mr. WYLIE] or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto.

Mr. Speaker, this is a historic moment in the history of the House in that I received a rule which I did not request or ask for. The provision which is in the rule today authorizes me to offer an amendment which would in effect allow me to strike the provisions of the Housing bill.

Now, as I say, I am not sure how we got here, but I have decided not to do that, not to ask for such a rule, because the House has worked its will on the housing bill.

May I say that we had a good day in the Banking Committee yesterday, I believe. We passed a package providing for a FSLIC recap bill, a regulators' bill, a funds availability bill, and H.R. 1. The funds availability bill and H.R. 1 had already been passed by the House by a rather substantial margin.

I have told the authors of the substitute, the gentleman from New York [Mr. LAFALCE] and the gentleman from Georgia [Mr. BARNARD] and also the gentleman from Rhode Island [Mr. ST GERMAIN] that I would not ask for an amendment or a rule which would provide for an amendment to strike the provisions of the housing bill.

So when I came this morning to the floor, that was the first notice that I had that an amendment would be in order by me to strike the provisions of the Housing bill and I was somewhat surprised.

What I wanted was the right to offer an amendment to meet the cap levels provided for in the budget for the housing programs.

The Congressional Budget Office, in its scoring, says that the bill does not authorize any specific funding levels for most programs. Instead, it includes a general policy statement that all fiscal year 1986-87 authorizations must be capped at levels established in the budget resolution; however, some provisions are direct spending and have a cost.

The committee estimates the overall cost implications of the bill are $470 million in excess of the levels established by the budget resolution.

I talked to the chairman of the Budget Committee, Mr. GRAY, a little earlier and he agrees with that assessment.

So what I would really like to do is to offer an amendment to the budget reconciliation bill today which would meet those cap levels and do exactly what the budget bill suggested that we do and also what H.R. 1 suggested we do.

So, Mr. Speaker, what I would like to do is ask unanimous consent at this point that I be allowed to offer an amendment which would simply state:

Provided, however, That the gentleman from Ohio [Mr. WYLIE] may in lieu of the amendment be permitted to offer the following amendment—

And it would strike to period after section 303 and would say:

Provided, however, That outlays associated with H.R. 1 are hereby reduced by $470 million in fiscal year 1987.

As I say, that would meet the budget resolution targets. It would also be in line with H.R. 1, which we previously passed in this House.

The SPEAKER pro tempore. The time of the gentleman from Ohio has expired.

Mr. LATTA. Mr. Speaker, I yield 1 additional minute to the gentleman.

Mr. WYLIE. So, Mr. Speaker, I do ask unanimous consent that this resolution which we are considering now be amended to reflect what I wanted to do, since the Rules Committee made in order an amendment to be offered by the gentleman from Ohio [Mr. WYLIE], which is something I did not ask for. What I would request is to be allowed to offer the amendment which I really wanted to offer.

Mr. LATTA. Mr. Speaker, will the gentleman yield to me?

The SPEAKER pro tempore. Would the gentleman from Ohio [Mr. LATTA] like to object?

Mr. LATTA. Mr. Speaker, I think the gentleman yielded to me.

Mr. WYLIE. Mr. Speaker, I made a unanimous-consent request, but I would yield to the gentleman from Ohio.

Mr. DERRICK. Reserving the right to object, Mr. Speaker, I yield to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, I thank the gentleman for yielding. I would like to address, under his reservation, a question to the gentleman from Ohio.

My understanding in discussing this with the staff who as usual are the experts in the details of this is that the one specific provision that would clearly be stricken was one adopted by a majority in the House which would reduce the rents for people in housing from 30 to 25 percent, because that was the one thing I was told would be directly affected.

Mr. WYLIE. Mr. Speaker, if the gentleman will yield, that is not correct.

Mr. DERRICK. Mr. Speaker, reserving the right to object, let me suggest that the gentleman is out of order. He has been yielded to for purposes of debate only; but further reserving the right to object, if I might suggest to the gentleman that I think a unanimous-consent request might be looked on favorably at the time the gentleman's amendment comes up under the bill itself; but I do make the point of order that the gentleman is out of order, that he has been yielded to for purposes of debate only.

The SPEAKER pro tempore. Objection is heard.

The Chair recognizes the gentleman from Ohio [Mr. LATTA].

Mr. LATTA. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. BARTLETT].

□ 1220

Mr. BARTLETT. Mr. Speaker, the purpose of the reconciliation bill, as has been discussed, is to lower spending so as to lower the deficit to come into compliance with the budget of the House. As has been discussed, and I will not elaborate on, this reconciliation may well lower the deficit, but it does not have specific provisions to lower spending. In fact, it has specific provisions—and the gentleman from Ohio [Mr. WYLIE] is seeking to correct one of them—to increase spending in some very specific ways.

One of those ways is the addition of H.R. 1, the Housing Act. Now I join with the gentleman from Ohio. I do not oppose necessarily putting H.R. 1 into this bill, nor do I oppose H.R. 1 in the form in which it passed the House. But I do think that it is very, very fair for the House to be allowed to vote on whether or not we want to cap spending in the housing bill, in H.R. 1, which is a part of this reconciliation package, at the fiscal year 1986 levels. I think that a majority of the members of the committee would want to do that and a majority of the Members of the House would want to do that.

As I understand it, Mr. WYLIE has been given permission by the rule to offer an amendment to strike the entirety of H.R. 1. That is an amendment that he does not wish to make and did not seek the authority to make. He does have an amendment that would correct the $470 million problem that is in this bill. It can be fully debated. It would have an hour's worth of debate, and then the house can decide as to whether they would adopt the cap on authorizations that Mr. WYLIE would seek to put in.

The amendment that Mr. WYLIE seeks to offer should be made in order because it is specific as to what the problem is. The gentleman from Ohio is the ranking member of the Banking Committee. He was given, as ranking member, the authority to offer an amendment, and he ought to be allowed to offer the amendment that he wants to offer, not the amendment that someone—we do not even know who it is—wants him to offer. He has talked, as I understand, with the chairman of the Committee on Rules, who had indicated that he sees no difficulty with doing that, and thinks that it ought to be made in order. He has talked with the chairman of the Housing Subcommittee, the gentleman from Texas [Mr. GONZALEZ], who supports the spirit of that and has said that he has no objection to it being in order.

I visited earlier with the chairman of the Committee on the Budget, the gentleman from Pennsylvania [Mr. GRAY], and he can speak for himself and I will yield to him for that purposes, but as I understand it, he would have no objection. I will just ask if the chairman would have any objection to Mr. WYLIE being allowed to offer this very specific amendment to a provision that he is familiar with.

Mr. GRAY of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Pennsylvania.

Mr. GRAY of Pennsylvania. Mr. Speaker, I would just say to my distinguished colleague that I would have no objection, but of course the jurisdiction for a role or an amendment to a rule lies with the Committee on Rules.

I would also point out to the gentleman one of the things that we are going to be facing in conference on all of these issues; I would hope that the gentleman and any of his colleagues who have a similar concern would take this into their consideration of the rule.

The SPEAKER pro tempore (Mr. NATCHER). The time of the gentleman from Texas [Mr. BARTLETT] has expired.

Mr. DERRICK. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BARTLETT].

Mr. GRAY of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Pennsylvania.

Mr. GRAY of Pennsylvania. Mr. Speaker, let me just simply say that I would hope that the gentleman from Texas and all who are concerned about this and other issues will be remined of something very important, and that is that in the other body there is a provision that does not allow any conference report on reconciliation to be considered that increases spending. So, therefore, one of the problems that we are going to face this year in reconciliation that we have not faced before is that the other body cannot recede to the House position because of that, and I think that it is going to take a lot of extraneous material out.

Mr. BARTLETT. Would the gentleman then support our cleaning up at

least this section of the bill here and then leaving the other items for conference? The gentleman is saying that in conference this spending is going to be reduced anyway, and the gentleman would support that as I understand his comments.

Mr. LATTA. Mr. Speaker, I yield 1 additional minute to the gentleman from Texas [Mr. BARTLETT].

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

Mr. BARTLETT. I yield to the gentleman from Ohio.

PARLIAMENTARY INQUIRY

Mr. WYLIE. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. WYLIE. Mr. Speaker, the gentleman from South Carolina [Mr. DERRICK] indicated that he did not really have objection to my unanimous-consent request to make this comply with the budget resolution, which is really what I wanted to do, but felt that the unanimous-consent request to change the amendment should be made when we go into Committee and are considering the resolution. I do not believe that I can do it at that time, that I have to make the unanimous-consent request while the House is in session.

The SPEAKER pro tempore. [Mr. NATCHER]. The Chair advises the gentleman from Ohio [Mr. WYLIE] that he can make that request after the rule is adopted and before we go into the Committee of the Whole.

Mr. BARTLETT. Mr. Speaker, do I understand that the parliamentary inquiry did not come out of the controlled time?

The SPEAKER pro tempore. [Mr. NATCHER]. The time is taken out of the gentleman's time.

Mr. BARTLETT. Mr. Speaker, I urge, unless this is resolved, at least in this issue, and I think that the Committee on Rules has wrestled with the rule, but I do urge a "no" vote on the rule unless the rule is changed—and there seems to be agreement to change it, but we cannot quite get to the point of doing it—to permit at least this one amendment that would specifically reduce or eliminate the increase in spending that is provided in the reconciliation bill. We ought to send it back to the Rules Committee.

Mr. LATTA. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, I understand the difficulty that the Committee on Rules has in coming up with a very complicated rule dealing with this proposition. However, I do think that this whole question about resurrecting revenue sharing in this way ought to be observed. Many of us have been talking with our local communities. We have told them that revenue sharing is dead, that there is no chance. Now it has risen again. I guess this is Easter Sunday for some of those people.

You just wonder after a while why we are doing this sort of thing. I suppose we might refer to this as "legislative backstroke." We just take what is supposed to be next year and we put it in this year's budget, which suggests to me that we can get rid of the deficit for next year. If someone would allow me to have an amendment to take the Federal budget for defense for next year and put it into this year's budget, we can get rid of the deficit for next year.

Now that just brings up the question as to how we are going to spend this $680 million between today, the 24th of September, and the 30th of September, but I guess where there is a will, there is a way.

Two weeks ago or 3 weeks ago, we had a very worthy bill on the floor, an antidrug bill. I was concerned that we went overboard in terms of money. I wondered what the next precedent was going to be. Last week, Corrie Aquino came and gave a magnificent speech, for which she received a $200 million honorarium. But now we top that. In what I would consider to be, as I say, legislative backstroke, we are now going to create $680 million out of whole cloth. It is not going to count against the deficit for next year because we put it in this year's budget, which only lasts for 6 more days.

I do not know how you get interest payments here. Maybe what we are doing is trying to create another reverse rally on Wall Street. If we put enough money from next year's budget into this year's budget, perhaps we could lose 200 points on the Dow Jones averages before the week is out and we could go home and face our constituents.

I understand that the Rules Committee was up against it in this one, but it just seems to me that this is the wrong way to legislate. It is legislative sleight-of-hand at the least that we adopt a rule, and in adopting the rule, we just take a small, paltry $680 million for next year, put it into this year, and we do not have to worry about it. I hope that we vote the rule down.

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

Mr. DERRICK. Mr. Speaker, for the purpose of debate only, I yield 3 minutes to the gentleman from California [Mr. ANDERSON].

Mr. ANDERSON. Mr. Speaker, I rise in opposition to the rule providing for the consideration of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986. As reported from committee, the reconciliation bill included a provision taking the transportation trust funds off budget. Adoption of this rule will wipe out that provision.

This rule prevents the full House from working its will on an issue that, albeit controversial, is critical to this Nation's transportation infrastructure. Despite the fact that we knew the Rules Committee was going to report a modified closed rule on this bill, we were expecting them to make in order an amendment to strike our provision. But never did we imagine the reporting of a self-actuating rule that denies the House the opportunity to even consider the issue.

Mr. Speaker, the Rules Committee took this action despite strong indications that this House, were it to have the opportunity to consider the issue, might support our effort to take the trust funds out of the unified budget. If we look at the record, we see that a similar vote last year was extremely close. In fact the provision to take the trust funds off budget would have passed with a swing of a mere nine votes. Last month, a swing of 22 votes would have carried a similar provision although at that time the motion under which our provision was being considered allowed for only very limited debate on the matter. Perhaps if we had been allowed today to debate this important issue, the House would have concluded that the trust funds should be removed from the unified budget, as is the case in the reconciliation bill for the Medicare hospital insurance trust fund. Unfortunately, we will never know because we have been silenced by the rule.

I think at the very least the Members have a right to know what has been lost by deleting this provision before they have had time to consider it. The transportation trust funds, which are derived solely from user fees, are by law allowed to fund only eligible transportation projects. Surpluses in the funds cannot be used to finance other programs, so do not lower the general budget deficit. Of course, these surpluses have been used to make our horrible budget deficits appear smaller. But since these surpluses do not decrease the real deficit, using them in this way merely deceives the American public and makes a mockery of the budget process and those of us who are concerned with the horrendous deficit that is confronting this country.

Mr. Speaker, the transportation trust funds cannot be used to lower the budget deficit. Nevertheless, in attempts to make it appear so, artificial ceilings are applied to the obligation of these funds. These result in the backlog of huge sums of money, money paid into the trust funds by transportation users and levied by the Government, this Congress, with the promise that their user fees would be used for improved transportation. Now, these unused and untouchable funds sit year after year while our Nation's infrastructure crumbles and long-awaited new projects languish, all so that we can deceive the public into

believing that the deficit is smaller than we know it to be.

Mr. Speaker, the reconciliation process provides that funding committees submit their reconciliation provisions to the Budget Committee, which then takes these provisions to the floor. The self-actuating rule recommended by the Rules Committee perverts that process and denies to the Public Works Committee the ability to have the House even focus on the committee position, let alone adopt it.

Mr. Speaker, it has been less than 24 hours since the Rules Committee reported this rule. Obviously, any organized attempt to defeat the rule in such a timeframe would have been futile. But let the record show how disappointed I am, as one who believes so strongly in the trust fund mechanism, in the action our Rules Committee has chosen to take in refusing to allow this provision to even be considered.

This is a gag rule, and I strongly oppose it.

□ 1230

PARLIAMENTARY INQUIRY

Mr. WALKER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore [Mr. NATCHER]. The gentleman will state his parliamentary inquiry.

Mr. WALKER. Mr. Speaker, the gentleman from Pennsylvania wishes to ascertain how the gentleman from Ohio [Mr. WYLIE] might be able to make his amendment in order.

The SPEAKER pro tempore. The Chair would like to advise the gentleman that that request would be in order after the rule is adopted and before we go into the Committee of the Whole. At that time that request is in order.

Mr. WALKER. Is the gentleman from Pennsylvania also correct that the committee could offer a committee amendment to this particular rule that would, in fact, offer the gentleman from Ohio a chance to offer the amendment which he had originally hoped would be given to him?

The SPEAKER pro tempore. The Chair would like to advise the gentleman from Pennsylvania that that would be up to the manager of the rule at this time.

Mr. WALKER. A further parliamentary inquiry Mr. Speaker: The gentleman from Pennsylvania does understand that. But that is an option which is available at this juncture, is that correct?

The SPEAKER pro tempore. The gentleman is correct.

Mr. WALKER. Furthermore, it is possible for the House to defeat the previous question, and thereby give the gentleman from Ohio a chance to offer an amendment which would then make his amendment to the reconciliation bill in order too; is that not correct?

The SPEAKER pro tempore. The Chair would like to advise the gentleman that an appropriate amendment to the rule might be in order.

Mr. WALKER. If the previous question were defeated; is that correct?

The SPEAKER pro tempore. The gentleman is correct.

Mr. WALKER. I thank the Chair.

Mr. WYLIE. Mr. Speaker, I have a unanimous-consent request.

The SPEAKER pro tempore. Does the gentleman from South Carolina [Mr. DERRICK] yield to the gentleman from Ohio for a unanimous-consent request?

Mr. DERRICK. Not at this time, Mr. Speaker.

Mr. Speaker, I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. DERRICK. 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 pro tempore. 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 216, nays 196, not voting 20, as follows:

[Roll No. 406]

YEAS—216

Abercrombie
Ackerman
Akaka
Alexander
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnes
Bates
Bedell
Beilenson
Bennett
Bevill
Boggs
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Carper
Carr
Chapman
Chappell
Clay
Coelho
Coleman (TX)
Collins
Cooper
Coyne
Crockett
Daniel
Daschle
de la Garza
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Eckart (OH)
Edgar
Edwards (CA)
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Fuqua
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Glickman
Gonzalez
Gordon
Gray (IL)
Gray (PA)
Guarini
Hall (OH)
Hamilton
Hatcher
Hawkins
Hayes
Hefner
Hertel
Hoyer
Jenkins
Jones (NC)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
Lantos
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lipinski
Long
Lowry (WA)
Luken
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McKinney
Mica
Mikulski
Miller (CA)
Mineta
Mitchell
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Natcher
Neal
Nichols
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Panetta
Pease
Penny
Pepper
Perkins
Price
Rahall
Rangel
Reid
Richardson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Scheuer
Schroeder
Schumer
Seiberling
Sharp
Shelby
Sikorski
Sisisky
Skelton
Slattery
Smith (FL)
Smith (IA)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stokes
Stratton
Studds
Swift
Synar
Tallon
Torres
Torricelli
Towns
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Waldon
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitley
Williams
Wilson
Wirth
Wise
Wolpe
Wright
Wyden
Yates
Yatron
Young (MO)

NAYS—196

Anderson
Archer
Armey
Badham
Barnard
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Brown (CO)
Burton (IN)
Byron
Callahan
Carney
Chandler
Cheney
Clinger
Coats
Cobey
Coble
Coleman (MO)
Combest
Conte
Coughlin
Courter
Craig
Crane
Dannemeyer
Darden
Daub
Davis
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Dyson
Early
Eckert (NY)
Edwards (OK)
Emerson
English
Evans (IA)
Fawell
Fiedler
Fields
Fish
Franklin
Gallo
Gekas
Gilman
Gingrich
Goodling
Gradison
Green
Gregg
Gunderson
Hall, Ralph
Hammerschmidt
Hansen
Hendon
Henry
Hiler
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Johnson
Jones (OK)
Kasich
Kemp
Kolbe
Kramer
LaFalce
Lagomarsino
Latta
Leach (IA)
Leath (TX)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Loeffler
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCain
McCandless
McCollum
McDade
McEwen
McGrath
McKernan
McMillan
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Monson
Moorhead
Morrison (WA)
Myers
Nelson
Nielson
Nowak
Oxley
Packard
Parris
Pashayan
Petri
Pickle
Porter
Pursell
Quillen
Ray
Regula
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roemer
Rogers
Roth
Roukema
Rowland (CT)
Rudd
Saxton
Schaefer
Schneider
Schuette
Schulze
Sensenbrenner
Shaw
Shumway
Shuster
Siljander
Skeen
Slaughter
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solomon
Spence
Stangeland
Stenholm
Strang
Stump
Sundquist
Sweeney
Swindall
Tauke
Tauzin
Taylor

Thomas (CA)
Thomas (GA)
Traficant
Vander Jagt
Vucanovich
Walker
Weber
Whitehurst
Whittaker
Wolf
Wortley
Wylie
Young (AK)

NOT VOTING—20

Berman
Biaggi
Boland
Breaux
Broomfield
Burton (CA)
Campbell
Chappie
Conyers
Fowler
Frenzel
Grotberg
Hartnett
Hillis
Kindness
Lundine
Moore
Whitten
Young (FL)
Zschau

□ 1250

Mr. LEATH of Texas changed his vote from "yea" to "nay."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. NATCHER). The question is on the resolution.

RECORDED VOTE

Mr. WALKER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 255, noes 157, not voting 20, as follows:

[Roll No. 407]

AYES—255

Abercrombie
Ackerman
Akaka
Alexander
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnes
Bates
Bedell
Beilenson
Bennett
Bentley
Berman
Bevill
Bliley
Boggs
Boner (TN)
Bonior (MI)
Bonker
Borski
Boucher
Boxer
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Carr
Chapman
Chappell
Clay
Coelho
Collins
Conte
Cooper
Coughlin
Coyne
Crockett
Daniel
Daschle
Davis
de la Garza
Dellums
Derrick
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Eckart (OH)
Edgar
Edwards (CA)
Emerson
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Fuqua
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Goodling
Gordon
Gray (IL)
Gray (PA)
Guarini
Hall (OH)
Hamilton
Hatcher
Hawkins
Hayes
Hefner
Hendon
Hertel
Horton
Hoyer
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
Lantos
Latta
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lipinski
Loeffler
Long
Lott
Lowry (WA)
Lujan
Luken
Lundine
MacKay
Manton
Markey
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDade
McGrath
McKinney
McMillan
Mica
Michel
Mikulski
Miller (CA)
Miller (WA)
Mineta
Mitchell
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Panetta
Pashayan
Pease
Penny
Pepper
Perkins
Pickle
Price
Pursell
Quillen
Rahall
Rangel
Reid
Richardson
Rinaldo
Rodino
Rose
Rostenkowski
Rowland (CT)
Rowland (GA)
Roybal
Rudd
Russo
Sabo
Savage
Scheuer
Schroeder
Schumer
Seiberling
Sharp
Shelby
Shuster
Sikorski
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (NJ)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stokes
Stratton
Studds
Swift
Synar
Tallon
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Waldon
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitley
Whittaker
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wright
Wyden
Yates
Yatron
Young (MO)

NOES—157

Anderson
Archer
Armey
Badham
Barnard
Bartlett
Barton
Bateman
Bereuter
Bilirakis
Boehlert
Bosco
Boulter
Brown (CO)
Burton (IN)
Byron
Callahan
Carney
Carper
Chandler
Cheney
Clinger
Coats
Cobey
Coble
Coleman (MO)
Coleman (TX)
Combest
Courter
Craig
Crane
Dannemeyer
Darden
Daub
DeLay
DeWine
Dickinson
Dornan (CA)
Dreier
Early
Eckert (NY)
Edwards (OK)
Evans (IA)
Fawell
Fiedler
Fields
Gallo
Gekas
Gingrich
Gradison
Green
Gregg
Gunderson
Hall, Ralph
Hammerschmidt
Hansen
Henry
Hiler
Holt
Hopkins
Howard
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jones (OK)
Kasich
Kemp
Kolbe
Kramer
LaFalce
Lagomarsino
Leach (IA)
Leath (TX)
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Lowery (CA)
Lungren
Mack
Madigan
Marlenee
Martin (NY)
McCain
McCandless
McCollum
McEwen
McKernan
Meyers
Miller (OH)
Molinari
Monson
Moorhead
Morrison (WA)
Myers
Nielson
Packard
Parris
Petri
Porter
Ray
Regula
Ridge
Ritter
Roberts
Robinson
Roe
Roemer
Rogers
Roth
Roukema
Saxton
Schaefer
Schneider
Schuette
Schulze
Sensenbrenner
Shaw
Shumway
Siljander
Slaughter
Smith (IA)
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solomon
Spence
Stangeland
Stenholm
Strang
Stump
Sundquist
Sweeney
Swindall
Tauke
Tauzin
Thomas (CA)
Traficant
Vander Jagt
Vucanovich
Walker
Weber
Whitehurst
Whitten
Wortley
Wylie
Young (AK)

NOT VOTING—20

Biaggi
Boland
Breaux
Broomfield
Burton (CA)
Campbell
Chappie
Conyers
Fowler
Franklin
Frenzel
Grotberg
Hartnett
Hillis
Kindness
McHugh
Moore
Oxley
Young (FL)
Zschau

□ 1305

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REQUEST FOR PERMISSION TO OFFER SUBSTITUTE AMENDMENT TO H.R. 5300 IN LIEU OF AMENDMENT MADE IN ORDER UNDER THE RULE

Mr. WYLIE. Mr. Speaker, I ask unanimous consent that I be permitted to offer a substitute amendment which is at the desk in lieu of the amendment made in order under the rule.

The SPEAKER pro tempore (Mr. NATCHER). Is there objection to the request of the gentleman from Ohio?

Mr. GRAY of Illinois. Mr. Speaker, reserving the right to object, I have examined the proposed amendment to be offered by the gentleman from Ohio, and it undoubtedly is aimed at an amendment I offered and was adopted in the House by a vote of more than 2 to 1 earlier, that would lower rents for senior citizens. Therefore, I am constrained to object.

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

Mr. GRAY of Illinois. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I understand the point the gentleman is making. However, we have had a rather unusual set of circumstances here. If the House would wish to vote in the direction the gentleman is talking, we certainly could have a vote on that issue.

But the gentleman from Ohio really was basically assured of an amendment and the gentleman tried to offer it during the process here. The committee refused to offer a committee amendment, and the gentleman has been frozen out of the situation and told that this was his one recourse in order to get his amendment in order. If the gentleman does make his objection, the gentleman from Ohio has lost his recourse and we have lost a chance to vote on 470 million dollars' worth of budget savings.

I am just wondering if the gentleman could at least allow us to bring this to a vote.

Mr. GRAY of Illinois. Mr. Speaker, further reserving the right to object, I apologize to the gentleman for having to do this but, as I said, the House voted by more than 2 to 1 for lowering elderly housing rents, including more than 50 Members on the minority side.

Mr. WYLIE. Mr. Speaker, will the gentleman yield to me so that I might explain my amendment if the gentleman intends to object?

Mr. GRAY of Illinois. Mr. Speaker, under my reservation of objection, I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Speaker, I thank the gentleman from Illinois for his courtesy.

Mr. Speaker, my amendment does not say anything about the amendment of the gentleman from Illinois which has to do with rental housing for the elderly.

All my amendment does is to put a cap on the spending for the housing program at the level which the budget recommended. I have discussed this with Mr. GRAY of Pennsylvania, and the gentleman agrees with me and says that it will be taken out in conference. I think that we should take it out here on the House floor.

The gentleman from Illinois [Mr. GRAY] has been around a long time, and the gentleman knows that my amendment cannot possibly have any effect on his amendment unless the Appropriations Committee wants it to have an effect on his amendment. The final appropriations have not been made for fiscal year 1987. They will not be made until after we adopt the budget and until after the housing authorization bill is adopted, which it has not been.

All my amendment does is reflect the will of the House when we passed the housing bill.

Under the rule, I would be permitted to offer an amendment which would strike out the whole housing bill which would include the gentleman's amendment. I did not ask for such a rule. As I said earlier, this is a historic moment. I got a rule which I did not ask for.

What I am trying to do is reflect the will of the House, and the final appropriations will determine what the monies will be spent for, and it cannot possibly have any impact on the gentleman's amendment at this point. I would hope the gentleman would not object.

Mr. GRAY of Illinois. Mr. Speaker, further reserving the right to object, will the gentleman tell us what items he is aiming at in his exact precise amount of $470 million.

I might say parenthetically that it is more than ironic that that happens to be the cost estimated by the Congressional Budget Office of lowering rents to senior citizens in public housing. If the gentleman is not aiming at my amendment, the gentleman is certainly a good guesser.

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

Mr. GRAY of Illinois. Under my reservation of objection, I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Speaker, I do not know where CBO got its estimates. All I am saying is that this rule came to my attention this morning for the first time. CBO says that, under its scoring policy, it indicates that the housing portion of the bill is $470 million over budget levels.

I think we are trying to follow the budget resolution in this budget reconciliation process. The chairman of the Budget Committee has assured me that that is the case.

It may be more than a coincidence if what you say is what CBO did in its scoring procedure. I do not know that to be a fact. But let me assure the gentleman I did not have any specific program in mind at all. All I am trying to do is to cap the level of outlays in my amendment, if I am permitted to offer it, to the fiscal year levels of spending which were announced earlier in the budget bill.

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

Mr. GRAY of Illinois. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Ohio.

□ 1315

Mr. LATTA. I thank the gentleman for yielding to me.

Mr. Speaker, let me say in the interest of fairness I would like to appeal to my friend from Illinois not to object. The gentleman from Ohio maintains that what we did in the Rules Committee is not what he wanted. I think that we ought to permit a Member, if we make an amendment in order under a rule, to offer, to at least offer what he intended.

We will have an opportunity when the proper time comes, even though you permit, without your objection, for him to make this amendment to his amendment, we will have an opportunity to vote on it. At that time the gentleman and the Members of this House will have an opportunity to vote up or down on his amendment. So that time is in the future. All he is asking for is to correct his amendment. It is his amendment; not yours, not mine, not anybody else's in this House. It is his amendment that we made in order in the Rules Committee.

So I think the gentleman ought to have an opportunity to perfect his amendment, and I hope the gentleman will not object. We will vote on it later on.

Mr. GRAY of Illinois. Mr. Speaker, further reserving the right to object, I certainly respect the very esteemed gentlemen from Ohio [Mr. LATTA and Mr. WYLIE] and the gentleman from Pennsylvania [Mr. WALKER] but it is very obvious what this proposed amendment is for. It is to get at the Gray amendment that reduced rentals in public housing from 30 to 25 percent of gross income. As far as it increasing the overall budget, Mr. Speaker, we pointed out in our very lengthy debate, that there is approximately a 15-percent vacancy rate in public housing now because the rents are too high. What we have are people moving out of our public housing units into substandard housing. If we can have more people coming back in with cheaper rents, we can recoup this $470 million or a great part of it. It is very obvious, in light of the fact that the gentleman from Ohio [Mr. WYLIE] cannot tell us exactly where those cuts are going to be made. It is further obvious to me that the gentleman from Ohio is definitely trying to cut back on the very poor people who are at the very bottom of the economic ladder. Our senior citizens living in public housing.

Mr. Speaker, reluctantly, I object.

Mr. Speaker, I am constrained to object.

Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

OMNIBUS BUDGET RECONCILIATION ACT OF 1986

The SPEAKER pro tempore. Pursuant to House Resolution 558 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5300.

□ 1317

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. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, with Mr. SEIBERLING in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Pennsylvania [Mr. GRAY] will be recognized for 1½ hours and the gentleman from Ohio [Mr. LATTA] will be recognized for 1½ hours.

The Chair recognizes the gentleman from Pennsylvania [Mr. GRAY].

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today we are considering H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as modified by the package of amendments incorporated into the bill by the rule.

The other body has already adopted a reconciliation package similiar to the one I present today. It is my hope that once the House passes this reconciliation bill, we will begin the conference immediately with the other body to resolve our differences in order to reach agreement on a package sufficient to meet the Gramm-Rudman-Hollings target.

We must send this package to the President before the October snapshot

to avoid a possible sequestration of more than $20 billion. Elements of the bipartisan package include provisions for a public offering of Conrail, Exim loan asset sales, rural development insurance fund asset sales, a validation of the administration's fiscal year 1986 revenue sharing payment, additional IRS personnel to increase revenue collections, accelerated collection of certain excise taxes, increased taxpayer compliance through penalties, and an across-the-board cut in discretionary spending, 50 percent from domestic and 50 percent from Pentagon spending.

All told, the original provisions of H.R. 5300 plus these modifications will result in more than $15 billion in fiscal year 1987 deficit reduction even when scored against the Gramm-Rudman-Hollings baseline.

I stress the fact that the package before you today is a bipartisan one, formulated only after extensive discussions between the majority, the minority and the administration. We all know our goal and through this package we will meet that goal, which is to avoid sequestration and come within the guidelines and the threshold of Gramm-Rudman.

The common question asked by my colleagues on both sides of the aisle is how did we get from passing a budget resolution in June containing a deficit of under $144 billion to the situation confronting us now of piecing together a deficit reduction package of $15 billion practically overnight. My answer is all too familiar these days: Gramm-Rudman-Hollings.

The original reconciliation bill, as adopted by the Budget Committee in July, represented the good faith efforts of the House committees to meet their reconciliation instructions. However, since that time the Congressional Budget Office and the Office of Management and Budget issued their fiscal year 1987 sequestration report. That report projected the fiscal year 1987 deficit to be not $142.6 billion, as we had believed in early July, but to be $163.4 billion. Well above the Gramm-Rudman-Hollings target of $144 billion.

This estimate is not only due to congressional actions but to things totally outside of our control, such as lower revenues due to slower economic growth than expected. Further, advance deficiency payments for farm price supports are expected to be made. Also appropriation bills or a continuing resolution at the budget resolution levels are expected to be enacted.

Together, those actions would increase the deficit to $169 billion for fiscal year 1987; $15 billion above the Gramm-Rudman-Hollings threshold. In light of these facts, H.R. 5300, as originally reported, did not meet our deficit reduction goals and avoid sequestration this year. Therefore, a bipartisan reconciliation package of amendments was fashioned to augment the savings in the reconciliation bill. These modifications, if enacted, will ensure that we meet the deficit target necessary to avoid sequestration this year.

The package of reductions will enable the House to maintain its priorities set forth in the 1987 budget resolution while avoiding the mindless approach to deficit reduction of Gramm-Rudman-Hollings sequestration.

□ 1325

If fact, if we fail today to pass this deficit reduction measure, our most recent estimates show that the across-the-board cuts would rise to $24 billion; $12 billion from national security in outlays, $12 billion from vital domestic programs in outlays, thus totaling nearly $50 billion in budget authority.

This reconciliation vehicle is not a perfect package, but it is what all parties involved, the leadership of the House, the other body and the executive branch of Government, were able to agree upon.

I will admit that this approach does not totally reflect my preferences on how to reduce the deficit. I would prefer to include the revenue as some specific reductions, both in Pentagon spending and the domestic side.

However, the President is adamantly opposed to any revenue increases, even those in his own budget for 1987. Since the President must sign any reconciliation vehicle, and since we are limited in the number of days in which to reach our goal, it would seem foolhardy to pursue a course that ignores this reality. Not until the President is willing to look at all parts of the budget, not just domestic spending will we ever be able to implement a long-run solution to the deficit problem.

My friends and colleagues, that brings us to the real question today. You may not think this is a good package or a perfect package, and you are probably right. However, the question is, in order to pass this into law, we would have to have a Presidential signature and, thus, how many of us here today are prepared, as the President wants, to cut $15 billion out of domestic programs only and not touch the Pentagon side?

How many of us here today are prepared to go against the President and vote for large increases in revenues which we know ahead of time the President will not sign and, thus, we will face sequestration on October 1?

When you look at those realities, I believe despite the deficiencies of this package, it is the best that can be done. One thing we do know is that if we pass this package today, because of the bipartisan support in working it out in this body and the other body, along with the administration, that we will be able to go to conference and we will be able to get a vehicle that can be passed into law, that will avoid sequestration.

In conclusion, my colleagues, this package, in a word, gets the job done. It enables us to maintain the priorities which we set forth in the 1987 budget resolution. It is a reasonable alternative to the pending sequestration resolution and it avoids the devastating impact of mindless reductions of $24 billion across the board mandated by Gramm-Rudman-Hollings.

So, as you look at the package, look at it, even with its imperfections, with the knowledge that we will avoid sequestration; we will get under the threshold. We will not make major structural changes in deficit reduction, but one must recognize what the alternatives are and whether we could implement those alternatives by October 1. If we cannot, then we are inviting sequestration.

I urge all Members, after looking at the alternatives, to look at this package and they will recognize what we in the Committee on the Budget bipartisanly recognize, and that is, that this is the best possible solution to a difficult problem and it gets the job done.

Before I conclude, Mr. Chairman, I must commend the ranking member of the committee and his ranking members on the minority side: the gentleman from Ohio [Mr. LATTA] and particularly the gentlewoman from Illinois [Mrs. MARTIN] and also the gentleman from Texas [Mr. LOEFFLER], who were a part of a task force, who bipartisanly last week came up with something that both sides in the Committee on the Budget could accept.

Then I must commend my colleagues on the minority side for having the wisdom, as well as the courage, to encourage the other body to look at the proposal and, as a result of their leadership, the other body, along with the White House, joined in deliberations that lasted for several hours so that we know when we pass this vehicle that at least $13.6 billion of the savings herein have already been tentatively approved and will be signed into law.

I want to commend the ranking member, the gentleman from Ohio [Mr. LATTA], the gentlewoman from Illinois [Mrs. MARTIN] and the gentleman from Texas [Mr. LOEFFLER] and those of the minority side for their outstanding leadership in putting this package together.

It is the best that can be done in light of the political realities that we face.

I urge my colleagues to support it and vote for it, particularly when they look at what the alternatives are and the amount of time we face in which

to enact legislation and avoid mindless cuts across the board.

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

Mr. Chairman, at the outset, let me thank the gentleman from Pennsylvania [Mr. GRAY] for his kind remarks and say that it is always a pleasure to work with him. Certainly in this instance it was a pleasure to work with him. We put in, as the gentleman indicated, many, many hours in trying to come up with a compromise, and a compromise is before us.

The gentleman from Pennsylvania [Mr. GRAY] has shown, since he has been chairman of this committee, extremely able leadership and we are very, very lucky in this body to have his leadership with us.

Let me say at the outset that we cannot lose sight of the fact that we bring to you a package that has been put together by the Committee on the Budget; however, it is package that was first given to us by the individual committees of this House.

We do not come up with these program reductions or these program additions, and there are a few additions in here. They are submitted to us on the Committee on the Budget and we put them together.

However, in our negotiations with the other body, we had certain limitatons that we submitted to the committee and said: "These are the figures that you must come up with." Most of them have complied. So we thank them for that.

I might say, if I had been putting this package together, I would not have done it in every detail as has been done here, nor would the President have done it as they have done.

I might say that I happen to be one of those who joined with the President and believes that we ought to be reducing expenditures of Government and not increasing taxes, as a good many Members in this House would do on the majority side.

We are going to be faced with this problem next session. We are going to have to decide at that time whether or not to reduce expenditures, as I think the American people want. They do not want increased taxes. You are not going to have any choice. We have given you an out this time in this reconciliation bill, but not the next time. There is not going to be a next time. You are going to have to fish or cut bait during the next session of this Congress and make some real cuts.

If you are talking about $15 billion in this bill, wait until the next time when you are talking about $40 billion.

Those are meaningful amounts, so get to thinking about it because the time is coming when those reductions in the budget are going to have to be made, and certainly the American people ought to take note of this fact, whether or not they want increased taxes or whether or not they want this Congress to reduce expenditures. I believe they want the latter.

Let me also say, as the chairman of the committee has indicated, I rise in support of this reconciliation bill as we have no other alternative. We have only a couple of days to act or sequestration is going to take place.

It is a product of negotiations, which are both bipartisan and bicameral. We sat down with the other body, Chairman DOMENICI of the Committee on Budget, and Senator CHILES, the ranking member, our chairman and myself, for several days to come up with this product that we have before us. So it is bicameral.

□ 1335

We had the Office of OMB Director, Mr. Miller, with us all the time, so the figures that we have here are figures that are going to be accepted downtown.

Certainly what emerged would not rank as anyone's first choice for dealing with this deficit. The best that can be said about it is that it is a package, and even though it has flaws, it will accomplish the objectives that we have to accomplish to avoid sequestration.

It allows the Congress to do the job of reducing the deficit rather than having it done through this automatic process across the board which I think would be unfair regardless of the value or the merits of the various programs. I think that is wrong to have equal cuts. I think there are some programs in government that are more valuable than others and some, in my humble judgment, we could do without altogether; but under Gramm-Rudman programs are cut across the board equally. We avoid that through this process.

We will be able to get below the Gramm-Rudman-Hollings deficit target of $154 billion, which would allow us to avoid sequestration in the fiscal year 1987 budget.

Here is what sequestration would have done. In these across-the-board cuts, they could total about $30 billion. This would be 8.9 percent in defense programs and 13.9 percent in nondefense programs. These cuts would have to be made on top of the automatic Gramm-Rudman cuts that were made earlier in fiscal year 1986, which amounted to 4.9 percent in defense and 4.3 percent in domestic programs.

The cumulative reductions below the amounts originally appropriated for 1986 would have been almost 14 percent for defense and 18 percent for domestic programs. After adjustment for inflation, the cumulative reductions would have been even greater.

Such a sequestration would have serious effects on many vital areas. It could be particularly harmful to the armed services. Hundreds of thousands of active duty and reserve military personnel would have to be laid off.

On the domestic front, programs to benefit the farmers and to carry on the war against drugs would be among those taking severe cuts.

Gramm-Rudman-Hollings makes no distinction between unnecessary Government spending and spending that America really needs.

So it is far better that Congress meet its responsibilities and reduce the deficit through the enactment of this reconciliation package, even though in my humble judgment it is flawed in many areas, rather than letting it be done through sequestration.

Reducing the deficit would provide little benefit for the American people if the reductions were accompanied by the kind of large income tax increases that many others in this Congress have advocated; so it is a major accomplishment that we are avoiding such a tax increase in reaching the target through this package. It is in line with the pledges made to the American people by the President when he was seeking reelection and also in line with the position that the Republican members of the House Budget Committee have taken all along.

I would have preferred to see substantial reductions in domestic programs in the package, but the majority on the Budget Committee made it plain that any domestic savings would have to be accompanied by a dollar-for-dollar reduction in defense programs, and the President is firmly against any more sizable cuts in our defense capabilities.

The House Appropriations Committee already has cut President Reagan's request for fiscal year 1987 by more than 12 percent. This would be 2 percent below the 1986 level after the 1986 Gramm-Rudman sequestration and about a 5-percent real cut from 1986 if you account for inflation. In the last 2 years defense has suffered real cuts totaling about 10 percent, so it is pretty obvious that defense has done its share in reducing costs.

Some critics have denounced what they call smoke and mirrors in this package. Well, maybe there is some smoke and mirrors, but OMB agrees to the figures.

There are good arguments for accomplishing deficit reduction this year with this kind of package. For one thing the selling of assets and imposing user fees avoids fiscal contractions on the general economy at a time when the economy appears to be quite fragile. In selling off assets we are pulling the government out of areas we feel would be better served by private enterprise without further expense to the American people.

When we sell loan assets without recourse—and I want to stress that—without recourse, we also can determine exactly how much Federal subsidy has been involved in all those loan programs.

As the chairman has already pointed out, under this reconciliation package we are going to have the advance payments to the farmers and they are going to be made shortly.

Revenue sharing for this year, payments are going to be made before the next fiscal year.

The package also provides for paying cost-of-living adjustments for Social Security recipients, even if the cost-of-living increase for the year does not reach the 3-percent trigger required under the current law. This is very important to some 36 or 37 million people under Social Security. This would cost about $800 million. It is one of the add-ons.

An additional $580 million is included to hold the part. A deductible required for Medicare patients to $500, rather than let this figure rise to $572 for 1987 stipulated in the current law, so we are saving these Medicare patients under part A $72 a year on their deductible..

It also contains money for improving enforcement of our income tax laws to make sure that some Americans do not profit at the expense of others by dodging legitimate tax payments.

Speaking of taxes, some Members think we can avoid sequestration just by utilizing the expected revenues from the next tax reform bill. That bill is designed to be revenue neutral. Even if you get a windfall of surplus revenues next year, this will be balanced off by a shortfall of revenues in future years, so obviously we cannot rely on it for long-term deficit reduction. No one is sure exactly how much surplus will be produced next year. It is highly unlikely that we could escape sequestration with the tax bill revenues alone without enactment of this reconciliation package.

Finally, Mr. Speaker, time is running out for this Congress to act. Even if we pass this package today, we still have some differences, even though they are small, to work out with the U.S. Senate, and the bill must still go to the President of the United States for his signature.

If this bill does not become law by a week from Sunday, October 5, then we probably will miss the deficit reduction target and the Government will have to undergo a painful sequestration.

Now is the time we must act to keep us from going that direction.

Mr. LOWRY of Washington. Mr. Chairman, I yield 15 minutes to the distinguished gentleman from Michigan [Mr. DINGELL], the chairman of the full committee on Energy and Commerce.

Mr. DINGELL. Mr. Chairman, I yield myself 5½ minutes for purposes of dealing with the aspects of this legislation which relate to the business of the Committee on Energy and Commerce.

Mr. Chairman, I thank my distinguished friend and colleague for his kindness to me. At the appropriate time I will yield 7½ minutes to my dear friend, the gentleman from New York [Mr. LENT], the ranking minority member, for purposes of addressing his share of the issues and his concerns.

First, Mr. Chairman, I rise in support of H.R. 5300, the Omnibus Reconciliation Act of 1986. I would like to take a few minutes to discuss title IV of the bill, which contains the reconciliation recommendations of the Committee on Energy and Commerce.

Title IV includes legislation that will result in 3-year outlay savings of $3.8 billion. More than $2.7 billion of that amount will be achieved in fiscal year 1987 alone.

The sale of Conrail will be a major source of these savings. The other savings in title IV have been achieved in a number of ways—by making improvements in the Medicare Program, by increasing user fees for the Nuclear Regulatory Commission, by imposing user fees at the Federal Energy Regulatory Commission, and by recouping some of the oil overcharge funds anticipated by the budget resolution.

Unfortunately, most of us on the committee believed at one time or another that the savings would be larger. Regrettably, a court decision rendered subsequent to the passage of the budget resolution made the bulk of the oil overcharge funds unreachable by legislative action, an action by the court which I regard as being extremely unwise and very much inconsistent not only with statutory law, but also with good sound public policy. Thus, the Energy and Commerce Committee's savings are lower than what they might have been were it not for this unfortunate judicial decree, even though the committee, I note, did meet its reconciliation targets.

Title IV also contains other provisions to effectuate certain policy goals contemplated by the budget resolution. For example, section 9 of the budget resolution expressed the sense of the Congress that the strategic petroleum reserve be filled to 750 million barrels. The committee's reconciliation recommendations provide the necessary authority to meet this goal.

Similarly, the budget resolution aimed at increasing funding for maternal and child health—the so-called children's initiative—and for specified improvements in the Medicaid Program. After close consultation with and approval of the Budget Committee and the leadership, the committee included legislation to carry out these important health policy imperatives.

The inclusion of our Conrail sale legislation in this bill has my wholehearted support and endorsement. It caps off nearly 2 years of discussion and debate on this issue. I am pleased to be bringing to the House a bill that will move Conrail to the private sector without the unfortunate anticompetitive problems and the job losses that would have accompanied a merger with another Eastern carrier.

The Conrail legislation, which has been incorporated as subtitle H of title IV, provides for a sale of the Government's 85-percent interest in Conrail through a public stock offering to be administered by the Secretary of Transportation. The Secretary would be expected to obtain proceeds of at least $1.7 billion, which when coupled with a transfer to the Government of $300 million in Conrail cash, would result in deficit reduction of at least $2 billion, if the market does not fall.

By a bipartisan vote of 32 to 9, the committee adopted an important amendment offered by the gentleman from Ohio [Mr. ECKART] to provide that the Secretary shall retain the services of multiple investment bankers to serve jointly and to be compensated equally as "co-lead managers" of the public offering and to establish a syndicate to underwrite the public offering. The gentleman from Ohio [Mr. ECKART], as author of this amendment, not only succeeded in having the amendment adopted overwhelmingly, but did so in a bipartisan fashion. Although I opposed that amendment as part of an agreement with my dear friends and colleagues, the gentleman from New York [Mr. LENT], the gentleman from New Jersey [Mr. FLORIO], and the gentleman from Illinois [Mr. MADIGAN], all of whom were similarly compelled to oppose it, I nevertheless believe that this is a good amendment and I commend the gentleman from Ohio for what he has done.

The committee engaged in an extensive debate when this amendment was offered. It is clear from my reading and my recollection of that debate that the committee intends the term "co-lead manager" to mean full and equal sharing of responsibilities in managing the transaction, as distinguished from the terms "lead manager" or "co-manager" as commonly used in the investment community.

This concept of "co-lead managers" is new to the American financial markets, but is well-known in the European Community and is certainly appropriate to an offering of this size, the largest in the history of this Nation.

Our committee was also cognizant of the need to insure the continuation of essential rail service in the Conrail region. Thus, the committee mandated

that Conrail take various steps for specified periods of time to maintain rail operations. We have also taken steps to guard against hostile takeovers and anticompetitive rail mergers. All in all, I believe the committee has produced a sensible, well-balanced, bipartisan sale package.

This package, called the Conrail Privatization Act, is the product of a bipartisan effort by a number of my colleagues, and I wish to commend them at this time—the subcommittee chairman, the gentleman from New Jersey [Mr. FLORIO], our two senior minority members, the gentleman from New York [Mr. LENT] and the gentleman from Illinois [Mr. MADIGAN], the ranking minority member of the subcommittee, the gentleman from Kansas [Mr. WHITTAKER], and the gentleman from Ohio [Mr. ECKART].

□ 1350

Mr. Chairman, I also want to recognize the distinguished chairman of the Committee on the Budget, the gentleman from Pennsylvania [Mr. GRAY], and his colleagues, and to commend them for their outstanding efforts and hard work to make possible not only the cooperation between our two committees, but also what we have done in this bill.

Mr. Chairman, I will include in the RECORD immediately following my remarks a floor statement and section-by-section analysis of the Conrail Privatization Act which represents the views of the chairmen and ranking minority members of the committee and subcommittee, as well as of Mr. MADIGAN, all of whom played integral roles in authoring this legislation.

The statement and analysis are as follows:

FLOOR STATEMENT ON CONRAIL—H.R. 5300, CONRAIL PRIVATIZATION ACT

SUBTITLE H—RAIL RELATED ISSUES

On September 17, 1986, the Committee on Energy and Commerce approved the Conrail Privatization Act. In lieu of a Committee Report, this floor statement represents the views of the Chairmen and Ranking Minority Members of the Committee and Subcommittee, as well as Representative Edward Madigan, and is intended to serve as the legislative history.

The Act would transfer Conrail to the private sector through a public offering to be administered by the Secretary of Transportation. Conrail is required to transfer $300 million in cash to the Government within thirty days of enactment. The Secretary shall thereafter sell the common stock owned by the United States in a public offering if the estimated sum of the gross proceeds to be realized by the Government from the public offering and the value of any warrants issued by Conrail to the Government is at least $1.7 billion.

The legislation provides guarantees to ensure that Conrail continues to provide rail service in the region. For example, the bill mandates that for five years Conrail spend at least $500 million annually on capital expenditures, unless the Conrail Board of Directors reduces that amount to $350 million (on a cumulative basis). If such expenditures are not made, Conrail cannot pay dividends. Other restrictions, ranging from three to five years in length, limit the ownership of any person in Conrail to 7.5 percent, require Conrail to maintain at least $250 million in cash on hand at the end of each year, restrict rail mergers, particularly with other carriers in the region, limit foreign ownership to 20 percent, and require Conrail to continue its affirmative action and minority vendor programs.

Once Conrail is sold, it will function like any other private sector corporation, with its own Board of Directors making decisions in the best interest of the Corporation, subject, of course, to applicable provisions of law.

A detailed section-by-section analysis of the legislation follows:

PART 1—GENERAL PROVISIONS

Section 4701. Short Title; Table of Contents

Section 4701 provides the short title, the "Conrail Privatization Act," and the table of contents.

Section 4702. Findings

Section 4702 provides the findings.

Section 4703. Purposes

Section 4703 provides the purposes.

Section 4704. Definitions

Section 4704 provides the definitions used in the Act.

With reference to the definition of "capital expenditures," we understand that Conrail's present accounting treatment distinguishes between capital expenditures and normal repair, maintenance and upkeep in accordance with generally accepted accounting principles.

Clause (A) of the definition of "cumulative net income" includes payments to be made to Conrail employees who are not represented by unions. We understand that Conrail will make payments to these employees which will not exceed $30 million. In addition, the aggregate value of the shares distributed under section 4724(f) should include cash distributed in lieu of fractional shares.

PART 2—CONRAIL

Subpart A—Sale of Conrail

Section 4711. Preparation for Public Offering

This section specifies actions required to prepare for a public offering.

Subsection (a) requires the Secretary of Transportation (the Secretary), not later than 30 days after enactment, in consultation with the Secretary of the Treasury and the Chief Executive Officer of Conrail, to retain the services of investment bankers to manage the public offering. The language provides that these firms will serve jointly as the "co-lead managers" of the public offering of Conrail stock, and will establish a syndicate to underwrite the public offering with equal responsibility for structuring and managing the public offering, an equal share in management fees resulting from the transaction, and an underwriting position and allocation of shares to be jointly determined by the co-lead managers.

The legislation requires that, in selecting the "co-lead managers," recognition and consideration shall be given to the contributions made by particular investment banking firms before the date of enactment in demonstrating and promoting the long-term financial viability of Conrail and the feasibility of a public stock offering.

Subsection (b) requires a transfer by Conrail of $300 million to the Secretary of the Treasury not later than 30 days after the date of enactment.

Subsection (c) requires Conrail to prepare and file a registration statement with the Securities and Exchange Commission (SEC) in connection with the initial and any subsequent public offering. We intend for Conrail to prepare and file with the SEC as many registration statements or amendments thereto as may be necessary to enable the Secretary to sell all the United States shares pursuant to this Act.

Subsection (d) amends the Regional Rail Reorganization Act of 1973 (3R Act) to eliminate the authority of the United States Railway Association (USRA) to purchase additional stock or debentures in Conrail, effective upon the date of enactment.

Section 4712. Public Offering

This section specifies requirements for the public offering.

Subsection (a) requires the Secretary in consultation with the Secretary of the Treasury, the Chairman of the Board of Conrail and the co-lead managers, to offer the Government's common stock interest for sale in a public offering, after the registration statement is declared effective by the SEC. The Secretary may offer less than all the shares owned by the United States at the initial sale, thus allowing for a sale in stages. Under no circumstances shall the Secretary offer any of the shares for sale unless, before the sale date, the Secretary determines, after consultation with the Secretary of the Treasury, the Chairman of the Board of Conrail and the co-lead managers, that the estimated sum of the gross proceeds from the sale of all of the shares owned by the Unted States and the value of any warrants issued by Conrail to the Government is at least $1.7 billion.

Subsection (b) request the Secretary, if a sale is to be done in stages, to sell the remaining shares in subsequent public offerings.

Subsection (c) provides that any public offerings under this section may be made without Conrail's consent.

Subsection (d) allows the Secretary to require Conrail to declare a stock split or reverse stock split.

Subsection (e) provides that, in consideration for the $300 million transfer from Conrail to the Secretary of the Treasury and any warrants issued under this section, the Secretary, concurrent with the initial public offering, shall deliver to Conrail all preferred stock, 7.5 percent debentures and contingent interest notes of Conrail held by the United States. Conrail shall then cancel such debentures, preferred stock, and contingent interest notes and the interest of the United States in such debentures, preferred stock and contingent interest notes will thereby be extinguished.

We understand that the surrender of the Conrail preferred stock and debt securities by the Secretary pursuant to this subsection is necessary in order to permit the Secretary to sell the United States shares. We understand that investment bankers are of the opinion that the United States are not marketable while the Conrail preferred stock, debentures and contingent interest notes are outstanding.

The subsection further provides that for purposes of regulation by the Interstate Commerce Commission (ICC) and state public utility commissions and for purposes of reporting to the SEC, certain actions au-

thorized by this legislation will not change Conrail's asset value net of depreciation and shall not be used to alter the calculation of Conrail's stock or asset value, rate base, or certain other attributes or otherwise affect or be the basis for a change in the regulation of Conrail's service, rates, or practices, or any change in Conrail's financial reporting practice.

Subsection (f) allows the Secretary, in consultation with the Secretary of the Treasury, the Chairman of the Board of Conrail, and the co-lead managers, to require Conrail to issue warrants to the Government, if doing so will increase the return to the Government. We intend for any determination by the Secretary under this subsection to specify the terms of any warrants to be issued by Conrail to the United States.

Subsection (g) requires the Secretary to ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in the public offering. This subsection is intended to ensure opportunity for participation by minority investment banking firms in the public offering. We intend that before concluding a contractual relationship retaining any co-lead managers, the Secretary shall ensure that minority owned or controlled investment banking firms have been provided an opportunity to participate to a significant degree in all other phases of the public offering, including, but not limited to, management, underwriting, selling and any other syndicate activities created pursuant to this Act.

Subsection (h) authorizes the General Accounting Officer (GAO) to make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of Conrail and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the GAO to make such audits, and the GAO shall report the results of all such audits to the Congress.

Section 4713. Fees

This section requires the Secretary, in consultation with the Secretary of the Treasury and Conrail's chairman, to agree to pay to investment bankers and other persons participating in the public offering the absolute mininum amount in fees necessary to carry out the public offering.

Subpart B—Other Matters Relating to the Sale

Section 4721. Rail Service Guarantees

This section provides rail service guarantees to protect essential rail service in the Northeast and Midwest.

Subsection (a) provides for certain restrictions or requirements on Conrail, for a period of five years from the date of enactment.

The first guarantee requires Conrail to spend the greater of its financial depreciation or $500 million in capital expenditures in each fiscal year. The guarantee allows Conrail's Board to reduce the required capital expenditure for such years to an amount which the Board determines is justified by prudent business and engineering practices, subject to a required minimum amount of $350 million per year (on a cumulative basis). We intend that the Conrail directors will exercise their business judgment in any determination under this paragraph, and that such business judgment will be held to the standards provided for under applicable State law.

The second guarantee limits dividend payments. Dividend payments may only be made if Conrail is in compliance with the capital expenditures requirement, and common stock dividends cannot exceed fifty percent of cumulative net income less the cumulative amount of any preferred stock dividends.

The third guarantee requires Conrail to continue its affirmative action and minority vendor programs.

The fourth guarantee requires Conrail to retain the locomotive shop and car repair shop in Blair County, Pennsylvania, and the repair shop in Collinwood, Ohio.

Subsection (b) provides the three year guarantees.

The first guarantee prevents any break-up of Conrail.

The second guarantee requires Conrail to have a cash balance of at least $250 million at the end of each fiscal year.

The third guarantee requires Conrail to continue to offer to sell lines which the ICC has approved for abandonment for 75 percent of net liquidation value.

Section 4722. Ownership Limitations

This section provides certain ownership limitations on non-rail and rail purchasers of Conrail stock.

Subsection (a) limits ownershp of Conrail stock by any person for a five year period, to 7.5 percent. This limit does not apply to the Employee Stock Ownership Plan (ESOP), the Secretary, to a railroad as described below, to underwriting syndicates holding stock for resale and, in the case of shares beneficially held by others, to commercial banks, broker-dealers, clearing corporations, or other nominees. This subsection also limits, for a five year period, total foreign ownership to 20 percent.

Subsection (b) limits railroad ownership. For five years, no Class I railroad may own more than 7.5 percent of Conrail stock, unless such railroad applies for merger authority with the ICC, in which case, the ICC shall give substantial weight to any views of the Secretary regarding the application. For five years, any railroad purchaser of no more than 7.5 percent of Conrail stock must vote such stock in the same proportion as all other common stock is voted. Any railroad which purchases more than 7.5 percent must vote as directed by the ICC, if no such direction is provided, in the same proportion as all other common stock is voted.

For the first three years, there are additional restrictions on Norfolk Southern Corporation and CSX Corporation. They are forbidden to own more than 7.5 percent of Conrail's stock and the ICC is forbidden to consider any merger or control application between Conrail and Norfolk Southern or between Conrail and CSX. These additional restrictions expire in three years or if any loan guarantee is made to Conrail under Section 4725. After these specific provisions expire, NS, CSX, and their successors and assigns will continue to be bound by the restrictions applicable to other railroads.

Section 4723. Board of Directors

This section provides for a transition from Conrail's current Board of Directors (six members appointed by the USRA, five members appointed by the Department of Transportation (DOT), and the Chairman and the President of Conrail) to a Board elected by the public shareholders of Conrail.

We intend that there will be special meetings of Conrail stockholders to elect new directors as soon as practicable after the dates on which this section requires new directors to be elected by public stockholders of Conrail, and that all directors referred to in this section will continue to serve as directors until their successors have been qualified and elected or appointed, as the case may be.

We intend that the first director elected by the Conrail public stockholder will replace the director with the shortest length of service as a director of Conrail. If the first Conrail director replaced was appointed by DOT, or is a replacement for a director appointed by DOT, the second director replaced will be the director (or replacement of such a director) having the shortest length of service from among the so-called "USRA directors." The third director replaced will be a DOT director, the fourth director replaced will be a USRA director, and so forth, with shortest length of service within each class determining the order of replacement. If the first Conrail director replaced is a USRA director, the reverse order of replacement will occur.

We intend that eight directors will be elected by the Conrail public stockholders after more than half of the Conrail stock owned by the United States has been sold, without regard to increments of 12.5 percent ownership interest sold by the United States.

The Secretary is not a public stockholder under this section.

Section 4724. Provisions for Employees

This section establishes various provisions for Conrail's employees in recognition of the role they have played in Conrail's successful turnaround.

Subsection (a) requires Conrail to assume financial liability for the current section 701 labor protection program, until the sale date.

Subsection (b) provides for dispute resolution procedures during this transitional period.

Subsection (c) repeals section 701 effective on the sale date.

Subsection (d) requires Conrail to provide protection to its employees, on and after the sale date, pursuant to its September 17, 1985 agreement with representatives of its employees, or as otherwise agreed between the parties. The United States shall have no liability for benefits under this subsection.

We understand and intend that the benefits provided under the Conrail supplemental unemployment benefit plan ("SUB plan") contemplated by the Definitive Agreement shall be considered for all purposes as benefits received by employees under a nongovernmental plan for unemployment insurance, and not as remuneration for services rendered to Conrail.

Subsecton (e) requires Conrail to pay, in compensation for past wages below industry standard, $200 million to present and former agreement employees in accordance with its September 17, 1985 agreement, or as otherwise agreed between the parties. We expect Conrail to pay other obligations to the Railway Labor Executives' Association only for legitimate verified claims for actual services rendered (such as legal fees).

This subsection of the bill provides for individual payments to all present and former employees who accepted wages below industry standard.

Subsection (f) provides for the distribution of shares in Conrail's ESOP to participants and beneficiaries. After the distribution of stock, the ESOP terminates. We

intend the allocation of shares in the ESOP will be as contemplated in the Definitive Agreement, i.e., to those persons who were Conrail employees at any time between April 1, 1981 and June 30, 1984. We intend that the ESOP will make any distributions required by the law to maintain its tax-qualified status.

Section 4725. Essential Rail Service Loan Guarantee

This section allows the Secretary, during the ten year period beginning on date of enactment, and at the request of Conrail, to guarantee a loan or loans up to a total of $500 million, if the Secretary determines such a guarantee is in the public interest and necessary for Conrail to continue to provide essential rail service. The Secretary may prescribe necessary and appropriate terms and conditions, which may include representation on Conrail's Board of the Secretary and the Secretary of the Treasury, or their designees.

Section 4726. Certain Enforcement Relief

This section provides for enforcement.

Subsection (a) provides that the Secretary, with respect to any guarantee in Section 4721 or ownership limitation in Section 4722, or any person, including Conrail, who suffers direct economic injury as a result of an alleged violation of the capital expenditure, dividend, or cash balance guarantees or the ownership limitations, may bring an action to enforce compliance with such provision.

Subsection (b) provides that any action brought under this part shall be brought before the Special Court. The Special Court may limit the enforcement of a guarantee under section 4721 only if the effect of such restriction would be substantially to impair the continued viability of Conrail.

Subpart C—Miscellaneous Technical and Conforming Amendments and Repeals

Section 4731. Abolition of the United States Railway Association

Section 4731 abolishes the USRA, effective January 1, 1987. The section also provides that the securities of Conrail held by the USRA and the responsibilities of the USRA are to be transferred to DOT. Effective as of January 1, 1987, the Financing Agreement between Conrail and the USRA, except for provisions specifying repayment terms and conditions to the United States, shall terminate. The repayment terms and conditions terminate on the sale date.

Section 4732. Applicability of the Regional Rail Reorganization Act of 1973 to Conrail After Sale

This section specifies that the 3R Act shall not apply to Conrail and to activities and other actions and responsibilities of Conrail and its directors and employees after the sale date, with specified exceptions.

Section 4733. Miscellaneous Amendments and Repeals

This section makes miscellaneous amendments and repeals to the 3R Act, the Northeast Rail Service Act of 1981 (NERSA), and other Acts.

This section also amends section 217(c) of the 3R Act, which was enacted by section 1140(c) of NERSA and which exempted Conrail from liability for state taxes until the property of Conrail is transferred. The amendment is intended to clarify the period of the exemption, which permanently removed a financial burden from Conrail.

This section also provides that, in the event Conrail files for bankruptcy, the Secretary is required to develop and submit to the appropriate court a reorganization plan which maximizes rail service and transportation competition. Such court shall give substantial weight to the Secretary's plan.

Section 4734. Liability of Directors

This section exempts Conrail's directors and others from liability if, with respect to the involved subject matter, the person was fulfilling a duty which such person in good faith reasonably believed to be required by law or vested in such person in his capacity, in connection with any action taken under this Part. However, this section does not apply to claims arising out of various securities laws, which claims are in connection with a public offering under section 4712 of this Act.

Section 4735. Charter Amendment

This section requires Conrail to amend its Articles of Incorporation to contain the following provision: "It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area." This provision shall not be subject to amendment or repeal and shall be primary to other lawful business purposes in which Conrail may engage under the laws of Pennsylvania, where Conrail is incorporated.

Section 4736. Status of Conrail After Sale

This section makes clear that Conrail remains a rail carrier, as defined in the Interstate Commerce Act, after the sale.

Section 4737. Effect on Contracts

This section specifies that nothing in this Act affects Conrail's obligation to carry out its transportation contracts, equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

We intend that Conrail will continue to be bound after the sale by any contract, agreement, judicial decree or similar instrument to which the corporate entity was a party prior to the sale. This section, therefore, does not abrogate other instruments that do not fit the descriptions contained in this provision. We also intend that nothing in this Act shall affect any Conrail agreements with states or localities.

Section 4738. Resolution of Certain Issues

Subsection (a) makes clear that the employee provisions in section 4724 completely and finally resolve any rights under section 401(e) of the 3R Act and certain other claims.

Subsection (b) provides that Conrail shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement because of any provision of this Part or any actions Conrail is required to take under this Part.

Subsection (c) withdraws the consent of the United States to be sued with respect to any claims for damages or other monetary compensation arising out of this Part.

PART 3—PROMOTION OF RAIL COMPETITION

Section 4751. RAIL Service Continuation

This section amends the Interstate Commerce Act (ICA) to provide protection for employees adversely affected by sales of lines.

Employees adversely affected by a line sale under section 10901 would receive protection under the conditions provided in *New York Dock*, subject to a cap of $25,000, except for employees provided long-term employment with the acquiring carrier.

The legislation would require implementing agreements in line sales.

In the case of transactions under section 10905, the protection would depend on the type of transaction. The protection in line sales would be the same as that provided for line sales under section 10901. The protection in abandonments under section 10905 would be the same as that provided in abandonments under section 10903.

This section also provides that the ICC could not interfere in collective bargaining under the Railway Labor Act, except insofar as necessary to allow, by agreement or arbitration if required, the railroad to carry out the transaction approved by the ICC through adjustment of work forces, such as selection and assignment of forces.

Section 4751(a) of the bill amends Section 10901 of the Interstate Commerce Act by providing that the Interstate Commerce Commission shall provide affected employees those protections provided employees by section 11347 of the ICA, subject to a cap of $25,000. The Commission now has discretionary authority to provide such protection to employees but has made formal policy rulings that it will not do so.

There are two differences, however, between the protections required by other provisions of the ICA and the protections required by this amendment. Unlike the payments made under the conditions required by sections 10903 and 11347 and other sections of the ICA, the payments to be made under this section are limited to $25,000 per affected employee. Also, unlike typical employee protection provisions, these protections would not apply to employees who obtain "long-term employment" with the acquiring carrier. "Long-term employment" is intended to mean permanent employment in a bona fide job which would continue for not less than 3 years.

The amendment would also require so-called implementing agreements to be entered into, either voluntarily or by arbitration, between the selling carrier, buying carrier and the affected employees. The implementing agreements between the selling carrier and the employees shall be the same as those executed under the requirements of the employee protection conditions imposed by the Commission under Section 11347 in purchase cases. The agreement between the buying carrier and the employees shall be limited to the selection of forces to service the newly purchased line. This provision provides a means of assuring employees, particularly older, senior employees of the opportunity for continued employment in the railroad industry and involves only the identity of the employees to transfer. Binding arbitration should be required to be completed by the ICC within 15 days.

Section 4751(b) amends section 10905 in the same manner and to the same extent as section 4751(a) amends section 10901. The reference to section 10901 at the end of subsection (b) is, of course, a reference to that section as amended by this bill in the new subsection (f) of section 10901.

Section 4751(c) of the bill is a free-standing provision which restores the autonomy of the Interstate Commerce and Railway Labor Acts which had become blurred as the result of recent decisions of the Interstate Commerce Commission. The authority of the Commission to supersede certain laws where necessary in transactions approved under section 11344 is limited in the area of labor relations to the adjustment of work forces such as selection and assignment of such forces to perform the work in the new operation. We do not, by adopting this pro-

vision, intend to provide a means for preventing the effective consummation of mergers and other transactions. We intend that when issues other than the adjustment of work forces arise, the parties should enter into collective bargaining which will swiftly accomplish the objectives of the transaction.

Section 4752. Agriculture Contract Disclosure

This section amends the contract rate provision of the Interstate Commerce Act to establish minimum standards for the disclosure of terms of contracts for the transportation of agricultural commodities. In particular, the terms to be disclosed include, but are not limited to, identity of the shipper party to the contract; the specific origins, transit points and other shipper facilities subject to the contract, and destinations served under such contract; the duration of the contract, including provisions for optional extension; the actual volume requirements, if any; whether any transportation service has begun under a contract before the date such contract is filed with or approved by the ICC; and the date on which the contract became applicable to the transportation services provided under the contract. The ICC is directed to interpret this provision to provide for liberal discovery to shippers seeking remedies under the remedial provision applicable to agricultural commodities.

This section also requires that any amendment, supplement, or change to any term or provision of an agricultural contract shall be deemed to be a new contract and most be filed separately with the ICC.

This section requires the ICC to issue regulations, within 60 days after enactment, to implement the new disclosure requirements.

Finally, the section requires the ICC's contract rate advisory service to assess the impact on competition among agriculatural shippers of variations between contract rates and the published single car rates and to submit a report to Congress no later than 120 days after enactment.

Section 4753. Boxcar Provision

This section confirms the legal authority of the ICC to promulgate that portion of the rule adopted by the ICC in Ex Parte No. 346 (Sub. No. 19), served September 12, 1986, consisting of protections for small railroads. This section will resolve any doubts that may have been raised in ICC dissenting opinions regarding the ICC's legal authority to adopt those small railroad protections.

Mr. DINGELL. Mr. Chairman, I yield 7½ minutes to the gentleman from New York [Mr. LENT].

The CHAIRMAN. Without objection, the gentleman from New York [Mr. LENT] is recognized for 7½ minutes.

There was no objection.

Mr. LENT. Mr. Chairman, the reconciliation instructions received by the Committee on Energy and Commerce required the committee to recommend changes in laws to save $5.6 billion in outlays over the next 3 fiscal years. Of that amount, $3.25 billion were assumed to be saved through Medicare provider payment reforms. The remaining $2.35 billion were assumed to come from savings in the energy area. Subsequently, the energy savings were reduced by $750 million due to judicial action.

In the course of meeting its energy savings targets, the committee increased annual charges for the Nuclear Regulatory Commission. The fees collected now will cover virtually all the cost of NRC regulation. The committee also increased user fees for the Federal Energy Regulatory Commission and repealed a statutorily required industrial energy conservation survey. Finally, the committee provided for the U.S. Treasury to receive funds recovered from those who violated petroleum price and allocation regulations to the extent the parties injured by those violations cannot be determined and to the extent petroleum overcharge recoveries are not governed by previous court orders.

The Medicare and Medicaid amendments reported by the Committee on Energy and Commerce fall far short of achieving the savings required by the budget resolution for fiscal year 1987. The minimal savings that are achieved through changes to the Medicare Program are significantly reduced by many provisions increasing Federal spending in both of the entitlement programs under the committee's jurisdiction. Both the Committee on Energy and Commerce and the Committee on Ways and Means have been instructed to achieve savings of $550 million in fiscal year 1987 in the Medicare Program. This savings target can be reached only if new spending provisions are minimized. Although there may be merit to the spending proposals contained in this legislation, a reconciliation bill is an inappropriate vehicle for them.

In order to meet the deficit reduction target required by the Gramm-Rudman legislation and to avoid further sequestration, I anticipate that any new spending provisions in the health area will be closely scrutinized in conference. It is my hope that the conferees from the Senate Finance Committee and both the House Ways and Means and Energy and Commerce Committees can reach agreement on a health package which achieves necessary savings through meaningful reforms to the Medicare Program.

Finally, the committee enacted legislation authorizing the sale of Conrail. The Conrail Privatization Act would transfer Conrail to the private sector through a public offering administered by the Secretary of Transportation. Conrail must transfer $300 million in cash to the Government within 30 days of enactment. The Secretary must then sell the Conrail common stock owned by the Government to the public. The Secretary may sell the stock only if the estimated sum of the gross proceeds to be realized by the Government from the public offering and the value of any stock warrants issued to the Government are at least $1.7 billion.

The legislation seeks to ensure that Conrail continues to provide rail service in the Northeast. It does this through minimum capital expenditure requirements, ownership limitations, and restrictions on any "break-up" of Conrail. Once Conrail is sold, it will function as a private corporation with an independent board of directors making decisions in the best interest of the corporation.

A detailed description of the Conrail Privatization Act is set forth in a joint statement which Congressmen DINGELL, MADIGAN, FLORIO, WHITTAKER, and I are submitting for the RECORD today. I understand that Congressmen BLILEY and ECKART, the sponsors of a committee amendment dealing with public offering managers, are submitting a statement further describing that provision, section 4711(a), in which I will join.

Mr. Chairman, in conclusion, I would like to take this opportunity to discuss an issue which has arisen dealing with the lack of rail competition in the New York Metropolitan area. Specifically, the New York, Susquehanna and Western Railroad [NYS&W] operates the Rahway Valley/Staten Island railroads in the New York/New Jersey Port area which are separated by a distance of roughly 20 miles with the mainline of the NYS&W. In order to provide a competitive alternative to Conrail in the port region, Conrail should make a good faith effort to negotiate overhead trackage rights to connect the two geographically separate parts of the NYS&W system. If Conrail and the NYS&W are unable to reach agreement on their own initiative, NYS&W should be free to reach a trackage rights agreement with New Jersey Transit, without interference from Conrail. Clearly, this interconnection would provide shippers a transportation alternative into the region and would inject an element of competition where there previously was none.

Mr. LENT. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. FIELDS].

The CHAIRMAN. Without objection, the gentleman from Texas [Mr. FIELDS] is recognized for such time as he may consume.

There was no objection.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. FIELDS. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, during the Energy and Commerce Committee markup of its reconciliation actions on energy and related matters, my distinguished colleague from Texas, Mr. FIELDS, offered an amendment to subtitle C, the Petroleum Overcharge and Distribution Act of 1986, as amended by Mr. SHARP's amendment. The amendment, which was overwhelming-

ly approved by a voice vote, deleted section 4202(b)(2) in its entirety and substituted in lieu thereof the following:

(2) amounts governed by the settlement, approved on July 7, 1986, in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas.

I would like to inquire of the author of the amendment whether the purpose of the amendment was to exempt fully from this legislation the settlement agreement in the stripper well litigation and the Court's judgment of July 7, 1986, which approved the settlement agreement?

Mr. FIELDS. The distinguished gentleman from New York [Mr. LENT] is correct. The purpose of my amendment was to preserve fully the stripper well settlement agreement and the Court's judgment and to exempt both the settlement and the judgment from the scope of the legislation. Further, my amendment neither expanded nor reduced the scope of the judgment.

My amendment assured that the legislation would neither alter the rights or obligations of any of the parties to the agreement or under the judgment, nor alter the terms and conditions of the agreement and judgment. Thus, my amendment exempted from the legislation all crude oil overcharge funds, including MDL 378 escrowed and deficiency funds and funds in other administrative and judicial proceedings regardless of whether such funds are in escrow or whether such cases had commenced on the date of enactment of my amendment.

Mr. LENT. Mr. Chairman, I yield 30 seconds to the gentleman from Kansas [Mr. WHITTAKER].

The CHAIRMAN. Without objection, the gentleman from Kansas [Mr. WHITTAKER] is recognized for 30 seconds.

There was no objection.

Mr. WHITTAKER. Mr. Chairman, subtitle H of the budget reconciliation legislation provides for the sale of Conrail to the private sector through a public offering of its stock.

This legislation marks a significant step in ensuring rail service in the Northeast and Midwest and ending the involvement of the Federal Government in freight railroading. This involvement has cost the American taxpayer over $7 billion in the last 10 years.

The process of structuring a sale of Conrail has been long and arduous. The Secretary of Transportation conducted a thorough and objective review of alternatives for a sale, and should be commended for her perseverance and dedication to this effort.

The legislation approved by the Committee on Energy and Commerce meets the criteria for the sale, set out in the Northeast Rail Service Act, of preserving essential rail service, and maximizing the Government's return on its investment. The legislation directs that Conrail be sold through a public offering of its stock for a minimum price of $1.7 billion. Covenants are also included which are designed to protect Conrail's financial strength and service in the region.

The legislation also includes provisions outside of the realm of the sale itself. One such provision addresses the inability of small agricultural shippers in pursuing statutory remedies in contesting contracts. Specifically, the provision would require greater disclosure of the terms of contracts to better enable shippers to effectively challenge a contract on the basis that it is "discriminatory" or "constitutes a destructive competitive practice."

In closing, Mr. Chairman, this legislation is a consensus document and represents the joint effort of the leadership of the Energy and Commerce Committee. It is structured with an eye toward ensuring Conrail's future strength and giving certainty to the shipping community that rail service in the region will be preserved for the long term. I congratulate my colleagues on their successful effort.

Ms. MIKULSKI. Mr. Chairman, I rise in support of H.R. 5300, the Omnibus Budget Reconcilation Act. In particular, I want to express my strong support for that portion of this legislation which would return Conrail to the private sector through a public stock offering.

Since 1981, Congress has wanted to return the Federal Government's interest in Conrail to the private sector.

During this time, I have examined the various privatization proposals with three principal goals in mind:

First, does it provide American taxpayers with a fair return on their investment? The Federal Government has invested a substantial amount of money in making Conrail a profitable railroad. As a result, any sale should maximize the return to the Federal Treasury to help reduce the deficit.

Second, will it preserve rail competition in the marketplace? With the passage of the Staggers Act in 1980, the Congress ushered in a new era of rail competition.

Any Conrail sale should maintain a framework within which shippers will have access to their markets and other railroads will be guaranteed a level paying field within which they can compete.

And third, does it provide the very best deal for Maryland?

My State's economic growth depends heavily on a competitive rail transportation system. The Port of Baltimore and the Eastern Shore rely directly on Conrail for moving goods to market.

Western Maryland, while not a direct user of Conrail, does rely on a transportation network where there is real competition because it is competition that guarantees continued rail service.

The Conrail Privatization Act contained in H.R. 5300 clearly meets these three goals.

It is a good deal for the taxpayer because it guarantees a minimum of $2 billion for deficit reduction from the sale.

It is a good deal for consumers and shippers because it keeps Conrail as an independent railroad, guaranteeing continued service and affordable rates by preserving rail competition.

And finally, it is a very good deal for Maryland.

I have always been concerned that a sale of Conrail to Norfolk Southern would have seriously jeopardized rail service within Maryland, particularly to the Port of Baltimore.

But by keeping Conrail independent, which this legislation does, I am confident we will maintain the integrity of its rail service in our State.

We will be able to move coal, grain, and other commodities through the port, helping to keep it a world-class port.

We will guarantee continued service to the Eastern Shore so our poultry industry and other businesses can transport their goods by rail efficiently.

And we will protect those men and women in places like Cumberland, Frostburg, and Brunswick in western Maryland who either work for the railroads or whose livelihood depends on continued, regular rail service.

The Conrail Privatization Act represents a watershed in the history of our Nation's rail transportation system. When Conrail was formed out of the bankrupt Penn Central in the mid-1970's, few people thought we would see it a decade later as a strong and viable railroad.

With passage of the Staggers Act in 1980, however, and under the very capable leadership of Stanley Crane, Conrail has become a viable railroad that is profitable and which provides cost-effective service.

I want to commend the chairman of the Energy and Commerce Committee, JOHN DINGELL, for his efforts on this legislation. He has worked tirelessly to make sure that Conrail remains a viable and profitable railroad once returned to the private sector.

I also want to commend Commerce Subcommittee chairman, JIM FLORIO, for his very hard work on this issue. I have enjoyed working with him and believe that the proposal he has fashioned is in the best interests of the taxpayer and business competition.

Since Conrail was formed a decade ago, Congress has been its trustee, the steward designated to protect the interest of the American people in this railroad.

In passing this legislation today, I believe we will be exercising responsible stewardship over that interest and urge my colleagues to join me in voting for this bill.

Mr. DINGELL. Mr. Chairman, I yield back the balance of my time.

Mr. LOWRY of Washington. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. FLORIO].

□ 1400

Mr. FLORIO. Mr. Chairman, in 1981, the Congress set in motion the process for the sale of Conrail. The railroad was given the opportunity to become profitable, and the mechanism to begin the sale process was set in place.

We are here today to reap the benefits of that action through a sale that will return at least $2 billion to the Federal Government. We are selling Conrail through a public offering that will protect rail service and competition in the Northeast and Midwest.

Under the able leadership of Chairman DINGELL, we have rejected the proposal of the administration to sell Conrail to a competing railroad. Instead, we have chosen an option which will preserve the maximum amount of rail service and will provide a higher return to the Government.

For the last 2 months, Congressman MADIGAN and I, along with Congressmen DINGELL, LENT and WHITTAKER, have worked diligently to put together a public offering bill that would provide us the opportunity to return Conrail to the private sector. The bill before us does just that, and at the same time it protects jobs, protects service, and protects competition.

Conrail is a success story. From a chronic money loser from 1976 to 1981, it has become one of the most successful railroads in the country, both in terms of its earnings and its service to shippers. The Chairman of the company, Stanley Crane, deserves great credit, as do all the employees of Conrail. They have worked hard and well and they deserve the success they have earned.

It is important to understand what this bill does. It transfers Conrail to the private sector for a substantial sum, but it imposes requirements that will ensure that Conrail remains primarily a railroad providing service to shippers. There are a series of guarantees that ensure that Conrail continues to invest in its plant, prohibits the payment of dividends if Conrail does not make the required investment or if earnings are too low, prohibits mergers with other railroads in the region, and several others. It is these guarantees that make this sale possible in my view. Without them there would be insufficient assurance that Conrail remain in the railroad business, but with them the Government gets out of the railroad business, earns over $2 billion, and protects rail service.

After the sale Conrail will act like any other private corporation with the exception of these guarantees. The Board of directors of the Corporation will make decisions in the best interest of the Corporation.

The sale itself will be carried out by the Secretary of Transportation under the strict requirements of the bill. The Secretary is to hire investment bankers to manage the sale of the Government's common stock. While the Secretary should recognize and consider the contribution made by investment bankers to a public offering, the most important goal is to hire investment bankers who will provide the best service to the Government at the lowest possible cost. The bill requires the Secretary to keep fees to the absolute minimum, which means, in the context of a large offering of this sort, below the percentage that is normally paid to investment bankers for a smaller transaction.

The Federal Government owns Conrail and should realize the highest possible return from the sale. Conrail is required to turn over $300 million within 30 days of enactment, which is a small fraction of Conrail's current cash balance, and is a small amount compared to the enormous investment made by the Government in Conrail.

Only when the Secretary determines that the United States will receive $1.7 billion from the sale of the Government's common stock may the Government begin a sale. This minimum price is simply a level below which the Government would be better off not selling the railroad. The Congressional Budget Office has estimated the value of Conrail to be far in excess of this amount, and if this amount cannot be achieved then the Government would be better off simply allowing Conrail to repay its obligations to the Government and postponing any sale.

The Secretary has the option of selling less than all the common stock of the Government at one time. For example, the Secretary could determine to sell one third at a time. Before the Secretary may choose this option, however, she must determine that the proceeds from all sales will equal $1.7 billion. The determination must be a realistic one, with an accurate assessment of the proceeds from the first and any future offerings.

The Secretary also has the authority to require the Corporation to issue warrants to the Government if the issuance of warrants will increase the proceeds to the Government. If the decision is made to sell warrants, that decision should be made prior to the time the investment banking community begins its efforts to sell the common stock so investors will know the investment situation.

The bill also requires the Corporation to pay $200 million to the employees for the wages the employees gave up after 1981. This amount includes all represented employees, including those who did not previously sign an agreement with Conrail. Conrail should pay a comparable amount to nonagreement employees for their wage give up.

The bill maintains competition in the region, but Conrail should be aware that additional competition may be necessary in some parts of the region. The New York Susquehanna & Western Railroad [NYS&W] provides a competitive access route to the Port of New York/New Jersey in competition with Conrail. NYS&W operates the Rahway Valley/Staten Island Railroads in the port area which do not connect to the main line of NYS&W. It is in the public interest that the NYS&W and Rahway Valley/Staten Island be connected to bring additional benefits of competition into the port area. I expect NYS&W and Conrail to make a good faith effort to negotiate overhead trackage rights over the most practicable Conrail lines to connect the two geographically separate parts of the NYS&W system. If Conrail and NYS&W fail to reach agreement it is my intent that NYS&W be free to reach trackage rights agreement with New Jersey Transit without opposition from Conrail. Such opposition would be inconsistent with the competitive spirit of the 3R Act.

The bill also contains provisions protecting employees in the sale of short lines under section 10901 of the Interstate Commerce Act. Unfortunately the ICC has misinterpreted the law so that this action was necessary to require the imposition of labor protection in these sales. The ICC should understand that these provisions are intended to require labor protection in short line sales in the same way that labor protection is required elsewhere in the act. The ICC is not free to decide that labor protection is something that they would rather not impose or that they would like to change. The law is clear and they should follow it.

This bill is an important one, and I urge my colleagues to support it.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 8 minutes to the gentleman from Ohio [Mr. GRADISON].

Mr. GRADISON. Mr. Chairman, the reconciliation bill now before us is not a sign of victory over the deficit, but an admission of defeat. It is a sorry story of negatives and apologies, rather than action and success.

Faced with opposition from those who don't want to cut domestic spending, those who don't want to cut defense spending, and those who don't want to raise new revenues, this measure gives in to them all. It ducks the tough choices with a rag-tag collection of counterproductive asset sales and dubious revenue enhancements.

For every dollar received from an asset sale, a dollar must be added to deficit-reduction baseline. This means that passage of this measure is worse than a "scam"—to use the word of my distinguished budget committee colleague from Texas, Mr. LEATH—for it actually raises the deficit-reduction glidepath. The consequences of this shortsighted plan is to guarantee that we will not even come close to next year's deficit target of $108 billion. In fact, we may find ourselves further from it.

In this Member's view, this reconciliation package will backfire; I can speak only for my constituents. They know the difference between real deficit reduction and blue smoke and mirrors, and I am clear as to their preference.

Given the political imperatives that come to dominate at this point in an even-numbered year, I can predict

with confidence that this bill will pass with votes to spare. Yet, approval will tell the world that the $144-billion deficit target for fiscal year 1987 will not be met, that the goal of $108 billion for fiscal year 1988 is out of the question, that the United States will continue its heavy dependence on foreign capital, and that our trade deficit will stay badly out of balance.

As recently as a week ago, our negotiators were moving in the direction of achieving a meaningful part of the needed deficit reduction through spending reductions—half domestic, half defense. But that gave way to the need to reach a compromise and the difficulty of the choices. I have the highest respect for those in both parties and in both Houses who developed the bill before us. But this Member, for one, would prefer sequestration to this reconciliation. For all its faults, at least sequestration, by actually lowering the deficit scorekeeping baseline, would keep the deficit on a downward path.

While Gramm-Rudman has rightfully forced us to focus on the deficit, that focus has been misdirected by political and budgetary legerdemain. And this bad bill is only the tip of the iceberg. Three other budget accounting masquerades come to mind:

First, the recapitalization of the Federal Savings & Loan Insurance Corporation [FSLIC] uses a clever gimmick to hide off-budget approximately $15 billion. I can hardly wait to see the accounting mechanism that will be developed to hide the cost of the next bailout which will probably be the Farm Credit System.

Second, the chartering of the Corporation for Small Business investment [COSBI] which reports savings of $850 million only because CBO was instructed by the House Budget Committee to score it as a savings, for reconciliation purposes.

Third, the creation of yet another off-budget Government-sponsored enterprise—the College Construction Loan Insurance Association which would provide a significant off-budget windfall to Sallie Mae.

Mr. Chairman, rather than dwell on the obvious, I close by expressing my deep disappointment that serious efforts to tackle the monstrous deficit have collapsed and come to this unintended result. If, as I expect, this bill is enacted, we will be back next year with a larger deficit, indeed with a deficit that will make this year's problems look like a tea party.

This member of the Budget Committee will vote "no" on reconciliation.

Mr. Chairman, I yield my remaining time to the gentleman from Pennsylvania [Mr. GOODLING] my colleague on the Budget Committee.

The CHAIRMAN. Without objection, the gentleman from Pennsylvania is recognized.

There was no objeciton.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I am happy to yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the present bill.

Mr. GOODLING. Mr. Chairman, neither the House nor the Senate package contains any significant increases in taxes or cuts in Federal spending, although in the House we do include $1 billion across the board which I understand the administration is opposed to because, of course, it would also reduce defense spending.

It is too late, I suppose, to talk about this year. It is probably the best we are going to get, or perhaps we might say the worst we are going to get, whichever choice you want to make. But we do want to keep in mind that when we come back next year we have a real serious problem facing us.

This package sells assets. You can only do that one time, and some of them they are selling they have been selling ever since I have been in the Congress, I think, so I do not know whether they will get them sold this time or not. But you can only do it once, and in the out years, of course, you lose money because you do not have any of the interest coming in on those assets.

Then we are told that by adding tax collectors we are going to receive a great deal more money for the Treasury of the United States. It was suggested, as a matter of fact, in the committee, that if we can do it that way, why do we not just add enough, and we will just wipe out the entire deficit. That may not be to facetious, because I think it is probably no different than what we have just done here.

We then talk about shifting $680 million from the 1987 deficit. I cannot do that at home and get away with it. I doubt whether we are going to get away with it here. It just means it is going to be that much more difficult when we come back next year.

As was mentioned by my colleague, it was only a few days ago when I think there was enough courage in the Budget Committee to cut at least $5 billion across the board, $2.5 billion domestic and $2.5 billion defense. Unfortunately, we have to deal with the administration and the other body in putting the package together, so that went by the board.

I think the young lady who wrote some information down on this sheet for me sums it up best of all with her last line. I do a "plain talk" which is a letter that goes out to the press on some topic each week. She says we will be able to write another really entertaining plain talk about this, but it may be the only positive characteristic of the entire bill. I am afraid that is probably true, and I yield back the balance of my time.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GOODLING] yields back 1 minute.

Mr. LOWRY of Washington. Mr. Chairman, I yield 15 minutes to the distinguished chairman of the Ways and Means Committee, the gentleman from Illinois [Mr. ROSTENKOWSKI].

□ 1410

Mr. ROSTENKOWSKI. Mr. Chairman, I rise today to urge support for this reconciliation bill for three major reasons.

First, the committee's deficit reducing recommendations are not blue smoke and mirrors. Real deficit reduction is achieved. In addition to the $6.2 billion of Medicare savings achieved by regulations, the bill under the Gramm-Rudman baseline assumptions reduces the deficit by some $13.5 billion over the next 3 fiscal years.

Medicare outlays are reduced by limiting the increase in the hospital reimbursement rate for both fiscal year 1987 and 1988, and capping the growth in cost reimbursement for hospital capital expenses. It should be understood that the latter is a stopgap provision. It is the intent of the Committee on Ways and Means to enact legislation that will fold capital reimbursement into the existing prospective payment system.

Several revenue provisions are included in the bill. However, there are no tax rate increases. The revenue provisions are either extensions of tax rates already in effect, speedups in the collection of existing taxes, increased penalties to encourage compliance, or user fees.

The bill would extend the 3-percent telephone tax and the two-tenths of 1 percent Federal tax on wages for unemployment compensation for 2 years.

Tax collections of State and local payroll taxes and wine, beer, and tobacco excise taxes are accelerated.

Title X also includes a new provision of law which would impose a "customs user fee" on all commercial entries of imported merchandise of 0.5 percent ad valorem beginning December 1, 1986, and 0.2 percent ad valorem on October 1, 1987, and thereafter.

The proceeds of such fees would be deposited in a separate account within the general fund of the Treasury and would be available, subject to appropriation, to the Customs Service for carrying out its operations.

The purpose of this Customs user fee on merchandise entries is to ensure that the costs of maintaining Customs Services are paid for by users of such services. The committee made certain that receipts from such fees would be dedicated to Customs operations and that periodic adjustments in the fee structure would be recommended by

the Secretary of the Treasury in order to ensure that such fees do not exceed the overall costs of Customs operations. The committee approved a higher fee for the first 10 months in order to cover any startup costs and to compensate for anticipated reductions in the level of imports below those projected by the Congressional Budget Office as a result of the lower value of the dollar.

The fee arrangement adopted by the committee is fully consistent with our GATT obligations. Article 2 of GATT authorizes signatories to impose fees on imports commensurate with the costs of services rendered. Several other countries, including France, Portugal, Spain, and Sweden, impose fees for the processing of commercial entries.

Second, the bill also contains important policies which aid many individuals. The bill eliminates the 3-percent COLA trigger in the Social Security Program. Without this legislation, beneficiaries in the Social Security, veteran pensions, supplemental security income, and railroad retirement programs would receive no cost-of-living increase this January.

The Medicare hospital deductible, which was scheduled to increase to $572 in 1987, an increase of $80, was held to an increase of only $8. Important reforms are contained in the bill which, among other things, ensure that Medicare beneficiaries are not moved out of a hospital setting prematurely due to incentives in the prospective payment system and ensure that adequate posthospital services are available.

The committee again recommends the mandating of the AFDC-two parent program so that unemployed fathers will not have to leave home in order for their children to receive AFDC and Medicaid benefits.

The reconciliation bill has several provisions which are designed to limit out-of-pocket medical costs for Medicare beneficiaries. Incentives are provided to encourage physicians to become "participating physicians" which implies that the beneficiary is not charged more than Medicare allows. Information is made available to assist beneficiaries who wish to select a participating physician. And perhaps, most importantly, when the freeze on actual charges for nonparticipating physicians ends this December, it is replaced with a policy which limits the increase in how much physicians can charge elderly and disabled individuals beyond what Medicare pays.

Also, the bill mandates that hospitals serving a disproportionate share of low-income patients would continue to receive periodic interim payments.

Finally, I would urge my colleagues to support this bill because it avoids the Gramm-Rudman sequester order. While this bill is not a perfect product, it was not the easy way out. We could have used the $11 billion revenue increase for fiscal year 1987 in the tax reform conference report to avoid the sequester, forgotten the reconciliation bill, and gone home. However, increasing reconciliation savings to avoid the sequester, as we do with this bill, is clearly a more preferable approach.

We should not belittle congressional efforts to reduce the deficit. The 1986 budget deficit will probably be $225 billion. If this bill is enacted, the fiscal year 1987 deficit will likely be between $140 and $150 billion. That is $80 billion of deficit reduction in 1 year. Even if the actual fiscal year 1987 deficit comes in $30 billion higher, $50 billion is significant progress.

I have attached to my statement a further explanation and legislative history concerning the provisions which the committee adopted on September 18 and 22, and which were not described in the committee report accompanying H.R. 5300.

MEDICARE PROVISIONS

HOSPITAL RATE OF INCREASE

Present law

Under present law the medicare prospective payment system (PPS) rates are to be updated annually by the Secretary of Health and Human Services. The law states that the update should reflect increases in hospital input prices, but not to exceed the hospital market basket (index measuring hospital input prices).

The Secretary of HHS promulgated regulations that would provide a .5% increase in the prospective payment rates for FY 1987.

PPS-exempt hospitals are paid on a cost basis subject to caps on the maximum amount of allowable reimbursement. The Secretary of HHS has provided a .5% increase for FY 87.

Explanation of provision

The bill would require that PPS hospitals be provided a 1.0% increase in the payment amounts for FY 87 and an increase of hospital market basket minus two percentage points for FY 88.

PPS-exempt hospitals would be provided a 1.0% increase in the cost limits for FY 87, and an increase of hospital market basket minus 2.0% for FY 88.

The provisions would be effective for cost reporting periods beginning during FY 87 and FY 88 for prospective payment system exempt hospitals; and for discharges occurring during FY 87 and FY 88 for prospective payment system hospitals.

2. PROMPT PAYMENT FOR MEDICARE PROVIDERS

Present law

There are no current law requirements concerning prompt payment of claims. Historically, medicare has processed both part A and part B claims in a timely manner. In recent administrative action HCFA has slowed down processing time for part A claims from an average of 9 days in FY 1985 to 27 days at the end of FY 86; and for part B claims from 11 days in FY 85 to 27 days at the end of FY 86.

Explanation of provision

Payment of medicare part A "clean" claims would be required within 22 days, effective for claims received on or after October 1, 1987. "Clean" claims are those claims which include substantiating documentation.

Payment of medicare part B "clean" claims for services provided by nonparticipating physicians and suppliers would be required to be paid within 22 calendar days of receipt effective October 1, 1987. "Clean" claims submitted by participating physicians and suppliers would be required to be paid within 11 days of receipt by the medicare carrier effective October 1, 1987.

Provisions eliminating periodic interim payments for certain providers would be effective August 1, 1987.

DELAY IN PROMULGATION OF REGULATIONS

Present law

Under current law, the Secretary of Health and Human Services has been given broad authority to issue regulations, instructions to medicare carriers and fiscal intermediaries, and other changes in policy to implement the medicare law. Generally, regulations, instructions, or changes in policy must be issued in final form prior to August 15 or prior to October 6 to be included in the August or October Gramm-Rudman baseline. As an exception to this general rule, proposed regulations updating the prospective payment amount for hospital operating costs are included in the August or October Gramm-Rudman baseline if they are issued prior to the August 15 or October 6 deadline. Under P.L. 98-21, capital-related costs were excluded from the prospective payment system until October 1, 1986. P.L. 99-369 extended this exclusion until October 1, 1987.

Reasons for change

The Secretary of Health and Human Services has recently used administrative regulatory authority to make major changes in medicare policy without seeking new legislative authority. To ensure that Congress has time to review such changes and to alter the approach, if appropriate, the Committee believes that it is necessary to impose a temporary moratorium on major rules (and other changes in policy) that would result in reduced medicare outlays of $50,000,000 or more in fiscal 1988. The Committee is particularly concerned about the ability of the Secretary to issue regulations changing the method of payment for capital-related costs. To ensure that the Congress has ample opportunity to legislate a capital reimbursement policy, the Committee believes that it is necessary to impose a moratorium on promulgation of final regulations concerning capital reimbursement and to clarify application of existing law to ensure that proposed regulations related to capital reimbursement are not included in the Gramm-Rudman baseline calculations.

Explanation of provision

The Secretary of Health and Human Services would be prohibited from issuing in final form any regulation, instruction, or other policy before September 15, 1987, which is estimated by the Secretary to achieve medicare savings in fiscal year 1988 of more than $50,000,000, except as required to implement specific provisions required under statute. Regulations, instructions or other policy, issued in violation of this provision would be null and void and should not be included in any baseline estimate projected medicare outlays by the Congressional Budget Office or the Office of Management and Budget.

The exception for regulations, instructions, or policies required to implement spe-

cific provisions required under statute should be strictly construed. A provision that authorizes, but does not require, the Secretary to make certain adjustments would not suffice to trigger the exception. Similarly, a general requirement that reimbursement rates for a class of services be set at a "reasonable" level should not be viewed as sufficient to trigger the exception. The exception would, however, apply to a provision which requires the Secretary to take a specific action or to implement a specific provision by a certain date. The exception would also apply to a provision which requires the Secretary to make a specific change in reimbursement policy.

A special rule applies to regulations concerning reimbursement of capital-related costs. The Secretary would be prohibited from publishing in final form any regulation regarding changes in the methodology for computing the amount of payment for capital-related costs for inpatient hospital services under medicare part A. The prohibition would be effective between September 1, 1986 and September 1, 1987. (For purposes of this provision, the term "capital-related costs" refers to those capital-related costs that are specifically excluded under Section 1886(a)(4) of the Social Security Act from the term "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.) Any regulation published in violation of this provision would be void and should not be considered either by the Congressional Budget Office or the Office of Management and Budget in any baseline estimate of projected budget outlays.

Finally, the Committee amendment clarifies references in current law to regulations issued in final or proposed form pursuant to Sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act. Under the Committee amendment, no such reference should be construed as including any regulation with respect to capital-related costs. Sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) concern the Secretary's authority to issue regulations specifying the "applicable percentage increase" used to update the target rates for prospective payment system (PPS) exempt hospitals and the average standardized payment amounts for PPS hospitals reimbursed under PPS. Under the Committee amendment, the reference in Section 251(a)(6)(D)(ii) of P.L. 99-177 to Sections 1886(b)(3)(B), 1886(d)(3)(A) and 1886(e)(4) of the Social Security Act would apply only to regulations specifying the "applicable percentage increase" and not to regulations related to the inclusion of capital-related costs into prospective payment. Therefore, no proposed regulation altering the method of payment for capital-related costs should be included by the Congressional Budget Office or the Office of Management and Budget in estimates of projected outlays under final or proposed regulations issued pursuant to Sections 1886(b)(3)(B), 1886(d)(3)(A), or 1886(e)(4).

The provision is effective on enactment.

REVENUE PROVISIONS

1. INCREASES IN CERTAIN TAX PENALTIES

a. Penalty for failure to make deposit of taxes

Present Law

A number of taxpayers (such as employers) are required to make periodic deposits of various taxes (such as social security taxes or income taxes withheld from employees) prior to the close of the taxable year. Taxpayers who fail to comply with these deposit requirements may be subject to a penalty of 5 percent of any underdeposit not deposited on or before the prescribed date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect (Code sec. 6656).

Reasons for Change

The committee believes that, in light of the present budgetary situation, it is appropriate to increase the level of this penalty, which will provide additional encouragement for taxpayers to make these deposits punctually.

Explanation of Provision

The penalty for failure to comply with these deposit requirements is increased from 5 percent to 10 percent of the amount of any underdeposit.

Effective date: This provision is effective for deposits required to be made (whether by the Code or by regulations) after the date of enactment of this Act.

b. Penalty for substantial understatement of tax liability

Present Law

If a taxpayer substantially understates income tax for any taxable year, the taxpayer must pay an addition to tax equal to 10 percent of the underpayment of tax attributable to the understatement (sec. 6661). An understatement is substantial if it exceeds the greater of 10 percent of the tax required to be show on the tax return or $5,000 ($10,000 in the case of most corporations). An understatement is generally the excess of the amount of tax required to be shown on a tax return over the amount of tax actually shown on the tax return. The penalty generally does not apply to amounts with respect to which (1) there was substantial authority for the taxpayer's treatment of the amount, or (2) the taxpayer discloses the relevant facts with respect to that amount on the tax return. The IRS has the authority to waive all or a portion of this addition to tax if the taxpayer shows that there was reasonable cause for the understatement and that the taxpayer acted in good faith.

Reasons for Change

The committee believes that, in light of the present budgetary situation, it is appropriate to increase the level of this penalty.

Explanation of Provision

The addition to tax for a substantial understatement of tax liability is increased from 10 percent to 25 percent, effective for returns the due date of which is after December 31, 1986.

The committee notes that the conference agreement on H.R. 3838 (the Tax Reform Act of 1986) would increase this addition to tax for a substantial understatement of tax liability form 10 percent to 20 percent of the amount of the underpayment of tax attributable to the understatement. Thus, under the committee's budget reconciliation bill, the level of this penalty would be increased an additional 5 percent beyond the level agreed to in the Tax Reform Act of 1986.

2. TIME FOR PAYMENT OF TOBACCO, WINE, AND BEER EXCISE TAXES

Present Law

Under present law, excise taxes on tobacco products, wine, and beer are payable with respect to semi-monthly periods, with payments being due the following number of days after close of the semi-monthly period during which the taxable event occurs:

Tobacco products 25 days.

Wine and beer 15 days.

In certain cases, payors of these excise taxes must pay by means of electronic transfer of funds.

Reasons for Change

The committee believes that the present budgetary situation requires more effective cash flow methods such as that provided by accelerated deposits of excise taxes.

Explanation of Provision

Under the committee amendment, the payment date for the tobacco products, wine, and beer excise taxes is reduced to 14 days after the close of the semi-monthly period during which the products are removed from bonded premises. If the regular payment date falls on a Saturday, Sunday, or legal holiday, payment is due on the last preceding business day. The present-law rules requiring electronic transfer of funds in certain cases are retained.

Effective date: This provision applies to taxable products removed during semi-monthly periods ending on or after December 31, 1986. Under a special rule, tobacco excise taxes for the semi-monthly period ending on December 15, 1986, will be due on January 14, 1986 (rather than January 10, 1986).

3. TAX TREATMENT OF CONRAIL PUBLIC SALE

Present law

Tax attributes

In general, the purchase of all or part of a corporation's stock has no effect on a corporation's tax attributes; thus, a corporation's net operating loss ("NOL"), investment tax credit ("ITC"), and other carryovers generally survive. Similarly, a stock purchase has no effect on a corporation's earnings and profits ("E&P") and aggregate asset basis.

Carryovers

Under the Internal Revenue Code of 1954, in the case of taxable stock purchases, NOL and ITC carryovers are eliminated if one or more of a loss corporation's ten largest shareholders increase their common stock ownership by more than 50 percentage points within a two-year period, unless the loss corporation continues to conduct a trade or business that was conducted before the ownership change. Amendments were made to these special limitations by the Tax Reform Act of 1976 that would substantially change the 1954 Code provisions; the effective date of these amendments was repeatedly postponed until January 1, 1986.[1]

Section 269 authorizes the disallowance of NOL and ITC carryovers after the purchase of a controlling stock interest in a loss corporation, but applies only if it is determined that tax avoidance was the primary purpose of the purchase.

Earnings and Profits

In general, the amount of a distribution by a corporation to a shareholder is includible in the shareholder's gross income as dividend only to the extent the distribution is made out of current or accumulated E&P. If a distribution exceeds E&P, the balance is treated as a tax-free return of capital. To the extent the distribution exceeds the basis of the stock, the excess generally is taxed at capital gain rates.

---

[1] Pending tax reform legislation (H.R. 3838) would retroactively repeal the 1976 amendments, as well as substantially change the 1954 Code provisions.

Asset Basis

A stock purchase would not affect a corporation's aggregate basis for its assets, unless an election to treat the stock purchase as an asset purchase were made or deemed made under section 338.

Cancellation of debt and preferred stock

Section 61 of the Code generally provides that the discharge of indebtedness results in the realization of income by the debtor. Under section 108(a), income from the discharge of indebtedness incurred by a corporation is excluded from gross income if the corporation elects to reduce the basis of its depreciable property by the excluded amount (under section 1017). Section 108(E)(6) provides an additional exception where a corporation acquires its debt from a shareholder as a contribution to capital.

Ordinarily, the cancellation of preferred stock would be a nontaxable event; however, preferred stock could be recharacterized as debt the cancellation of which gives rise to income.

Reasons for Change

The Conrail Privatization Act authorizes a public sale of stock in Conrail. Special tax provisions are required to implement certain aspects of the public sale. Further, the committee determined that it would be inappropriate to permit the transfer of tax benefits that directly resulted from investments made by the Federal Government. Under present law, it is likely that Conrail's NOL, ITC, and other carryovers would survive the public sale. Further, depending on the identity of Conrail's shareholders after the sale, any deficit in Conrail's E&P (the existence of which is suggested by the NOL carryovers) could generate additional tax benefits. For example, for individuals who purchase Conrail stock, a deficit in E&P would enable Conrail to pay tax-free dividends (after the distribution of any post-sale current E&P). On the other hand, non-controlling corporate shareholders who are eligible for the dividends received deduction would view the possibility of capital-gain dividends (after recovery of basis) as a disadvantage. Under the committee's bill, the price for which Conrail stock is sold will be based on Conrail's value, without inflation or reduction because of the corporation's tax history.

Explanation of Provisions

Under the committee amendment, the public sale of stock in Conrail will be treated as a purchase of Conrail's assets: Conrail will be treated as a new corporation that purchased all of its assets as of the beginning of the day after the public sale, for an amount equal to the "deemed purchase price" (defined below). As a consequence of conforming the tax treatment of the stock sale to that of a sale of assets, Conrail's NOL, ITC, and capital loss carryovers attributable to periods before the public sale will not be carried forward for use in any period after the public sale. Conrail's carryovers will be available to offset income or tax liability determined with respect to a taxable year ending prior to the public sale. Another consequence of the deemed asset purchase will be the termination of Conrail's taxable year.

The basis of Conrail's assets will be adjusted to reflect the buyers' cost, measured by the stock purchase price, liabilities, and other relevant items (*e.g.*, the payment for back wages that the amendment requires to be capitalized, described below). This "deemed purchase price" will be grossed up to reflect 100 percent of the stock in Conrail.

In general, the committee amendment requires the allocation of the deemed purchase price among Conrail's assets in a manner that is consistent with the temporary regulations promulgated under section 338 (generally, first to cash, then among all other assets—excluding assets in the nature of good will—in proportion to fair market values, and then to goodwill or going concern value). The secretary is to establish specific guidelines for the allocation so that the basis of conrail's assets will be ascertainable before the public sale. The amendment contemplates that the secretary will resolve issues relating to (1) the amount of liabilities to be included in the deemed purchase price, (2) the extent to which any portion of the purchase price should be allocated to intangibles, and (3) the relative values of conrail's assets, among other issues.

The committee amendment provides that no amount will be included in the gross income of any person by reason of the cancellation of any obligation or preferred stock of Conrail.

The committee amendment preserves the status of Conrail's Employee Stock Ownership Plan ("ESOP") as a qualified plan under section 401 and section 501. First, the amendment provides that the limits on contributions and benefits generally applicable to ESOPs (section 415) will not apply with respect to interests in stock transferred to the Conrail ESOP as the result of the public sale or a previously enacted law. Second, the amendment provides an exception to the general rule that precludes a participant from withdrawing contributions made on the participant's behalf prior to the expiration of two years after the year in which the contributions were made.

Further, the committee amendment proscribes the deduction of any amount paid after the date of the public sale to Conrail employees for services performed on or before the date of the public sale, to the extent such payments are made for the purpose of increasing wages or benefits to industry standards.

The committee amendment includes a number of definitions for purposes of the special tax provisions. The term "Conrail" means the Consolidated Rail Corporation, as well as any corporation that was an 80-percent controlled subsidiary of Conrail immediately before the public sale. The term "public sale" means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act; if there is more than one public offering, such term means the sale pursuant to the initial public offering.

Effective date: These provisions are effective upon enactment.

4. PORT USE TAX AND RELATED TRUST FUND; INLAND WATERWAYS TRUST FUND AND FUEL TAX

In General

The committee amendment includes the revenue provisions of H.R. 6 (title XV) as passed by the House on November 13, 1985, with two modifications. First, the effective date of the provisions is changed from January 1, 1986 to January 1, 1987. Second, the mechanism for alleviating a double burden of toll charges and port use taxes on cargo shipped through the Saint Lawrence Seaway is changed from a credit against the port use tax for payment of the tolls to a rebate of the tolls.

The legislative history of these provisions (other than the two modifications) is set forth in House Report 99-251 (Part III). The following is an overview of the principal provisions of the committee amendment.

Overview

Port use tax

The committee amendment imposes a new 0.04 percent (4 cents per $100) excise tax on the value of commercial cargo loaded onto or unloaded from a commercial vessel at a port in the United States.

The port use tax does not apply to cargo where the transportation of that cargo has been (or will be) subject to the excise tax on diesel or other fuels used on the inland waterways under Code section 4042. Also, the port use tax does not apply to fish or other aquatic animal life caught during a voyage.

The port use tax does not apply to cargo when loaded or unloaded at ports in Hawaii or in any possession of the United States; also, the tax does not apply to cargo when loaded on a vessel at any U.S. port for ultimate use or consumption in Hawaii or a possession. If the cargo loaded in Hawaii or a U.S. possession is unloaded at a port in the United States, then the port use tax applies when the cargo is so unloaded.

Generally, as determined under Treasury regulations, the port use tax is to be administered by the U.S. Customs Service, with penalties applicable as under the customs laws, and not under the tax administrative procedures of Subtitle F of the Internal Revenue Code. For purposes of determining court jurisdiction, the tax is to be treated as if it were a customs duty.

The committee amendment establishes a new Port Infrastructure Development and Improvement Trust Fund in the Treasury. The Trust Fund is to receive amounts equivalent to revenues from the new port use tax. In addition, the committee amendment authorizes appropriations to the Trust Fund of sufficient general revenues for each fiscal year such that the total of port use tax revenues and general revenues for the fiscal year equals $1 billion. The committee amendment specifies the permitted expenditures out of the Trust Fund. The Trust Fund statute is placed in the Trust Fund Code of the Internal Revenue Code.

Effective date: These provisions are effective on January 1, 1987. Thus, the port use tax applies to cargo loaded or unloaded on or after January 1, 1987.

Inland waterways trust fund

The committee amendment places the Inland Waterways Trust Fund statute in the Trust Fund Code of the Internal Revenue Code. The amendment provides that not more than one-third of the cost of specified waterway construction projects under section 202(a) of the Water Resources Development Act (H.R. 6 as passed by the House) and not more than one-sixth of certain relocation costs under section 202(b) of that Act may be paid out of the Trust Fund.

The committee amendment adds the Tennessee-Tombigbee Waterway to the list of inland and intracoastal waterways the commercial use of which is subject to the inland waterways fuel tax under Code section 4042. There is no other change in the fuel tax.

Effective date: These provisions are effective on January 1, 1987.

5. OIL SPILL LIABILITY TRUST FUND; TAX ON PETROLEUM

In General

The committee amendment includes the Oil Spill Liability Trust Fund and revenue provisions of H.R. 2005 (title V, part III) as passed by the House on December 10, 1985, with certain modifications. (*See*, H. Rept.

99-253, Part 2.) First, the effective period of the provisions is changed from January 1, 1986 through September 30, 1990 to January 1, 1987 through December 31, 1991. Second, cross references are to expenditure provisions of the Comprehensive Oil Pollution Liability and Compensation Act of H.R. 5300 (title VI, subtitle F) as reported by the House Budget Committee. Third, a technical correction is made of the $30 million minimum balance provision (limiting payments which reduce the fund below this balance to payments for removal costs).

Overview

Oil spill liability trust fund

The committee amendment establishes in the Treasury an Oil Spill Liability Trust Fund, to be funded in part by a 1.3-cents-per-barrel excise tax on domestic and imported petroleum. Amounts in the Oil Spill Fund will be available for removal costs, certain damages associated with oil spills, and contributions to an International Oil Spill Liability Trust Fund if the convention establishing such fund comes into force with respect to the United States. No amounts will be payable to State or local governments for natural resource damage claims or lost tax revenue or for other purposes unrelated to the cleanup of oil spills. Amounts payable to the International Fund are restricted to provide conformity with the expenditure purposes of the domestic fund. Excess amounts remaining in the funds created by the Deepwater Port Act and the Outer Continental Shelf Act are transferred to the Oil Spill Liability Trust Fund.

Effective date: The trust fund provisions are effective on January 1, 1987.

Oil spill liability trust fund excise tax on petroleum

A new excise tax of 1.3-cents-per-barrel is imposed on domestic crude oil and on petroleum products (including crude oil) that are imported into the United States. The tax is imposed on the same crude oil and petroleum products, and is subject to the same definitional and other provisions, as the Superfund petroleum tax (Code sec. 4611) which expired on September 30, 1985. A credit against the oil spill tax is allowed to the extent that the taxpayer contributed to the Deepwater Port Liability Fund or the Offshore Oil Pollution Compensation Fund before January 1, 1987. Amounts equivalent to the revenues from the tax are deposited in the Oil Spill Liability Trust Fund. The collection, enforcement, and penalty provisions are the same as under the prior law Superfund petroleum tax.

Effective date: The excise tax provisions are effective on January 1, 1987. The petroleum tax expires on December 31, 1991.

TRADE PROVISION

1. CUSTOMS SERVICE USER FEE

Present law

The Consoldiated Omnibus Budget Act of 1985 (P.L. 99-272) for the first time imposed a schedule of customs users fees to cover Customs' costs of processing the arrival of vessels, trucks, trains, private boats and planes, and passengers. No fees were imposed, however, on the processing of commercial merchandise.

Reasons for change

The total revenues of approximately $200 million per year realized from the existing fees fall far short of covering the costs of Customs operations. Article II, section 2 of the General Agreement on Tariffs and Trade (GATT) authorizes any contracting party to impose at any time on the importation of any product, "fees or other charges commensurate with the costs of services rendered." Several other countries including France, Egypt, Portugal, Spain and Sweden, impose fees for the processing of commercial entries.

These fees are intended solely to cover the costs of maintaining the operations of the Customs Service and the Committee believes that such fees are consistent with the GATT exception regarding such charges. During Committee deliberations, questions were raised concerning the 0.5 percent level of fees for fiscal year 1987, which according to CBO estimates would raise approximately $1.8 billion in that fiscal year. While it is true that the fiscal year 1987 authorization level recently approved by the House in H.R. 5484 was $1.06 billion, the Committee nevertheless decided to approve a fee structure at the 0.5 percent level for several reasons. First, the actual level of imports for fiscal year 1987 may well be lower than that estimated by CBO because of the declining value of the U.S. dollar. Second, the Committee wanted to ensure that there are adequate receipts in the fund to cover start-up costs and to cover any potential increases in the costs of Customs operations. In this regard, the fee was reduced to 0.2 percent ad valorem after only 10 months of operation on the belief that, after the start-up costs were absorbed, the lower fee in subsequent years would offset any surplus resulting in fiscal year 1987, so that for the first two years the fees realized will closely approximate Customs' actual costs of operations. Finally, in order to ensure that the fees approximate the actual costs of Customs operations, the Secretary is directed at the end of fiscal year 1988 and every two years thereafter to recommend corrections in the fee structure in order to bring the funds in the dedicated Customs users fee account to a zero balance. Accordingly, the Committee chose to adopt a cautious approach and to approve a fee structure which would guarantee adequate funding at the outset and strive for overall balance in the ensuing years.

Explanation of provision

The Committee amendment imposes a customs user fee on all formal entries of imported merchandise for consumption based on the f.o.b. value (i.e., excluding ocean freight and insurance) of 0.5% ad valorem in fiscal year 1987 (beginning December 1, 1987) and 0.2% ad valorem in subsequent fiscal years. The provision would not apply to articles classifiable under items in schedule 8 of the Tariff Schedules. The process of such fees would be deposited in a separate account within the general fund of the Treasury and be available, subject to appropriation, to the Customs Service for carrying out its operations.

Beginning at the close of fiscal year 1988 and every two years thereafter, the Secretary of the Treasury would be required to submit a report to the Congress concerning any necessary fee adjustments to bring the account into a zero balance and to ensure that the fee reflects the actual costs of the services provided.

The fee is intended to apply to all formal entries of merchandise for consumption, including warehouse withdrawals for consumption. The fee would not apply however to informal entries, merchandise which does not formally enter U.S. commerce, or any articles which are eligible for special tariff treatment under one of the provisions in schedule 8 of the Tariff Schedules of the United States. The fee would apply to all other articles, however, regardless of whether such articles are dutiable or duty free or whether the articles are eligible for a tariff preference such as the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI), a bilateral fee trade arrangement or general headnote 3(a).

The Committee recognizes that such a fee will create some hardships to the importing community and believes it is reasonable for importers to expect the Customs Service to be adequately staffed and to provide its services in an expeditious fashion. It is the intention of the Committee in providing for a Customs user fee for cargo shipments, that such a fee will enable the Customs Service to guarantee that staffing and services will be provided at such times and at such levels as are necessary to meet the demand of the shipping public.

The Committee is also concerned that the creation of a user fee on consumption entries not be the occasion for an increase in the record keeping or other data collection burdens imposed upon the public. In this regard, it is anticipated that the Customs Service will continue to employ its existing standard consumption entry form (CF 7501) which contains sufficient information to assure proper collection of the user fee. In implementing the new user fee, the Committee directs the Commissioner to make certain that no new record keeping or data collection burdens are imposed upon the public, including all shippers, cargo/freight carriers or related entities.

Mr. Chairman, how much time do I have remaining?

The CHAIRMAN pro tempore (Mr. MONTGOMERY). The gentleman from Illinois [Mr. ROSTENKOWSKI] has 8 minutes remaining.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 4 minutes to the gentleman from California [Mr. STARK].

The SPEAKER pro tempore. Without objection, the gentleman from California is recognized for 4 minutes.

There was no objection.

Mr. STARK. Mr. Chairman, title X of H.R. 5300 is extremely important legislation. As chairman of the Ways and Means Subcommittee on Health, I would first like to thank the ranking minority member, the distinguished gentleman from Ohio and all of the members of my subcommittee, for their time and bipartisan effort. I would also like to thank our hard working chairman, and the gentleman from Tennessee, the ranking minority member, for their efforts in bringing this responsible deficit reduction bill to the House floor.

I urge my colleagues to support this legislation because it achieves some very important goals. It achieves a 3-year net saving of over $5 billion in Medicare provisions.

We are particularly proud that we have protected beneficiaries from increased out-of-pocket costs proposed by the administration. Under the administration's budget Medicare beneficiaries would have paid over $2 billion more in coinsurance and deductibles over the next 3 years—and a whopping

$8 billion more in part B premiums. We rejected all of these proposals.

The committee's legislation addresses another important concern of beneficiaries. The part A hospital deductible has increased rapidly as an unforeseen consequence of shorter lengths of stay in the hospital. Left unchecked the deductible would have gone up from $492 to $572 in 1987. This would have meant an increase of over 43 percent over the 2 years, 1986-87. This is unacceptable. For this reason, the committee decided to set the deductible at $500 for 1987. The committee plans on revisiting this issue next year to determine an appropriate cost sharing for future years.

Concerned with more than costs, the committee has worked hard to protect the quality of care Medicare beneficiaries receive. Contained in title X of H.R. 5300 are several provisions to ensure that Medicare providers, in their efforts to cut costs, don't compromise on quality or access to care.

In particular, I would like to point out that paying physicians to reduce or limit services to Medicare beneficiaries, which anyone would think would be illegal, will become illegal as a result of this legislation. This bill also gives patients recourse if they feel they are being improperly treated.

As a response to widespread concern that many elderly are now being discharged "quicker and sicker," the committee has included a number of provisions to protect against premature hospital discharge and to improve access to needed post-hospital services. These provisions create a balance. They ensure that policies which obtain greater savings do not damage the quality of care provided to the elderly.

Further, we have achieved the needed budget reductions and yet have still provided for increases in reimbursements to hospitals and physicians. We have sought fairness in Medicare payments to hospitals. The committee provided a 1-percent increase in hospital payments; this is in comparison to a 0.5-percent increase proposed by the administration. Further, knowing how important prompt payment of claims is to hospitals, we have preserved periodic interim payments for certain hospitals and guaranteed prompt businesslike payment of claims to all Medicare providers.

On the other hand, believing that Medicare was paying too much for capital expenditures, we have limited the aggregate increase in capital. For fiscal year 1987, the rate of increase could not exceed expenditures in fiscal year 1986 plus 10 percent. Capital expenditures would be limited to 20 and 30 percent over the fiscal year 1986 base for fiscal years 1988 and 1989 respectively. The committee will continue to work over the next year in an effort to devise an equitable system to incorporate capital into the PPS system.

To prevent the administration from issuing regulations in this area we have prohibited the Secretary of HHS from publishing in final form any regulation regarding changes in the computation of payment amounts for capital-related costs for inpatient hospital services between September 1, 1986, and September 1, 1987.

Title X of H.R. 5300 provides a 3.2-percent increase in payments to all physicians. Participating physicians would receive an additional 1-percent bonus to encourage participation in Medicare. The bill also limits increases in actual charges by nonparticipating physicians to ensure that savings are not obtained at the expense of higher costs for the elderly. This is a fair outcome—physicians will receive a full inflation increase and beneficiaries will be protected from further increases in out-of-pocket costs.

H.R. 5300 also protects end-stage renal disease [ESRD] beneficiaries by strengthening ESRD networks. I would like to assure the many Members who have contacted me about the administration's proposals to reduce ESRD rates that the bill seeks to protect beneficiaries. The legislation reduces rates to ESRD facilities by approximately $5.50 per treatment; half the cut originally proposed by the administration. Physician payments would be reduced by approximately $14 a month per patient. The legislation calls for a study to determine the effects of lower ESRD rates on quality or access to care.

The bill gives the Secretary of HHS authority to deal with problems that have arisen in the Medicare Health Maintenance Organization Program. It also repeals the 2-for-1 rule which is so inequitable to long established providers.

Finally, H.R. 5300 calls for one small but significant proposal to help the medically uninsured. The bill requests that States establish high risk health insurance pools to provide access to health insurance for currently uninsurable Americans. This will not solve all of the problems of the uninsured but it will provide access to health insurance to the 1 percent of the population who now can't buy insurance at any price.

This legislation deserves your support because it reduces the budget deficit. It responsibly restrains Medicare costs. And it does this without increasing the financial liability of Medicare beneficiaries.

□ 1420

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 3 minutes to the gentleman from North Dakota [Mr. DORGAN].

The CHAIRMAN pro tempore. (Mr. MONTGOMERY). Without objection, the gentleman from North Dakota [Mr. DORGAN] is recognized for 3 minutes.

There was no objection.

Mr. DORGAN of North Dakota. Mr. Chairman, I listened to my friend from Ohio in discussing this bill, and I want to agree with some of his remarks. I also want to say I do not think any thinking person in this town believes we can solve the problem we are confronted with in fiscal policy without first, substantial spending restraint; and second, additional revenue.

Now, what the President says to Congress is, "I want you to balance the budget or move forward toward a balanced budget or at least make progress in reducing the deficit, but I insist on my military numbers and I insist there be no additional revenue." He is saying, "Put a puzzle together over there, and I am going to keep a couple of pieces of that puzzle in my pocket." It is impossible to deal with this fiscal policy problem with the President's current position.

We need additional revenue in addition to spending restraints.

I took the well because I want to talk just for a moment about an amendment that I proposed in the Committee on Ways and Means the day before yesterday on an oil import tariff. It is one way to achieve some revenue. It is very controversial. Some people do not like it.

There are several other ways that I would support as well to achieve some revenues. The oil import tax that I introduced over at the committee, which lost on a voice vote and then a show of hands, 12 to 6, would suggest that we ought to be willing to pay to ourselves, to reduce the Federal deficit, that which we were previously required to pay the OPEC countries in the form of a $38 price per barrel of oil.

I suggested a $22 per barrel floor price and a variable tariff between the world price and that $22. That raised $50-some billion in the next several years and raised about $15 billion the first year alone.

Now, why not pass something like that? Well, first of all, the President says, "I won't accept any new revenue. You solve this fiscal policy problem without revenue." I say it is absolutely impossible to do.

We are working with Gramm-Rudman, that is what this is all about. That is a sham and a fraud. In the old days these folks would have driven covered wagons and stopped in a small town 100 years ago and sell amber fluid out of the back to cure hiccups and heart attacks. That is a fraud; these folks who have constructed the Gramm-Rudman approach, if they were involved 100 years ago in dealing with this sort of thing, would be doing the same but out of the backs of wagons.

It does not make any sense at all. This thing is unworkable, it is fundamentally fraudulent, and we are all talking as if it is serious.

We need the President to engage with us, Democrats and Republicans, in a responsible attempt to first, restrain spending, and that includes defense; and second, raise additional revenue and finally move toward some semblance of order in this country's fiscal policy.

The present fiscal policy is irresponsible, and we cannot solve the problem without the President's cooperation. He insists weeks after week after week that he will not cooperate.

This Member is disgusted with that.

The CHAIRMAN. The gentleman from Illinois [Mr. ROSTENKOWSKI] has 1 minute remaining.

Mr. ROSTENKOWSKI. Mr. Chairman, I reserve the balance of my time.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 5 minutes to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Chairman, I hope that the House is not going to be deluded by this bill, even if it feels that passage of the bill is the only way it can deal with this matter of reconciliation.

In my judgment, having this bill before us, and its ultimate passage, represent a full retreat from what I call a sane fiscal policy. The reconciliation process was developed so that we could reduce spending. But this is a reconciliation bill devoid of spending reductions.

Instead, the bill has nearly $9 billion of asset sales, and it has nearly $8 billion in increased taxes for fiscal 1987. Worse, it has actually increased spending of nearly $2 billion.

So the bill by any rational standard of measure does not do that which reconciliation was intended to do.

It is a shame that Congress has copped out on its responsibility under reconciliation, but that is the only phrase that I can think of that fully describes what we are doing here. In my judgment, it would be far better for us to vote down this reconciliation bill and let the sequester take place. If we pass this bill, we will increase baseline spending. That is both outrageous and contrary to the spirit of reconciliation.

Raising the spending baseline will surely and inevitably make it completely out of the question that GRH targets of next year can be achieved. We have created this reconciliation bill in the usual way, with our pencils rather than with our knives. Cuts are what we were asked to do, but there are no cuts here. There are only erasures and strikeovers.

It took all the cunning the leadership of this House could muster to turn a reconciliation bill into a tax and spend bill. But when it comes to plain and fancy spending, never underestimate the creativity of our House leaders.

I must say, with respect to some of the items in this bill, they really bring a smile. Hooray, hooray, we are selling Conrail again. I wonder how many years we can put the sale of Conrail into our budgets and our reconciliation plans. This is our second consecutive year. I will be counting future sales.

There is also a Customs Service user fee of $1.8 billion. That is a 15-percent surcharge on all customs duties. The new customs surtax amounts to about twice as much as the Customs spends in a year. Therefore, it hardly can be considered a surcharge. It is certainly in violation of our international agreements, and we will be charged compensation by every other country in the world with which we do business.

Now, there are also some things you cannot see in here because they will cause future taxes. We are going to nail the employers of the United States $3.6 billion over the next 3 years for continuation of FUTA taxes even though the expenses those taxes were designed to cover will be completed at the end of fiscal year 1987.

FUTA is a jobs tax, of course, because nobody wants to hire new employees if it costs more extra money to put them on the payroll. Also, there are telephone excise taxes in here which, in the next 3 years, will cost the telephone users of America more than $2 billion.

So all I can say to Members of this Committee is, if you are very strong for increasing taxes, this bill ought to be just your cup of tea. And if you do not believe in fiscal sobriety, this bill is made for you. If you think increasing spending is what the people of the United States want, this bill is designed to suit you to a tee.

On the other hand, if you believe that the people would like the Congress to reduce spending, to reduce the deficit, then I think you have no other choice than to vote against it.

I shall vote against it.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. MARTIN] has 1 minute remaining and has been yielded back 1 minute.

Mrs. MARTIN of Illinois. Mr. Chairman, I reserve the balance of my time.

Mr. LOWRY of Washington. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. ECKART].

Mr. ECKART of Ohio. Mr. Chairman, for those who have not paid attention, we are back on the railroad again.

I thank the gentleman for yielding to me. I am pleased that we are here on the floor with public offering legislation which I had initially introduced with my good friend and colleague from Virginia, Mr. BLILEY, some 16 months ago.

Two amendments which the gentleman and I offered in committee and which were adopted, one by voice vote and the other by a vote of 32 to 9, expressed clearly the intention of the majority of the committee, No. 1 to have an independent audit by the GAO of the activities relevant to the public offering, and the second was to require that the firms selected be colead managers, to jointly manage the public offerings.

As an original cosponsor of legislation calling for a public sale of Conrail more than 1 year ago, I am extremely pleased that we are moving down that track today. I have long been convinced that a public stock offering will yield the highest proceeds for the Government's interest in Conrail, while at the same time protecting the important interests of labor, shippers, and others associated with or served by Conrail.

Mr. Chairman, I would also like to take a minute to clarify an understanding of the language of the bill which requires the Secretary of Transportation to select colead managers to organize and run a public stock offering. As the gentleman will recall, this language was the subject of an amendment which I offered in committee and which was adopted by a vote of 32 to 9. It is my intent, as shared by the bipartisan majority of the committee, that the bill would require that firms selected as colead managers jointly determine how to manage the public offering and share equal responsibility for structuring and managing the offering, an equal share of management fees resulting from the transaction and equal underwriting position and allocation of shares including:

Advising DOT on timing, size of issue, structure of the deal and structure of Conrail's capital structure, value of shares and marketing program.

Forming and managing a syndicate, which may include other comanagers, and allocating shares for sale to the underwriters, dealers, major institutional purchasers, and others to include for example agreement and nonagreement Conrail employees as contemplated by the definitive agreements among Conrail, the RLEA, and Morgan Stanley.

Organizing the preparation of documents, contracts, and presentation materials.

Negotiating final terms with the seller, including price, size, and distribution expenses; and

Overall coordination of sales, management, and publicity efforts under mutually agreed upon terms and locations.

Mr. Chairman, I would be pleased to acknowledge the support of my colleague from Virginia who is so instru-

mental in this regard for his comments and yield to him.

Mr. BLILEY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I also want to associate myself with the remarks just made by my distinguished colleagues from Michigan and Ohio. I, too, was an original cosponsor of legislation to return Conrail to the private sector through a public offering. I felt then and continue to believe that Conrail has the financial strength to survive and be successful and that preserving Conrail as an independent entity is far superior, from a rail competition standpoint, to combining it with Norfolk Southern. With the legislation before us today, I am confident that the first major component of the President's privatization initiative will be successful.

Mr. Chairman, I would also briefly like to touch on the subject of colead managers. I believe that it is important for my colleagues to recognize that the amendment regarding the selection of colead managers for a public offering was supported by 32 members of the Energy and Commerce Committee, including a majority of Members on both sides of the aisle. On this point, I would like to confirm the understanding of the distinguished ranking minority member of the committee, Mr. LENT, that the committee's intention in adopting this language is to direct the Department of Transportation to select those firms with the greatest marketing ability and knowledge of Conrail to assure a successful sale. In this regard, it is the committee's intention that the Department select colead managers based on the significance of their contributions prior to the date of enactment in demonstrating and promoting the long-term financial viability of Conrail as an independent entity and the feasibility of a public stock offering. It is not our intent to exclude any particular firm or firms that have been involved in this transaction during the legislative process.

Mr. Chairman, I wonder if the gentleman from Ohio [Mr. ECKART] would yield to the ranking minority member on the committee to see if that is not his understanding of what took place in the committee, as well.

Mr. ECKART of Ohio. I would be pleased to yield to my colleague, who worked with us in this subcommittee and now sits as the ranking member of the Committee on Energy and Commerce [Mr. LENT] from New York.

Mr. LENT. I thank the gentleman for yielding.

Mr. Chairman, the gentleman is correct in his understanding of the amendment as adopted by the committee. The intent is to assure that the Department of Transportation will select colead managers with the necessary expertise and marketing credibility to assure the success of a public offering and that the contributions of the firms in promoting Conrail's viability and the feasibility of a public offering prior to enactment should be a primary criteria for selection.

Mr. ECKART of Ohio. I thank my colleagues for their participation. I thank particularly my friend from Virginia [Mr. BLILEY] and his staff who have labored long and hard in negotiating these most difficult of matters. I am delighted for the public offering's presence here today.

Taxpayers will be protected, working men and women who have sacrified so much to make Conrail so productive and profitable in the last few years will be rewarded, and lastly competition will be preserved in our part of the country, which is so important for our economic development.

Mr. LELAND. Mr. Chairman, earlier today my good friend and colleague, Mr. ECKART of Ohio, discussed the Conrail public offering. He stated that under the definition of colead managers the firms selected will jointly "run the books." This statement raises some concerns.

Mr. ECKART has told us that he was not asking any Member to repudiate a valid Government contract, such as Goldman-Sachs has with the Department of Transportation to serve as "the" lead manager. Therefore, I must assume that there will be only one colead manager working together with Goldman-Sachs which is entitled by contract to 50 percent of the management fee.

As far as I know, there has been no other instance where two firms have shared a similar colead role, either in U.S. corporate or municipal finance, or in the international market. I therefore am very concerned that we may be creating a monster that may work against our mutual wish for a smoothly executed public offering. I believe the definition of colead manager should be changed to reflect the traditional comanagement form.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Chairman, if you enjoy returning to Congress every year to face record budget deficits, you should like this bill. If you are in favor of burdening our Nation's children with huge future debts you should vote for this bill.

This bill has bicameral, bipartisan support. Unfortunately, that translates into meaning that it contains little real deficit reduction. It doesn't cut defense, it doesn't cut domestic spending. This is Washington at its worst—you get yours, I get mine and the kids get the bill.

This is the next step in the process of pretending to meet Gramm-Rudman targets. In reality, we aren't close to that target.

Revenues are down. Appropriations are over budget. Outlays for defense, agriculture and health care will probably continue to race ahead of estimates. The recent snapshot showing us only $20 billion off target is too optimistic.

Mr. Chairman, this bill is a hollow log. It is a "fill in the blanks" bill. We figure out how much savings the bill needs to contain and then we stick in the numbers.

Once upon a time, selling Conrail was said to be worth $1 billion. Then it went to $1.8. Now its got a price-tag of $2.1 billion.

Loan sales are supposed to bring in $6.5 billion. But it's going to be hard to bring in that amount of revenue because we have delayed so long in passing this bill. By dumping this authorization on the administration at the last minute, we encourage a fire sale of securities late into fiscal year 1987. And asset sales, as we all know, do not address the structural deficit.

Then we've got some new taxes in this bill—excise taxes and user fees. And again, we've filled in a blank by inserting a phony number showing $2.5 billion savings from IRS enforcement. Let's remember that CBO has already revised their baseline revenue estimates down by $16 billion, so who's kidding who?

As for the health and welfare provisions, they are a combination of new spending proposals and accounting gimmicks. Accounting gimmicks in Medicare, I should point out, do little to add stability to a troubled program.

Today we pass a savings bill that contains no savings. Tommorrow we pass a spending bill that contains too much spending. We do these things in the name of deficit reduction, and we refuse to learn that saying so won't make it so.

It is profoundly tragic that we are not doing anything about the deficit this year—we're passing on another $200 billion to our children. And it is frightening that we appear to be fulfilling the warning of Orwell's "1984": Freedom is slavery, 2 and 2 equal 5, and this bill saves $15 billion.

□ 1435

Mr. LOWRY of Washington. Mr. Chairman, I yield 4 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, I want to congratulate the Budget Committee for doing a very reasonable job of meeting a very unreasonable goal.

Gramm-Rudman did not make a great deal of sense when it was passed, and it has become less sensible as time has gone on. In particular, I am referring to the economic targets that were involved. Gramm-Rudman said that we should reach a certain level of deficit reduction based on the assumption that there would be a given amount of economic growth in the country.

What has happened is that there has been, for a variety of reasons, much less economic growth than we had anticipated, less than a percentage point in the most recent quarter.

Virtually every economist, regardless of ideology, conservative and liberal, has said that this should dictate a change in the Gramm-Rudman target; that is, given the failure of the economy to grow the way the administration thought it would grow, the target set for this fiscal year by Gramm-Rudman for the deficit was unrealistic. In effect, we have all recognized that. But for a variety of reasons, pride of authorship in the other body, the very impressive ability of this President to ignore reality and some political timidity in here, we have not had the votes to do the straightforward thing, which is to change the Gramm-Rudman target.

On the other hand, no one has wanted to deal with sequestration. Members having voted in both Houses for sequestration compete now to talk about what a horrible thing it is.

So we have this problem: How do we meet this target which is no longer rational economically—and everyone from Martin Feldstein and Herb Stein and Paul Volcker and a range of others have said it is no longer rational—how do we do that without exacerbating the problem of slow growth which we now have?

To have made substantial domestic spending reductions would be exactly the opposite. As Herb Stein, a former Republican Chairman of the Council of Economic Advisers, said, one does not have to be a Keynesian to decide not to be an anti-Keynesian, to think that it is not wise to make substantial cuts at a time of very slow growth.

So we have come up with a way to deal with this. We have a new slogan now. "No taxation without representation" served us for a couple hundred years. We have a new one, "No sequestration while we can have obfuscation," because that is what we have in this bill. Instead of dealing directly with it, we are going to do a little obfuscating.

What we are doing instead of making any serious cuts right now, because every economist thinks it would be unwise and because Members do not want to cut—people do not want to cut defense any further in some parts and people do not want to cut domestic spending any further—what we are doing is showing the deficit really was not as bad as people thought because we are selling off our assets. If we were anything but the Federal Government in fact when we looked at our financial condition, we would have put some valuation on those assets.

When we talk about the national debt, we lament it and it is too high, but we do not do what would be done rationally in any other organization setting, offset that with our assets. What we are doing today is in fact implicitly admitting that the deficit is not as bad as people have said it is, because when we calculate this, people like Robert Eisner have pointed out, we never look at the underlying assets. So we are going to sell off some assets today.

It is too bad we cannot sell Conrail to the Japanese, because then we could get a twofer. We could reduce what we call the deficit and also do something about the trade deficit. But what we are doing instead is—and we ought to be clear about this—avoiding economic nonsense by showing that the deficit is not as bad as we thought it was.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois [Mr. FAWELL]

Mr. FAWELL. Mr. Chairman, this reconciliation bill is an admission that Congress does not have the will to cut Federal spending to meet the Gramm-Rudman targets. It's an admission that we are not going to reduce the Federal deficit in 1987.

The deficit is real—so is the growing national debt which now consumes about $200 billion a year just to pay interest on that debt. I have the distinction of telling my constituents that in the first 2 years of my congressional career, I have seen Congress continue to chronically overspend so as to produce back-to-back all-time record annual deficits of $212 billion in 1985 and $230 billion in 1986. Were it not for the $11.7 billion Gramm-Rudman cut last March, the 1986 deficit would be $241.7 billion. In total for those 2 years, the deficit is approaching one-half trillion.

I can remember when we were talking about last year's reconciliation bill. Our budget was to produce a deficit of about $172 billion by enacting that bill. But, the deficit is coming in at $230 billion.

Actually, the deficit in 1986 will be more than $230 billion because now, by the means of this year's reconciliation bill, we are transferring payments which should be paid in 1987 to 1986—like the $680 million final payment for revenue sharing which is due to be paid in October 1987 but will be prepaid in 1986 so the deficit will look less in 1987.

I've supported Gramm-Rudman. Yet, all year I've watched as deadlines required by Gramm-Rudman have been ignored. Congress hasn't passed any 1987 appropriation bills or the 1987 reconciliation bill, even though Gramm-Rudman requires that the latter be completed by June 15. As a result, when the OMB-CBO "snapshot" of the 1987 deficit was taken on August 15, 1986, there was nothing to snap.

So the snapshot had to be of 1986 expenditures, which produced a $230 billion deficit. Yet the snapshot came up with the miraculous conclusion that there would not only be a freeze in Federal spending in 1987, as compared to 1986, but predicted there would actually be a decrease of $5 billion in spending. There's no one in this Chamber who believes that. Yet estimated spending is one of the two foundations for OMB-CBO arriving at the conclusion that the deficit for 1987 would be reduced by $67 billion—from $230 billion to $163.4 billion in 1987—just about $9 billion shy of the $154 billion deficit which would eliminate the need for sequestration for 1987.

It is also estimated in the snapshot that there would be $62 billion in new revenue in 1987 which, combined with the predicted $5 billion in decreased spending in 1987, results in the estimated $163 billion deficit for 1987. A like estimate of $60 billion in new revenue was predicted by OMB in 1986. New revenue for 1986, however, will be only about $30 billion.

So we have in my view a snapshot of a 1987 estimated deficit which is knowingly inaccurate in predicted Federal spending and revenues.

And now, I submit, we have a reconciliation bill which is mostly smoke and mirrors, rather than real cuts in spending or real and lasting enhancement of revenues. And it is based upon a snapshot prediction of a 1987 deficit which is inaccurate.

This reconciliation bill not only fails to make net cuts in Federal spending, it results in a net increase in spending. There are actual spending cuts of $1.42 billion in the bill in Medicare, student loan programs, and an across-the-board reduction. Yet spending increases a total of $1.93 billion not including Social Security COLA's.

The only real savings in the bill are from user fees, and from the sale of Conrail—these savings total about $4 billion out of total claimed savings of $18 billion; $7 billion of the savings in this bill—about half of the claimed reconciliation savings—are from loan asset sales. But these are false savings because even though they lower the deficit in 1987, they raise the deficit next year—and beyond—because the Government is no longer collecting principal and interest on the loans.

For example: While the bill claims savings of $850 million in 1987 from selling Small Business Administration loans, the Government would lose almost $1.4 billion from 1988 to 1996 from forgone revenues. That is, the Government won't be collecting the principal and interest it had counted on. Therefore, the Government may not only realize no savings, it may lose money on the sale.

In addition, very shortly now, we'll also be presented with a mammoth continuing appropriation bill involving 13 committee appropriations totaling

over one-half trillion dollars. Some call it a Christmas tree. I don't mean any disrespect to anyone, but I think we all know that when Congress gets done with the CR and the supplemental appropriations and the increased mandatory spending, all of which will follow as surely as does the night the day, we shall have produced another $200 billion plus 1987 deficit.

I understand that at this late date, it's easy to say that while this isn't much of a reconciliation bill, it's better than sequestration. That's where I differ. Frankly, I think sequestration is a better alternative because it would cause Congress and the administration to be serious about prioritized spending and real enhancement of revenue. In short, sequestration would apply the pressure upon Congress and the administration it was meant to apply. Faced with sequestration, Congress and the administration, even now, still have time before the final OMB-CBO snapshot of October 6 to work out a meaningful reconciliation bill.

And sequestration is not the only alternative. Congress can simply turn down this reconciliation bill and the flawed snapshot upon which it stands and ask for some real prioritized cuts and/or enhancement of revenues. Congress has time to do this before the next snapshot is made on October 5.

If we fail to be serious about reconciliation, as we have failed to be serious about the Gramm-Rudman deadlines and about the 1987 snapshot, we have admitted that we are not serious about controlling the 1987 deficit. We shall simply continue to overspend and have the bill sent to our children and grandchildren.

□ 1445

Mr. LOWRY of Washington. Mr. Chairman, I yield such time as he may consume to the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. I thank the gentleman for yielding to me.

Mr. Chairman, I rise to address the chairman regarding a matter of particular concern to me and also to my friend and colleague from South Dakota [Mr. DASCHLE]. I refer to an amendment on Public Law 480 funding which was adopted on a bipartisan basis in the other body and which, as I understand it, will be a conference item in the reconciliation bill.

The amendment requires that funds already appropriated by the Congress for Public Law 480 title II in fiscal 1986, but which are not otherwise obligated to date, shall be obligated by the end of this fiscal year, and shall be used only for the purposes for which they were appropriated—and so on, humanitarian food shipments overseas.

This amendment was made necessary by what, to this Member, is an astounding mistake by the current administration.

What happened was that this summer the administration put a "hold" on further obligations of the funds that Congress had approved for Public Law 480, the Food-for-Peace Program, in fiscal 1986. The ostensible reason was that some of the amount would or could be needed as part of the Contra aid package for Central America. After protests from Congressmen, Senators, and others, the administration unfroze some of this money and the other body added a special amendment to provide for Central American aid.

But early this month, we received word that the administration had once again put a "hold" on remaining Public Law 480 money. Specifically, this froze the $50 million still unobligated for Public Law 480 title II this year. Title II is the Humanitarian Grant Program which we use for food aid to victims of famine in Africa, for mother-child health programs, school lunches, food-for-work, and other worthy projects in poor countries.

The fact is, this Public Law 480 aid is not only a help to those recipients abroad, but it also is a program helpful to American farmers. Public Law 480 exports part of our agricultural surplus, reducing some of the costs of our Domestic Farm Program. The processing and transportation of the food shipments provide jobs to Americans as well as assisting the needy overseas.

That is why the Congress has supported this worthy program. Agricultural interests support it. Agribusiness and labor groups support it. Private voluntary groups support it for humanitarian activities. It makes no sense to sit on this already-appropriated money, and possibly lose its use, at this time of need for our farmers, our trade, and hungry persons abroad—including millions still at risk in Africa's continuing food emergency.

I ask the chairman, on behalf of my colleagues from South Dakota and other interested parties, if he would be willing to agree to the amendment which was bipartisanly adopted by the other body.

Mr. DASCHLE. Mr. Chairman, will the gentleman yield?

Mr. DORGAN of North Dakota. I yield to the gentleman from South Dakota.

Mr. DASCHLE. I thank the gentleman for yielding to me.

Mr. Chairman, I just want to applaud the gentleman from North Dakota, my colleague, for bringing this issue to the attention of the committee and to the House. I think it is the height of irony that at a time when we have surpluses unlike any time in recent history, at a time when we find a great deal of hunger, not only in Latin America but in Africa, that we find this administration and some in the Congress willing to freeze the funds for Food for Peace, ironically, to be earmarked for arms to the Contras. That is the height of ridiculousness. It is preposterous as we try to resolve the many difficulties we have with regard to hunger as well as regard to the agricultural policies that are now in place. In addition, of course, to our needs, to meet the humanitarian needs that we have, not only in Latin America, Africa, but around the world.

So it is an important issue, and it is one that we try to resolve I think in this way. All we ask is the assurance of the chairman that we can have his support as we try to resolve this dilemma as we face this bill now.

Mr. DORGAN of North Dakota. The gentleman from South Dakota puts it very well. We are talking about $50 million that I think is very important to the Food for Peace Program. I have asked for this colloquy to ask the chairman on behalf of my colleague and myself and other interested parties if he would be willing to consider agreeing to the amendment which was bipartisanly adopted by the other body on this matter.

Mr. GRAY of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. DORGAN of North Dakota. I yield to the gentleman from Pennsylvania.

Mr. GRAY of Pennsylvania. I thank the gentleman for yielding to me.

Mr. Chairman, I fully understand and share the concerns of the gentleman from North Dakota on this issue, and I would like to assure him and his colleague, who have been in the forefront of speaking out very clearly on the issues of hunger in the world, that I will do my best to secure conference agreement on the amendment to which he refers.

Mr. DORGAN of North Dakota. I thank the chairman very much.

Mr. DASCHLE. I thank the chairman.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I would just like to say to the gentlemen from North and South Dakota that the ranking member is not here, and I assume you have also talked to him, because as you pointed out in a bipartisan effort, both parties would want to be involved and we look forward to that involvement on a bipartisan and bicameral level.

Mr. Chairman, I yield 5 minutes to the gentleman from New Hampshire [Mr. GREGG].

Mr. GREGG. I thank the gentlewoman for yielding me this time.

Mr. Chairman, as I said earlier, I consider this reconciliation bill to be a

trip to "Fantasy Island" by the Congress. It is pure escapism in its worst form in the legislative process.

As we look down the numbers of this bill, it is very hard to find any hard savings. The gentleman from Illinois [Mr. FAWELL] has just noted that he estimates that there is approximately $4 billion of hard savings in this bill. I think that may be generous, quite honestly.

What there is in this bill is some hard spending money. There is no question but that this bill is going to energize $3 billion in new spending. So it is very likely that rather than being a reconciliation bill as traditionally perceived during the budgetary process where you save money and reduce spending in the outyears, this bill ends up being possibly simply a wash. Maybe even a money loser.

The process by which the $15 billion which is reflected in this bill is reached is one of smoke and mirrors as has been mentioned on many occasions today. But there are some things which are so egregious I think they need reemphasizing.

One of them, of course, is the manner in which the Federal revenue sharing is handled. The Congress generally has agreed, I believe, that Federal revenue sharing is a program which we can no longer afford. We are perfectly happy, I suspect, to share with local and State communities Federal debts since that is what we have an excess of, but we do not have an excess of Federal revenue and there is none to share. We certainly cannot afford the Federal Revenue Sharing Program.

It had been assumed that this program was going to be terminated; that is what the budget resolution called for. What the budget resolution further called for was that if it was not terminated there had to be some way to fund it.

This is a unique way to fund it, folks. What we are going to do is to throw it into this year's budget rather than next year's budget and thus claim that next year's budget is reduced by the amount that we throw into this year's budget. That is a very unusual accounting method. Not only does it not save us any money, it is going to cost us money because that is just going to simply build up the deficit this year on which we are going to have to pay interest so we are going to accelerate Federal revenue sharing in its payment process and thus create a greater interest payment and thus create a bigger Federal debt and preserve a program which everyone generally has agreed that we should eliminate.

Mrs. MARTIN of Illinois. Mr. Chairman, will the gentleman yield?

Mr. GREGG. I yield to the gentlewoman from Illinois.

Mrs. MARTIN of Illinois. I thank the gentleman.

Mr. Chairman, just so there is clarification, it is not the budget resolution that continues the revenue sharing. On that you get to wait for the CR to take care of. This does accelerate a final payment. I want to be very clear: It is not your budget resolution that has the new final years of revenue sharing.

Mr. GREGG. This resolution by the passage of the rule transferred $680 million into this year's expenditures which should have been incurred next year. That is certainly inappropriate.

Mr. Chairman, it seems to me that whether you come from the liberal side of the aisle in this House or the conservative side of the aisle you are concerned about deficits. I think the concern is legitimate.

If you are on the liberal side of the aisle, you may lean toward increasing taxes as a legitimate way to address the deficit problem we have today. If you are on the conservative side of the aisle, you lean toward cutting spending.

What you do not lean toward, however, I would hope, is a bill which clearly uses only mechanisms of accounting and smoke and mirrors in order to reach an alleged budget deficit reduction.

This bill does not accomplish any deficit reduction of substance and it is an abandonment of the purpose of this House and especially an abandonment of the reconciliation process for us to pass it.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in support of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986. However, I do so reluctantly. I had hoped that today we would consider an amendment to this legislation to protect Federal, military, black lung, railroad retirees, and other retirees' cost-of-living adjustments [COLA's] from the threat of further Gramm-Rudman cuts. In effect, this amendment would have simply provided that these retirees be treated the same as Social Security beneficiaries. It would have guaranteed that our Nation's retirees would be treated equally and that they would be assured of the COLA's which they have been promised by law. It would not have added 1 penny to our budget deficit.

The reconciliation does provide COLA's for 1987 but does not hold it harmless in Gramm-Rudman in the future.

The Senate has already adopted such an amendment as part of its reconciliation legislation. Twice, I have attempted to offer a COLA protection amendment in this body. Yesterday, I proposed that my amendment be considered as part of H.R. 5300. This summer, I proposed that it be considered as part of our action to affirm the 1986 Gramm-Rudman cuts. Both times, it was decided that I would not be allowed to offer the amendment on the floor of this House.

Last December, the recipients of civil service, military, tier II railroad, CIA, black lung, Foreign Service, and certain FECA retirement benefits were abruptly denied their COLA. Scores of these retirees were informed only 2 weeks before they expected to receive their checks that their 1986 COLA had been suspended. The suspension became a denial on March 1, 1986. At the same time, their contemporaries, who receive Social Security benefits were given a 3 percent adjustment. This action immediately established unequal treatment of our Nation's retirees, and placed an unnecessary financial strain on millions of senior citizens.

In 1983, Social Security recipients were required to sacrifice their COLA's for 6 months. Similar sacrifices have been made by all civilian retirees, as well as military and railroad retirees, over the past 3 years. While inflation has risen 10 percent over this period, civilian and military retirees have only received one COLA, in 1984, at a rate of 3.1 percent. Over the last 6 years, Federal annuitants and their survivors alone have lost approximately 30 percent of their inflation adjustments. I believe the time has come for Congress to reexamine where sacrifices need to be made. Senior citizens have done enough.

Just a few months ago, Members of this body affirmed their belief in COLA equity for all retirees. On June 24, by a rollcall vote of 396-19, the House approved my legislation, H.R. 4060, which guarantees a COLA in January 1987 to recipients of civil service, military, and other Federal retirement benefits. The amendment I had hoped to offer today was a logical extension of this bill and this vote. It simply sought to treat all retirees the same.

Mr. Chairman, unequal application of the law is never wise public policy. In the case of America's retirees, the Gramm-Rudman law is discriminatory. It singles out millions of retirees for unfair treatment. I fully support exempting Social Security beneficiaries from Gramm-Rudman. I firmly believe we should do the same, prospectively, for the rest of our Nation's retirees.

In conference, I call upon the House conferees to accede to the Senate version.

Mr. Chairman, Budget Committee Chairman GRAY and the chairmen of our other standing committees have worked hard to fashion this compromise budget reconciliation language. I

fully appreciate the pressures they have been under to meet our deficit reduction targets, especially in light of the administration's stubborn refusal to consider changes in revenues and defense spending as part of an overall deficit reduction effort. I commend my colleagues for their perseverance in fighting this seemingly impossible budget battle.

I do believe, however, that this House had an opportunity to exhibit strong leadership in defense of fairness for our retirees. I am deeply disappointed that we did not seize that opportunity and vote on my amendment today.

Mr. Chairman, I urge my colleagues to vote for H.R. 5300. In addition, I urge the House to accept the Senate amendments to exempt civil service, military, and other Federal retirement COLA's from further Gramm-Rudman cuts when we meet in conference on H.R. 5300.

□ 1455

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Chairman, I rise in strong support of H.R. 5300. The additional savings contained in the Budget Committee's perfecting amendment allow us to achieve our goals for reconciliation. Not only would we avoid a deep sequestration under Gramm-Rudman, but we would also make needed improvements in the Medicare, Medicaid, and Maternal and Child Health Programs.

The Energy and Commerce Committee provisions relating to Medicare in title IV of this legislation would, on net, reduce outlays by $100 million in fiscal year 1987 and $750 million over the next 3 years. These are real savings, and are based on the Gramm-Rudman baseline. Moreover, they come from reforms in the methods of paying providers; there are no increases in the beneficiaries' out-of-pocket expenses. In fact, we have built into this bill protections against greater patient liability, in situations where Medicare payments to providers are reduced.

The Medicare provisions would lift the current freeze on physician fees and reward physicians for taking assignment on their Medicare claims. The bill would achieve savings through reductions in payments for cataract surgery, clinical laboratory services, and therapy services in the home. It would also make several important improvements in the Medicare Program, some of which were included in our reconciliation conference agreement last year. For example, we would:

Improve patient access to vision care;

Provide for judicial review on disputed claims;

Mandate demonstration projects on providing services for patients with Alzheimer's disease;

Provide payments for the drugs that are essential to the success of organ transplants already paid for by Medicare;

Improve the supply and distribution of organs for transplantation; and

Initiate policy research on health care practices and patient outcomes that will enable us to make more sensible program improvements in the future.

With respect to Medicaid, the bill contains a number of important program reforms. Following on a recommendation of the Southern Governor's Association, the bill would allow States, at their option, to extend Medicaid coverage to pregnant women, and infants up to age 1, whose incomes fall below 100 percent of the Federal poverty line. I believe that this provision, which has bipartisan support, will enable the States to reduce their infant mortality rates and increase the number of low-income babies born without health problems.

The bill also includes a provision to allow States to use Medicaid funds to pay the Medicare cost-sharing requirements faced by the low-income aged and disabled with incomes below the poverty line. Finally, the bill contains a provision to hold 13 States harmless against a decrease in their Medicaid matching rates in fiscal year 1987 as a result of a change made by last year's reconciliation bill. The States protected are: Arizona, Florida, Georgia, Maine, Minnesota, Missouri, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, and Virginia.

Each of these Medicaid reform provisions was adopted by the Senate in the reconciliation bill which it passed last Friday. They all have broad, bipartisan support. While these provisions do cost money—$110 million in the first year—I do not believe that Federal funds could be better spent than helping poor pregnant women, infants, and elderly and disabled people get needed health care.

I urge my colleagues to support the bill.

Mr. GRAY of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I am pleased to yield to the gentleman from Pennsylvania.

Mr. GRAY of Pennsylvania. Mr. Chairman, I ask the distinguished gentleman from California if he would tell me and tell the House what would happen in the area of health care for the elderly if this reconciliation package is not approved, particularly with regard to things like the deductibility and other issues which the gentleman is one of the foremost experts on.

Mr. WAXMAN. Mr. Chairman, the biggest complaint of the elderly under the Medicare Program is the fast increase in the hospital deductible. The reconciliation bill provides for a ceiling on that increase so that the elderly, once they have to go to the hospital, will not be faced with such a dramatic out-of-pocket cost.

The legislation further, under Medicare, provides for services for those who do not have services at the present time, particularly Alzheimer's patients, as well as some access to health care that low-income elderly would not have.

Mr. GRAY of Pennsylvania. I thank the gentleman because some of the spending that was mentioned earlier by some of our colleagues really is referring to the issues that the gentleman is talking about, and they have been paid for by some increases in revenues which this administration approves of.

When you hear the talk about taxes, increased spending, you are talking about those issues that provide health primarily for the elderly in the area of Medicare and Medicaid and the deductibility.

I think the House ought to be aware of that.

Mr. Chairman, I yield 10 minutes to the gentleman from North Carolina [Mr. JONES], the distinguished chairman of the Committee on Merchant Marine and Fisheries.

Mr. JONES of North Carolina. Mr. Chairman, I rise to explain those provisions in the reconciliation bill contributed by the House Merchant Marine and Fisheries Committee. These are found in title VI of the legislation.

The Congessional Budget Office has estimated that our provisions save $38 milion in direct spending for fiscal year 1987 and $50 million in fiscal year 1988 but increase direct spending by $3 million in fiscal year 1989, thus totaling a decrease of $85 million in direct spending over 3 years. In addition there is a $10 million savings in authorizations over 3 years. The Congressional Budget Office also estimates a $139 million increase in net revenues over the 3-year period. This last figure is attributed to the oil spill provisions.

Subtitle A of title VI imposes certain modest fees on ocean dumping permittees. This language is essentially the same as that found in H.R. 1957, the Ocean Dumping Amendments Act of 1985, which was approved by the House of Representatives on December 10, 1985.

Subtitle B has been stricken from the bill by adoption of the rule.

Subtitle C amends the Merchant Marine Act of 1920 to permit the United States to gain possession and dispose of vessels and other assets in

default of a federally guaranteed loan under title XI of the Merchant Marine Act of 1936. The Government can recoup some of its costs by selling these assets.

Subtitle D authorizes specific Coast Guard user fees associated with loadline and tonnage measurement laws. This subtitle is essentially the same as H.R. 1362, which was approved by the House of Representatives on December 2, 1985.

Subtitle E amends the Panama Canal Act of 1979 to increase the amount of interest on the United States investment in the Panama Canal which is paid to the United States by the Panama Canal Commission.

Subtitle F provides for a comprehensive oil pollution liability and compensation system. The House has repeatedly endorsed and passed legislation to have a comprehensive Federal system to deal with oil spills but the other body has failed to act. Inclusion of the oil spill language in the reconciliation bill is another effort to seek to have the other body deal seriously with this issue in the 99th Congress.

Subtitle G establishes a National Offshore Vessel Operators Safety Advisory Committee.

Subtitle H repeals the act establishing the National Advisory Committee on Oceans and Atmosphere. Repeal should prevent future appropriations and thus save the Federal Government about $500,000 a year.

Subtitle J imposes a requirement for the use of American built equipment for the exploration and developing on the U.S. Outer Continental Shelf.

The Committee on Merchant Marine and Fisheries is proud of its title VI contribution to deficit reduction and supports its complete inclusion in the Omnibus Reconciliation Act.

Mr. Chairman, I reserve the balance of my time.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 10 minutes to the gentleman from Michigan [Mr. DAVIS], the ranking member of the Committee on Merchant Marine and Fisheries.

Mr. DAVIS. Mr. Chairman, I thank the gentlewoman from Illinois for yielding time to me.

Mr. Chairman, I would like to take this opportunity to make some observations about title VI of this bill, which was reported by the Merchant Marine and Fisheries Committee, and which I support. I commend my colleague, Mr. JONES, the chairman of our committee, for his capable explanation of the provisions of this title.

There are two areas in which our committee elected to include user fees in this package. The first, the ocean dumping user fee, will collect from ocean dumping applicants a fee not to exceed $10,000, which will reflect the reasonable administrative costs of the Administrator of EPA in processing the permit application. This measure also provides for the collection of a special fee for permits issued by EPA to recover the costs of ensuring compliance with dumping regulations. These provisions were included in the Ocean Dumping Act reauthorization which passed the House on December 10, 1985.

We gave substantial thought to the fees, particularly the special compliance fee provisions of this legislation, especially as they affect the development and implementation of technology for destroying hazardous waste at sea by incineration. Specifically, the amount of the special compliance fee should not be set at a level which will adversely impact the prospects for commercial implementation of effective and efficient ocean-based waste destruction technology. Also, we intend the special compliance fee to reflect the need for reasonable assessments of the direct effects on the marine environment caused by disposal activities and not for gathering baseline data nor to recoup the costs of long-term, comprehensive ocean research programs.

The second user fee in this package will be charged by the Coast Guard to recover the costs of loadline and tonnage measurement for vessels. The fee is part of the text of H.R. 1362, a bill revising, consolidating, and enacting certain laws related to loadline and tonnage measurement which passed the House December 2, 1985. The fee is a reasonable and direct user fee which has been agreed to by industry.

In particular, I bring these two sections into focus because there has been an effort to enact, as part of reconciliation, a general Coast Guard user fee for recreational boaters. It is the strong opinion of this Member of the House that these kinds of revenue-raising ploys are nothing but additional taxes and should, at the very least, be called by their real name. The Committee on Merchant Marine and Fisheries has made it abundantly clear time and again that we are not opposed to reasonable, direct fees—demonstrated, I think, by our willingness to include two such fees in this legislation. But we continue to oppose efforts to balance the budget with across-the-board taxes on specific sectors of our population, in this case boaters. I will continue to strongly oppose this concept here in reconciliation or anywhere else it may appear in legislation we produce in this House.

Mr. Chairman, title VI also includes a provision, in section 6201, to amend the Merchant Marine Act of 1920 to restore the protections the Maritime Administration enjoyed under the Vessel Loan Guarantee Program of title XI of the Merchant Marine Act of 1936, prior to enactment of the Bankruptcy Code in 1978.

Title XI was created to meet the national security objectives of secure waterborne commerce with adequate auxiliary vessels and crew. The Loan Guarantee Program was intended to be self-sustaining; to show neither profit nor loss over the long term. In the last several years, however, the program has experienced an unprecedented series of defaults requiring payouts in the billions of dollars to guaranteed bond holders by the Federal Government.

Until 1978, the Maritime Administrator could repossess on demand despite the protections accorded a debtor under bankruptcy laws. However, Congress unintentionally eliminated that power when it revamped the Bankruptcy Code in 1978, and since that time, bankruptcy proceedings have presented a substantial impediment to the Maritime Administration for closure efforts. The inability of the Maritime Administration to foreclose on its collateral in a timely manner has been one factor in the current insolvency of the title XI program.

Moreover, the continued operation by defaulting debtors adversely affects the financial liability of other, nondefaulting operators. This, in turn, threatens the continued viability of other loans of the Maritime Administration by undermining the ability of nondefaulting operators to pay off their debts.

Section 6201 will give back to the Government the ability to enforce a maritime lein, protect its collateral, and help assure the future viability of nondefaulting operators. It will also have the additional benefit of raising revenue for budget reconciliation purposes. CBO estimates it will raise about $34 million in the first year alone.

Finally, Mr. Chairman, I would like to point out that our title of this bill includes comprehensive oil pollution liability and compensation, the "oil spill fund." This committee has worked long and hard to get a comprehensive system of oil spill compensation and cleanup and it is my hope that through this vehicle we may finally get a system in place. My colleagues may have noted that there was a frighteningly large oil spill near the Delaware River this month. That spill could have caused major damage to the environment. Luckily it did not. Nonetheless, the taxpayers of this country, according to the Secretary of Transportation, paid $6.3 million to clean it up. Had we had the system proposed here today in place, the taxpayers would have been relieved of that burden.

The important thing for us to keep in perspective is that we enact a system that fully compensates victims of oil spills and that fully cleans them up. This should be achieved while

treating all parties—industry, environmentalists, and States—in a balanced and fair manner, as well as upholding our obligations in the international maritime community. I urge my colleagues to continue to press forward on ensuring that this oil spill fund is set up before we consider our work complete in this Congress.

□ 1505

Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Maine [Mr. McKERNAN].

The CHAIRMAN. Without objection, the gentleman from Maine [Mr. McKERNAN] is recognized for 3 minutes.

There was no objection.

Mr. McKERNAN. Mr. Chairman, I thank the distinguished ranking member for yielding.

I want to say, first of all, that I voted against the rule on this legislation because I feel that there is a better way to meet our obligations to reduce the deficit. Having said that, I also feel that it is important to support this legislation in order to keep the process moving so that we will ultimately be able to come to a resolution which is going to reduce this deficit that faces our country.

I want to commend as we begin to debate this particular aspect of the bill both the chairman of the Merchant Marine and Fisheries Committee, as well as the ranking member, for including title VI, which is subtitle (F) of the oilspill liability. It is an issue that we on the committee have spent an awful lot of time dealing with. It is one which to my mind has not been satisfactorily resolved to date, especially because of some of the provisions that adversely affect the States that have taken the initiative to protect their particular coastlines; but section 6510 of subtitle (F) changes the way we have passed this legislation in the past. It maintains States rights, and for me personally it is the successful culmination of a 4-year battle that we have had to make sure that States that had the foresight, such as Maine, to protect their coasts will continue to have that opportunity even as we move to a national system to also protect the coasts where those States have not had the foresight to do what the people of Maine have had on the books for some 15 years.

I want to just say in conclusion again that I think this is a major step forward. I think we can all be proud that we are finally working toward having a way to protect our coasts and at the same time not interfering with those States that have already taken that action in order to make sure that they can preserve their coastlines, which are so important not only to the heritage of many of the States, but also to our future.

Mr. DAVIS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time to the gentlewoman from Illinois [Mrs. MARTIN].

Mr. JONES of North Carolina. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time to the gentleman from Pennsylvania [Mr. GRAY], chairman of the Committee on the Budget.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 6 minutes to the distinguished gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Chairman, this is not the most glorious moment in the history of the budget process. I think there are many of us who would look to a very strong reconciliation bill that will be comparable to the $400 billion that we have been able to achieve in the budget process over the last few years and to try in some way to provide a package that is comparable to what we have been able to do in the past; but at best, we have a one-shot effort to try to avoid the ax of Gramm-Rudman.

We are in the last few minutes of this year's budget game. Frankly, we have very little choice left. If we walk off the field now and do not adopt reconciliation, then we are sure to lose the game. Gramm-Rudman would go into effect to the tune of almost $24 billion that would have to be reduced, $12 billion out of defense, $12 billion out of nondefense.

We are looking at cuts in terms of cost-of-living increases.

More importantly, in the defense area, we are looking at a cut of almost 300,000 active duty personnel. There is not anyone here who is prepared to subject the country's security to that kind of a proposal.

So we have to play out these last few minutes and we have to do it with a giant dose of pain killer, of novacaine, and that is what this represents.

Everyone acknowledges that in this package we are not solving the structural problems of the deficit. We know what we have to do to do that. We have got to proceed with serious reductions in spending and we have to proceed with revenue increases. That is where it is at. That has been acknowledged time and time again when it comes to dealing with the deficit issue.

But what has happened? The President has basically walked away from this issue and the Congress has followed. The President has said that we are not going to cut defense, we are not going to raise taxes, and the Congress basically says, "If that is your position, Mr. President, we are not going to cut spending."

It is gridlock, budget gridlock, and it has been that way for the last 5 years and it continues today.

Gramm-Rudman was intended to try to break that budget gridlock. That is the whole point of Gramm-Rudman. It was intended to say to both the President and the Congress, "Get your act together, make your tough choices, or else we will cut everything else across the board."

To the extent that Gramm-Rudman has failed to break that deadlock, Gramm-Rudman has failed, and I am one of those who worked on that proposal and felt hopefully that it would convince both the President and the Congress to act. It failed to do that; so we really do not have any choice today.

The only path we can follow is the path of supporting this reconciliation to avoid an even greater crisis that this country would have to face; but in saying that, I hope all Members will learn some basic lessons today from what we do on reconciliation.

First of all, let us understand that we cannot in the Congress wait for the President to lead on this issue. He is not. If you are waiting next year for this President to suddenly take a lead on revenues, forget it. Not raising revenues has been a centerpiece for this President throughout his administration and he is not about to change next year. The President has basically taken the position that he is not going to put deficit reduction as a No. 1 priority; so we ought not to wait for his leadership. If we are going to move on the deficit, we in the Congress are going to have to do it.

Second, by enacting this package, we are bringing the Nation closer to a real crisis in terms of our deficit situation. Next year we face a target of $108 billion under Gramm-Rudman. By enacting a short-term package in this sense, we face an even tougher situation next year.

The third lesson is this. We are by enacting this package slowly limiting our options even more.

The options for 1988 that we face in the budget for 1988 are one of two. We will either get rid of Gramm-Rudman and the targets that are a part of Gramm-Rudman or we will enact the very tough choices that have to be enacted of adopting revenue increases and reductions totaling anywhere from $60 billion to $70 billion.

We are in that corner now. We have given up the last few easy ways out throgh asset sales and through the other parts that are contained in the reconciliation; so ultimately what Gramm-Rudman failed to do, we may very well be forcing ourselves to do, which is to move on those tough choices.

It does not replace leadership, but ultimately it may force us to take the right action because the public will demand no less.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Chairman, I thank the gentlewoman for yielding.

Mr. Chairman, I think my position was made quite clear in the previous debate on the rule which was held earlier this morning, that out of perhaps an overabundance of caution, I want to discuss the issue that I addressed earlier in regard to my amendment.

As I said, the Rules Committee made in order an amendment to be offered by me. I did not ask the Rules Committee to do this for me. This may be an historic moment where a Member received a rule that he did not request. It may be that the Rules Committee is compensating me for all the rules that I did ask for and did not receive, but I do not regard this as a favor, and in my opinion it is not a quid pro quo.

I just learned about the rule when I came to the floor this morning when I saw the briefing sheet. When I took a look at the briefing sheet, I saw that the banking title of the reconciliation bill adds to the deficit by $470 million. This caused me great concern, because I was under the impression that what we were doing in the Banking Committee was sending over a bill which met the deficit reduction targets as outlined in the budget resolution. Because of this, it was my intent to offer an amendment which would reduce the banking title by $470 million and therefore reduce the deficit to the budget reduction figures.

So there will be no misunderstanding, Mr. Chairman, my amendment, which was general in nature, did not specifically refer to the amendment of the gentleman from Illinois reducing the elderly rents or any other program contained in the housing authorization bill.

I do think that I should point out to the members of the committee that in order to meet the budget requirements, the Budget Committee is forcing the Farmers' Home Administration to sell rural housing loans that it holds in its portfolio. This amounts to a fire sale and it is forcing the Farmers' Home Administration to give up assets which it owns and which are valuable, in my opinion.

During the debate on the rule this morning, the esteemed chairman of the Budget Committee brought to my attention with regard to H.R. 1 and its inclusion in the reconciliation bill that because of the rules of the other body, the extraneous legislative material contained in H.R. 1 will be dropped.

For all these reasons, I do not intend to offer the amendment which was made in order by the rule, which I did not request. I think offering the amendment at this time would be a vain thing, and I am not in the habit of doing vain things.

Now, Mr. Chairman, I would like to just say a couple of words about what we had to do in our Banking Committee to meet the targets of the budget process.

With regard to the Government-owned assets, the Banking Committee has few programs from which to choose. Therefore, title III, the Banking Committee's title of H.R. 5300, contains legislation which would require the Farmers' Home Administration to sell loan assets in sufficient amounts to lower the net outlays by $2.4 billion over the next 3 years.

Title III also contains legislation which would require the Export-Import Bank to sell sufficient loan assets to reduce outlays by $2.8 billion in 1987.

The Banking Committee's contribution to reconciliation is almost double the amount that was initially required by the concurrent budget resolution. This action was necessary because of the fact that H.R. 5300 was significantly under what was required to meet the 1987 Gramm-Rudman target and therefore avoid sequestration.

Mr. Chairman, there has been a lot of controversy over achieving deficit reduction by means of selling off Government assets. Some have referred to this as nothing more than a fire sale; that is, selling a portion of the assets of the Nation at the risk of realizing certain losses of the asset itself, its associated future revenues and the discounts that will be required in order to sell it all for a one-time boost in revenues.

I am going to support the reconciliation bill today.

As I said earlier this morning, I support the housing bill which passed the House earlier this year and mention the fact that we did have a good day in the Banking Committee yesterday. We passed the package providing for a FSLIC recapitalization bill, a regulators' bill, a funds availability bill, H.R. 1.

For all these reasons, Mr. Chairman, I do not intend to offer my amendment at the time it is afforded to me.

□ 1520

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. DINGELL], the distinguished chairman of the Committee on Energy and Commerce.

Mr. DINGELL. Mr. Chairman, I thank the distinguished chairman of the Committee on the Budget, and I express my appreciation to him for not only his extraordinary ability in handling this difficult matter, but also his courtesy to me during this debate.

I rise first for purposes of making a statement regarding the legislative history of the Conrail Privatization Act.

On September 17, 1986, the Committee on Energy and Commerce approved the Conrail Privatization Act. In lieu of the committee report, this floor statement that I have with me represents the views of both the chairmen and the ranking minority members of the committee and the subcommittee, the gentleman from New Jersey [Mr. FLORIO]; my distinguished and beloved friend, the gentleman from New York [Mr. LENT], the senior minority member; our dear friend and colleague, the gentleman from Kansas [Mr. WHITTAKER], as well as of our good friend, the gentleman from Illinois [Mr. MADIGAN].

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, we know that there are many Members of the House who have concerns about how Conrail will deal with shippers, railroads, facilities, and State and local governments after it becomes a private company. I would hope that Conrail will negotiate in good faith to resolve all such concerns. I trust that the chairman shares my concerns, and that we can work together in the appropriate fashion to see that Conrail is properly sensitive to these concerns.

Mr. DINGELL. Mr. Chairman, I thank my dear friend from New York, and I concur fully in his statement. I would expect Conrail, as the gentleman has said, to negotiate in good faith with the parties he has mentioned to resolve these problems. I furthermore add that the committee will interest itself actively in this matter to ensure that Conrail is dealing with these concerns in an appropriate fashion.

Mr. Chairman, I yield back the balance of my time.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, I must admit that I am one of the people who is fascinated when I go to a magic show, and I watch that act where the magician comes out and first of all brings an elephant onto the stage and levitates it. Then, after levitating it and so on, in a few moments, proof, the elephant is gone, and so on.

Well, I must say that this whole process reminds me a little bit of that kind of a magic show, and we ought to be just as fascinated by it. The act of levitation was when we brought the budget to the floor. When I go to that magic show, I am always looking for the wires—you know, where do they have the wires on the elephant, and so on. Well, I suppose that I did not look hard enough in this case, because I was one of those who ended up believ-

ing. I saw the levitation and I believed and I voted for the budget, because I really thought that this was something that was real.

Now I find out when we get the reconciliation package out here on the floor that in fact it was just another illusion, because the reconciliation package has absolutely nothing to do with the budget. What we have done is found about $15 billion, and poof, it is gone. Here it is out here in language and so on that everybody could understand.

How did we get it to go away? Well, we took some spending that was supposed to be made in 1987 and we moved it back into 1986, so that the $230 billion deficit we had in 1986 becomes a $231 billion deficit. That does not make any difference, good heavens, and so on, it just adds on to the $2 trillion deficit that we have. Our kids will pay for it anyway, and so on, but it does not show up in 1987.

Using that kind of logic, we could balance this budget. All we would have to do is take the whole defense budget out of 1987, bring it back and put it in 1986—of course, it would make the 1986 deficit about $500 billion, but who cares, that is by now, and so on—and we would have a balanced budget in 1987. We could all go home and we could campaign on the idea that, by golly, we had balanced the budget.

This is the kind of illusion that we are dealing with out here. It is a magic act. It should not be taken seriously. We ought to kill this bill right now; we ought to just vote it down.

Mrs. MARTIN of Illinois. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentlewoman from Illinois.

Mrs. MARTIN of Illinois. Mr. Chairman, I just want the gentleman to know he should not give up in terms of the defense budget; we are not back with the conference report yet.

Mr. WALKER. We have another elephant coming? I am pleased.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 1½ minutes to the gentleman from Tennessee [Mr. FORD], a member of the Committee on Ways and Means.

Mr. FORD of Tennessee. Mr. Chairman, I rise in support of H.R. 5300, and I would like to commend the chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. ROSTENKOWSKI], also for his leadership in bringing in the title X section of H.R. 5300 that is before us today.

I am especially pleased that title X of the bill includes provisions requiring that all States implement the AFDC unemployed parent program. Today in half the States a father must leave his home in order to support his family in order for them to receive AFDC benefits. It should come as no surprise that this policy encourages family breakup. What continues to surprise me, however, is the Reagan administration's opposition to this policy. The President has repeatedly stressed his profamily agenda and often alluded to the welfare policies that encourage the breakup of the family.

We have taken the President at his word. We have identified the single most notorious antifamily welfare policy, and we propose to eliminate it in the reconciliation provision that was reported by the Ways and Means Committee.

If the President means what he says, then he will support this bill, including the AFDC-UP program. After all, it gives him the best of both worlds. It gives him profamily, and also antideficits.

Mr. Chairman, we urge our colleagues to vote for H.R. 5300.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Chairman, I rise in opposition to this package designated "reconciliation." One would think that when we in the Congress have to face the reality of finding ways to reduce the deficit, most Americans would say, "Well, cut spending."

That is not true. What this package proposes to do is kind of like when the family gets together and discusses that they do not have enough money to run their household budget, and somebody suggests, "Well, let's sell off the kitchen, or how about the bedroom."

"How can we live if we do that?"

"Who cares about that? At least we'll get by this budget crisis for this year."

That is what we propose to say in this reconciliation package: $15 billion-plus of alleged savings comes about from selling the kitchen or the bathroom or the bedroom of the house, $8.7 billion. What is most distasteful and reprehensible in this whole process of reconciliation is that we still see Members of the House using the reconciliation process as a vehicle for adding new programs for which no authorization exists. In this reconciliation package it totals a little over $3 billion. Never should we be putting our stamp of approval on that kind of a process.

In terms of cuts there is $1.876 billion of cuts in this bill. I commend the courage of those who developed it at least for that much. In case Members are wondering where we can find ways to cut more, I have a list of $26 billion in spending cuts that are identified, a compilation of recommendations of the Grace Commission, the Heritage Foundation, and the General Accounting Office.

The only thing that we need around here is people with the guts to vote to do it. We do not have this in the 99th Congress, and in November 1986 I hope that the American people will make a judgment as to who they want to show up around here in organizing the 100th Congress.

□ 1530

Mr. LOWRY of Washington. Mr. Chairman, I yield 3 minutes to the gentleman from Arizona [Mr. UDALL], the chairman of the Committee on Interior and Insular Affairs.

Mr. UDALL. Mr. Chairman, the Constitution assigns the Congress broad responsibilities regarding our insular areas. Because their 3.5 million Americans do not have influence over the decisions we make that affect them equal to that of their fellow Americans, we have a special obligation to carefully consider the impact of all legislation upon the territories and commonwealths.

The Committee on Interior and Insular Affairs has broad jurisdiction over matters affecting our territories and commonwealths. Because almost all matters affect them, this jurisdiction is shared with other committees of the House.

The circumstances of our Caribbean and Pacific insular areas are often different from the rest of the Nation. Because this means that their needs are also unique, they must be specially treated in most legislation.

I am concerned that several provisions of this legislation were developed without consultation with the Committee on Interior and Insular Affairs or our colleagues from the U.S. insular areas. I hope that the unique needs of the territories and commonwealths can be adequately addressed in the conference on budget reconciliation so that serious adverse consequences for insular America do not result.

Two provisions of concern would impose new fees on port and customs use. The economies and consumers of the insular areas would be negatively and disproportionately impacted in comparison to the rest of the Nation because they are small, disparate, distant from supplies and markets, have limited resources, import most consumer goods, export most of their products to the United States, have higher costs of living and doing business than elsewhere in the Nation, and have per capita incomes which are far lower.

The port use fee provision exempts the insular areas from the new levy for goods shipped from the United States to the islands but imposes it on goods shipped from them to the United States. This will yet further handicap their industrial development and should be a priority concern accommodated through a broader exemption.

The customs user fee provision includes no special treatment for the insular areas and would affect some dif-

ferently than others, since Puerto Rico is within the United States for customs purposes; American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands are outside U.S. customs territory; and Samoa and the Marianas enforce their own customs laws. Consumer costs, which are already high, and manufacturing, which is not at a high enough level, would be more adversely affected in the insular areas than in the States.

For example, according to our colleague Jaime Fuster, the customs user fee would add $21 million to consumer costs in Puerto Rico, given 1985 imports. Further, the commonwealth is three times as dependent upon inports than is the Nation as a whole.

Our colleagues Fofo Sunia of American Samoa and Ben Biaz of Guam, have pointed out the problems that these fees would create for the important tuna and textile industries in their territories.

The territories receive necessary preferences in tariff treatment—since they are members of the American political family—and something similar is needed in this situation—because of the unique impacts. Additionally, a fundamental element of the Federal fiscal relationship with insular areas is that they are either exempted from Federal revenue provisions or receive the proceeds of Federal collections. This principle should be maintained.

A third provision of concern would require that all States provide Aid to Families with Dependent Children (AFDC) benefits to needy two-parent families in which the principal earner is unemployed and apply this requirement to the U.S. insular areas. I support such application because the need for these benefits in the insular areas is the same as the need for the benefits in the States.

AFDC and related Medicaid assistance to the territories and commonwealths, however, is subject to amount limitations that supersede the Federal share of the costs of the programs. There are, of course, no similar "caps" on Federal payments under the programs to the States.

Because the current insular caps are well below even current program costs, the insular governments would have to pay all costs of the additional benefits which would be required by the bill—as much as $19 million by fiscal year 1979, according to the Congressional Budget Office. Since most of these costs in the States would be paid by the Federal Government, the inequitable treatment of the territories and commonwealths in the AFDC and Medicaid programs would be made worse.

So that further inequities are not unintentionally created by this legislation, I urge that the provision be amended in conference to exempt the costs of the additional benefits from the caps on AFDC and Medicaid assistance to the territories and commonwealths. Our senior insular colleague, Ron de Lugo of the Virgin Islands, has already discussed the need to do this with Chairman Ford of the Subcommittee on Public Assistance and Unemployment Compensation.

The bipartisan leadership of the Committee on Interior and Insular Affairs stands ready to work with the conferees on the concerns that I have identified. We and the insular representatives regard it as important that they be adequately addressed.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Illinois [Mr. CRANE].

Mr. CRANE. Mr. Chairman, the provision in H.R. 5300, the Omnibus Reconciliation Act of 1986, that establishes a 0.5-percent user fee on all formal entries of merchandise is a thinly disguised and ill-advised revenue raising device.

This fee is GATT illegal on its face and in its effect, and cannot be justified as a "user fee." The amount raised by this new tariff, in effect, is about $1.8 billion. This amount far exceeds any fee that can be correlated to expenses of the Customs Services in processing imported goods.

In order to be GATT compatible, any customs user fee must be associated with costs of services provided to process imports. Article VIII of the GATT states that—

> All fees and charges of whatever character imposed * * * in connection with importation or exportation be limited * * * to the approximate cost of services rendered and *shall not represent an indirect protection to domestic products or a taxation * * * for fiscal purposes.*

Under the GATT, countries have also agreed to attempt to reduce the number and diversity of such user fees.

For fiscal year 1986, the entire budget for all programs of the Customs Service was about $717 million including all administrative and personnel costs, drug interdiction, air program, computer processing of customs documentation and import data. Because of expanded drug enforcement efforts, the total customs budget for fiscal year 1987 should exceed $900 million. However, this so-called user fee raises $1.8 billion—far in excess of the costs associated with the "service" provided in processing imported goods.

Although the level of the fee seems small, in effect this fee increases the overall amount of tariffs collected by about 15 percent. In calendar year 1985, for example, about $13 billion in tariffs were collected on about 7 million formal entries. For individual imported products where duties are low or the value of products high, the total amount of the fee could be extensive and far in excess of the cost associated with clearing the particular product through customs and collecting any duties.

This user fee would apply to all duty-free products and preferential products under the generalized System of Preferences [GSP] for developing countries, Caribbean Basin Initiative and the Israel-United States Free Trade Zone Agreement. Under these programs and agreements, including those items that are bound at duty free under earlier MTN rounds, the United States is obligated to maintain duty-free treatment. In some cases we would owe compensation for applying an additional revenue-raising fee or tariff, even though we have attempted to name it a user fee.

Finally, this fee is a direct and blatant violation of the standstill and rollback provisions of the agreement reached just a few days ago in Punta del Este, Uruguay kicking off the new round of multilateral trade negotiations. The United States and about 90 other nations agreed, during the period of negotiation, not to impose any further barriers outside GATT rules or auspices and to eliminate any such existing practices that violate GATT as soon as possible. Otherwise, further negotiations to establish trade disciplines and open markets becomes meaningless as countries engage in unilateral one-upmanship such as this fee.

I hope we are more committed to a successful MTN, to an effective trade policy, and to the integrity of the United States in meeting its obligations than this new fee or tariff suggests. The administration strongly opposes such a fee. Our trading partners have already made representations to our Government against this provision. I hope it can be dropped in conference.

Mr. LEATH of Texas. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Chairman, two sentences really stood out in this week's Congressional Quarterly article about this reconciliation bill: First, the package would pare $13 billion to $15 billion from the fiscal 1987 deficit; and second, neither the House nor Senate package would contain any significant increases in taxes or cuts in Federal spending.

Will someone please explain to me how we can reduce the deficit by $15 billion without any significant cuts in spending or increases in revenue?

Even if we are saved from sequestration, we are not making an honest projection of the fiscal year 1987 deficit.

Since no fiscal year 1987 appropriations bills have been enacted into law, the Gramm-Rudman-Hollings base level, against which these reconciliation savings will be computed for the

purpose of avoiding sequestration, is based on fiscal year 1986 appropriations levels. In other words, this base level deficit projection, unlike the regular CBO and OMB baselines, is not based on extending current services into the future.

The Gramm-Rudman-Hollings base level assumes that fiscal year 1987 outlays will be virtually unchanged from fiscal year 1986 levels and that revenues will increase by an incredible $60 billion. As our friend and colleague, HARRIS FAWELL, has pointed out in his excellent "Dear Colleague," 1986 revenues grew only by $31 billion and outlays have grown over $50 billion a year for the last 6 years. Federal spending has grown in each of the last 21 years. To me, this sounds like a formula, not for coming anywhere close to meeting our Gramm-Rudman-Hollings target for 1987, but missing it by as much as $70 billion.

If the fiscal year 1987 deficit does, indeed, come in at $70 billion over what we tell the public it is going to be, how are we going to explain that to our constituents back home a year from now?

Even the fiscal year 1987 numbers are defective and we will be relying on the tax reform bill to save us from sequestration.

One other thing worth remembering is how we arrived at the goal of reducing the deficit by $13 to $15 billion in this bill. We are trying to get under the $154 billion Gramm-Rudman-Hollings "trigger." The August 20 "snapshot" said we needed to find $9.4 billion in savings to do that. But that $9.4 billion figure is the average of CBO and OMB estimates. Their individual estimates differed significantly. The GAO has already said the joint estimate was too low.

Taking the CBO figure alone, we would have to cut $16.6 billion to avoid sequestration. Most Members today seem to agree, which is why this bill calls for $15 billion in savings, not $9.4 billion.

But these figures also imply that Congress will be depending on the tax reform bill to carry us the rest of the way below the trigger and provide about a $9 billion cushion.

PROBLEMS WITH ASSET SALES

This bill calls for $7 billion in asset sales. As a practical matter, the Government probably should sell some assets and keep others. A smart business person is one that knows what lines of business he or she shouldn't be in. But I'm not going to discuss the merits of selling assets. These sales do not constitute $7 billion in deficit reduction, unless we can sell that same $7 billion in assets next year and the year after.

It's bad enough that selling assets reduces the defict only for 1987 and only from a cash-flow point of view. What's worse is that some of this year's asset sales will increase the deficit in future years, as the Government forgoes principal and interest repayments. For example, this year's $850 million "saving" from selling SBA loans may be offset by $1.4 billion losses from future foregone revenues. CBO says that, in the long run, the prepayment of REA loans will cost almost $2 billion. And CBO says that selling Ex-Im Bank loans will cost $543 million by 1991.

False savings this year mean big problems for fiscal year 1988 budgeting.

We are scrambling to get the deficit projection under the Gramm-Rudman-Hollings trigger of $154 billion, at least on paper. But if we do that without real spending reductions or revenue increases, what is going to happen next year?

The deficit target for fiscal year 1988 is only $108 billion. If we don't enact real deficit reductions this year, then next year will be still tougher. Even if the fiscal year 1987 deficit does come in under $154 billion—which I doubt—we will still have to cut spending and raise revenue to reduce the deficit another $46 billion to meet the 1988 target. Because the asset sales in this bill will reduce the deficit only technically and only for 1987, we are going to have to cut spending and raise revenues by another $7 billion next year. And if we pass the tax reform bill—which I hope we do not and think we might not—we will add another $17 billion to the fiscal year 1988 deficit giving us at least $70 billion to cut between now and 1988.

As it is, we will probably have to cut still more: The CBO baseline deficit projection for fiscal year 1988 is already $150 billion and this year's deficit is already approaching $230 billion. The longer we wait, the more painful it is going to be for everyone.

This bill is not honest deficit reduction.

It's been said, if you just tell the truth, you don't have to remember all the stories you've told folks. The same rule applies to truth-in-budgeting. This reconciliation bill is not honest deficit reduction. Some of us will go home and tell our constituents that the House voted for $15 billion in deficit reductions. But a year from now, they're going to wonder why the 1987 deficit is $180 billion or $200 billion or more, instead of the $154 billion this bill promises.

Other problems with the reconciliation bill.

Lowering the fiscal year 1987 deficit by shifting $680 million in revenue sharing payments from October to September and trying to hide it in an already staggering 1986 deficit is pure chicanery. Overall debt will still go up by the same amount—and even more since the Government will begin paying interest on borrowing that $680 million even sooner.

The bill unravels an earlier compromise this Congress passed in 1983 to stabilize the Social Security system. Under the 1983 rescue, there would be no cost-of-living adjustment when inflation is less than 3 percent. Yet, by incorporating a COLA at a lower inflation level, the bill spends $808 million more than would be spent under current law.

There is new spending in the bill and authorizing language that does not have anything to do with the budget reconciliation process. The whole text of H.R. 1, a multibillion-dollar housing authorization will be incorporated. If this trend continues, soon Congress will be passing only two bills every year: A continuing resolution to appropriate funds for the entire Government and a reconciliation bill to authorize the whole Government.

The rule contains the usual waivers of all points of order against the bill. One wonders why we even bother maintaining the fiction of this House having rules if, on legislation as far-ranging and major as this, we continue to have more exceptions than rules.

No, you can't have it all.

Contrary to what the well known commercial says, we can't have it all: Guns, butter, low taxes, and real deficit reduction. At least one of those items has to give. Preferably, all three; guns, butter, and revenues should give some. Instead of fooling ourselves and misleading our constituents with promises that we can have it all, we need to acknowledge that the right tune for the times is you can't always get what you want.

Our constituents do want us to make the hard choices.

I voted last year for the Leath-Slattery-MacKay budget amendment that would have frozen all spending, including defense and entitlements, and except for programs for the neediest poor. The year before that I voted for the Roemer-Stenholm-Montgomery budget amendment that would have cut all indexing—for entitlements and taxes—to CPI minus 2 percent. I went from having one reelection opponent to none. Other Members of this body have had similar experiences. To me, that says that our constituents want us to make the hard choices; that they will understand if deficit reduction involves pain, as long as that pain is spread equitably and across the board.

I don't know why my constituents should be much different from those in any other district. When I go home and go to town meetings and discuss what's in the Federal budget and what options are available, my constituents tell me they are willing to see entitlement growth restrained; they are willing to see defense growth restrained; they are willing to see revenues raised

a little if that is accompanied by spending cuts.

It's been said that elected officials overestimate how much information the average voter has and underestimate how much wisdom he or she has. If we are honest with out constituents about what it will really take to balance the budget, they will support real deficit reduction.

Mrs. MARTIN of Illinois. Mr. Chairman, I reserve the balance of my time.

Mr. LEATH of Texas. Mr. Chairman, I ask unanimous consent that 5 minutes of the time remaining on each side be reserved until after the disposition of all amendments and before the Committee rises.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. PURSELL. Mr. Chairman, I would like to associate myself with the comments of my friend and colleague from Michigan, Mr. DAVIS, with regard to a provision in H.R. 5300, the Omnibus Budget Reconciliation Act, that reduces the Medicare reimbursement fee for cataract surgery.

Mr. Chairman, I support H.R. 5300 with the understanding that the cataract surgery reimbursement provision included in this legislation will be changed in conference so that these Medicare reductions are distributed more equitably among the States.

The issue is not whether to cut reimbursement payments for cataract surgery but the inequity of the formula used to determine these reductions. As written, the bill sets an upper limit on the prevailing charge for cataract removal with lens implantation at 110 percent of the prevailing charge for removal without implantation.

The result is that some States are singled out for enormous reductions in their Medicare payments while others feel very little impact. Under the proposal, Michigan physicians stand to lose an average of 51 percent per case in payments for cataract surgery while those in California would lose only 7 percent.

I support a proposal that more evenly distributes the impact of reductions in cataract surgery payments among the States and reiterate that my support for this legislation is conditioned on a conference change in this unfair and inequitable provision.

Mr. DAVIS. Mr. Chairman, I would like to associate myself with the remarks of my colleague from Michigan, Mr. PURSELL.

I will vote for the omnibus budget reconciliation, but I do so with the understanding that a provision concerning Medicare reimbursement for cataract surgery will be substantially improved in conference with the other body.

This provision is nothing but punitive in its treatment of opthalmologists. It singles out this medical specialty for deep reductions in Medicare payments. Not only does this provision unfairly target this profession, it will result in dramatic disparities in payment amounts for identical services provided in different States. The issue is not whether to cut the cataract reimbursement, but the inequity of this method.

This provision is unrealistic because it attempts to base surgical fee reductions on an outmoded procedure. The outmoded procedure is extraction of the cataract without implanting an intraocular lens. Today, in 95 percent of the cases, cataract surgery is performed with the implanted lens. Statistically, there are too few cataract surgeries performed using the old procedure to develop a valid baseline. The inequity of basing current payments on an outmoded procedure is illustrated in the wide range of State-by-State reductions in Medicare payments that will result. For example, Michigan opthalmologists will be forced to bear a 51-percent payment cut for cataract surgery while another State's opthalmologists' reimbursements will be reduced by only 5 percent. Clearly, this is not fair.

It is important to stress that there is no valid reason for opthalmologists in certain States being targeted for massive cataract reimbursement cuts. The quality, efficiency, and type of cataract surgeries performed in these States are identical to those in States which benefit from negligible cuts. The cause of this problem is a statistical aboration, and one which can be easily corrected with an across-the-board percentage reduction nationwide.

I have been assured that when the budget reconciliation goes to conference, a more equitable fee reduction plan will be adopted. My vote supporting the conference report is by no means assured without the correction of this glaring inequity.

Mr. HENRY. Mr. Chairman, the process by which today's budget reconciliation bill has come to the floor has lately come in for widespread—and well-deserved—criticism. A process which was supposed to allow the necessary cuts in Federal programs to comply with the budget resolution has become the main, and nearly sole, vehicle for programmatic changes in Government programs. In one bill, and in one vote, we are asked to approve or disapprove of changes ranging from revising the reimbursement formulas for doctors and hospitals under the Medicare and Medicaid programs to "Buy American" requirements for offshore oil rigs.

There are a number of programmatic changes in the bill which I support—such things as increases for physician and hospital rates under Medicare, the AFDC–UP provision, the improved waiver authority for community-based services for the mentally ill under Medicaid—section 2176 waivers. And the bill is, in my view, still preferable to the disruption of sequestration.

On the other hand, the bill does not meet our responsibility, in my view, for deficit reduction. I am also strongly opposed to the inclusion of the State health risk pools provision in this budget reconciliation bill. It is a purposely vague attempt at establishing what has been described accurately as a "patchwork quilt of national health insurance"—paid for by the employer community. While we obviously have a pressing problem in the number of persons who do not have health insurance coverage, this "solution" is both dishonest in shifting this hidden cost to the business community, and shortsighted in encouraging the very problem we are attempting to resolve.

Mr. FORD of Michigan. Mr. Chairman, I rise to explain title VII of the Omnibus Reconciliation Act of 1986, which represents a diligent effort on the part of the Committee on Post Office and Civil Service to meet this year's reconciliation directive.

I am indeed satisfied that our committee's recommendations satisfy the reconciliation directive.

This year, I am happy to say, the reconciliation burden does not fall as heavily as it has in past years on Federal employees who were asked to provide more than their fair share of the effort to reduce our horrendous budget deficits.

The reconciliation recommendations of the Committee on Post Office and Civil Service, which are included in the matter before us, are in two areas: First, participation in the Federal Employees Thrift Savings Plan; and second, computation of the postal revenue forgone appropriation. These recommendations were approved by a bipartisan vote of 22 to 0 and substantially achieve the savings required by the concurrent resolution on the budget.

ACCELERATE PARTICIPATION IN THRIFT SAVINGS PLAN

This recommendation would permit employees covered by the Civil Service Retirement System [CSRS] to begin contributing to the Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986 in January 1987 rather than July 1987. As a result, those employees who choose to participate in the thrift savings plan would have 6 additional months during fiscal year 1987 during which contributions would be withheld from their pay and invested on budget under the plan.

The Federal Retirement System Act of 1986 establishes a three-tier retirement program for those Federal employees covered by Social Security. The three tiers are: First, Social Security; second, a defined benefit pension plan; and third, a tax-deferred thrift savings plan similar to 401(k) plans common in the private sector. Under the thrift savings plan, an employee may contribute to the plan, and thereby shelter from taxation, up to 10 percent of salary each pay period. The Government matches up to 5 percent of the employee's contribution. Under the act, the new retirement program commences in January 1987 at which time those employees covered by the new program may begin contributing to the thrift savings plan.

The act also permits those employees covered under the Civil Service Retirement System to participate in the tax-deferred thrift plan with certain qualifications. The qualifications are: An employee may contribute only up to 5 percent of pay each pay period; employee contributions are not matched by the Government; employee contributions may be invested only in Government securities; and an employee may not begin to contribute until July 1, 1987.

The reconciliation recommendation would permit employees under the CSRS to begin contributing to the tax-deferred thrift plan in January 1987. This is the same time employees under the new plan are permitted to begin making contributions and will provide an additional 6 months during which the affected employees may enjoy the benefits of the tax-deferred savings plan. The other qualifications

for CSRS employee participation are unaffected. Similarly, the provisions of the act relating to the 6-month "open season" during which employees may switch from the CSRS to the new program are unaffected.

REVISE METHOD FOR COMPUTING REVENUE FORGONE APPROPRIATION

This provision implements one of the recommendations of the Postal Rate Commission from the June 18, 1986, report on its preferred rate study, which was required by the Consolidated Omnibus Budget Reconciliation Act of 1985. This recommendation revises the method for computing the amount of the revenue forgone appropriation for reduce-rate mail. Called the equal markup method, it defines the amount to be appropriated in terms of a percentage markup over the attributable cost level that determines the reduced postage rates which the mailers of reduced-rate mail have to pay. Each of the reduced-rate categories will have the same percentage markup over attributable costs as is set for the most closely corresponding regular-rate category in postal rate proceedings, in order to help cover the institutional costs of the postal system. Through the revenue forgone appropriation, the Federal Treasury will then bear the same percentage contribution to institutional costs as regular ratepayers are require to pay for the same general type of mail.

Because all of the institutional costs of the postal system must be paid by someone, any reduction in the portion to be paid from appropriations inevitably affects the postage rates which must be charged to other kinds of mail. There can be no saving for the Government as a whole until postage rates in general are adjusted to reflect the revised methodology for determining how much should be received from appropriations. Accordingly, the revised methodology will be introduced in conjunction with the next general rate adjustment, but for appropriation purposes will take effect not later than January 1, 1989.

Enactment of this provision will result in savings of approximately $200 million in fiscal year 1989.

Mr. HOWARD. Mr. Chairman. The budget is dishonest. Some have even characterized it as a "Mickey Mouse system." Whatever, as an accounting technique, it is wrought with inequities and deceptions which, when all is said and done, serve to victimize the American people.

Nowhere in the entire hodgepodge of the budget is this better demonstrated than by the current treatment of the so-called transportation trust funds—the highway, transit, aviation, and inland waterways trust funds.

These funds are self-supporting and financed by fees paid by the users of these transportation systems. Under the law, they are dedicated solely for transportation improvements. However, the balances in these funds have been used to make the Federal deficit appear smaller. Current practice allows this by permitting the President and the Congress to "cook the books."

Who suffer? The American people and the quality of life afforded them; needed infrastructure projects; and our Nation's overall long-term economic growth.

Recognizing this, I, along with a number of my colleagues, have labored long and hard to get these trust funds removed from the unified budget. As some have said, it is not right to count such user-fee receipts against the Federal budget deficit.

Most recently, in H.R. 5300, the Omnibus Reconciliation Act of 1986, language was included which would achieve this end. But, as in the past, the committee's efforts have been thwarted. Not, I might add, by a vote of the House but by action taken by the Rules Committee which provides that in adopting the rule on H.R. 5300, the off-budget language would be automatically deleted.

Regardless, I think it is important that we understand what the issue really is. Taking the transportation trust funds off budget is not a Public Works Committee issue. It is an "American people's" issue. As such, it should transcend politics and committee jurisdictions. The focus should be on the American people and not Congress, for it is they, not the institution, who are being victimized.

No doubt people have argued that taking the transportation trust funds off budget will result in greater cuts in other transportation programs; that doing so will result in drastic increases in across-the-board cuts under Gramm-Rudman; and that this would set a precedent for taking other trust funds off budget.

At the least, these assertions are exaggerations; at the most, they are wrong.

Taking the transportation trust funds off budget—

Does not necessarily result in cuts in other transportation programs—just like taking Social Security off budget last year did not result in automatic cuts this year in other income security programs;

Does not result in drastic increases in across-the-board cuts under Gramm-Rudman—CBO estimates only one-tenth of 1 percent;

Does not give higher spending priority to transportation at the expense of other programs—over 100 safety net programs exempt from Gramm-Rudman would not be affected;

Does not eliminate annual congressional oversight or controls—that is, authorizations and appropriations;

Does not set a precedent for other trust funds—we are not simply talking about trust funds but user-fee financed trust funds whose programs receive no general fund appropriations. Other than Social Security, the transportation trust funds are the only ones that fit this definition; and

Does not alter the role or responsibility of the Appropriations and Ways and Means Committees—to set ceilings and taxes.

This is not budget gimmickry. It will not open the flood gates. And, it is not a question of "haves" and "have nots."

Regardless of what happens today, I remain committed to this issue. Taking the transportation trust funds off budget is good public policy based upon truth in budgeting. Unfortunately, we are dealing with a dishonest budget.

Mr. FIELDS. Mr. Chairman, I rise in strong support of the Panama Canal interest provision which is contained within title VI of H.R. 5300.

This provision, which I authored, was adopted by the House Merchant Marine and Fisheries Committee and will raise, according to the Congressional Budget Office, some $9 million in fiscal year 1987, $6 million in fiscal year 1988, and $5 million in fiscal year thereafter.

I would like to briefly share with my colleagues the justification and need for this proposal.

As some of my colleagues may recall, last year we adopted and the President signed into law a bill which directed that the interest payment on our original investment in Panama Canal be paid directly into the General Fund of the U.S. Treasury and not the Panama Canal Commission Fund.

This proposal was necessary because of some ambiguous language contained within the Panama Canal Act of 1979 which caused the diversion of some $62 million in U.S. taxpaye funds between October 1, 1979, and December 31, 1985.

While this legislation could have simply transferred the $62 million and all future interest payments to the U.S. Treasury, the bill was drafted so that it affected only prospective interest payments.

As the author of Public Law 99-195, I chose not to seek a transfer of the $62 million because these funds are needed by the Panama Canal Commission in order to avoid a serious cash-flow shortage at the beginning of each fiscal year.

With the problem of all future interest payments now successfully resolved, H.R. 5300 addresses a key remaining issue involving the level of our investment in the canal upon which our interest payments are calculated.

The language contained in subtitle E of title VI would raise the principal on our investment in the canal to the level where it should have been had no interest funds been previously diverted.

With the enactment of this provision, the Department of the Treasury would be authorized to add the $62 million that is deposited in the Panama Canal Commission Fund to the level of our principal investment, which is $75.1 million, and to calculate our yearly interest payment by multiplying that figure by the prevailing interest rate of 9.3 percent. By so doing, you arrive at the savings calculated by CBO which represents some $20 million in U.S. taypayer funds for just the next 3 fiscal years alone.

Let me emphasize, however, that this amendment does not transfer the $62 million to the General Fund of the U.S. Treasury. While I am sure that some of my colleagues would support such an effort, I have once again decided not to seek a transfer of those funds because such an action would have an adverse and negative impact on the operational requirements of the Panama Canal Commission.

While some may argue that this proposal may cause the Commission some financial anxieties, I would emphasize to my colleagues that at the end of July, with only 2 months left in the fiscal year, the Commission had accumulated an operational surplus of $10.3 million. Without this provision, the Republic of Panama will receive a huge and substantial profit payment for fiscal year 1986. This profit payment is the result of language contained within title XIII of the Panama Canal Treaty of

1977 which requires that any Panama Canal Commission revenues which exceed expenditures must be paid to the Government of Panama.

While I have no desire to damage our longstanding relationship with the Republic of Panama, there is no debate or controversy among the members of the House Merchant Marine and Fisheries Committee over the fact that these interest payments on our investment in the canal should be properly paid and deposited in our U.S. Treasury.

Finally, Mr. Chairman, since there is no dispute over the legitimacy of our claim to these interest payments, I would like to address the impact of this proposal on the operational budget of the Panama Canal Commission.

I would say to my colleagues that there are four important reasons why this proposal will not cause any cash flow problems for the Panama Canal Commission. These are:

First, the President has signed into law legislation I sponsored which permanently exempts the Panama Canal Commission from the enforcement provisions of the Gramm-Rudman-Hollings law. Without this exemption, the Commission would have had its operational budget reduced by $18.3 million in fiscal year 1986 alone. These funds are now available for their use.

Second, the Panama Canal Commission received earlier this year some $17.1 million in funds from the fiscal year 1986 supplemental appropriation bill.

Third, the Commission has, and will continue to have, access to the $62 million in interest funds that accumulated between October 1, 1979, and December 31, 1985.

And, fourth, the Commission continues to utilize some $85.6 million in U.S. taxpayer money which was appropriated to that agency in 1979. While the Commission has repaid some $378 million from its original appropriation, $85.6 million is still outstanding at this time.

Mr. Chairman, I would urge my colleagues to support the committee's position on this proposal which will raise over $20 million for the U.S. Treasury by restoring the proper level of our investment in the Panama Canal.

Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Chairman, today we have before us a bill containing changes to Medicare and Medicaid—programs essential to the health and well-being of millions of elderly and poor. Several signfiicant initiatives deserve your support, especially the two Medicaid provisions relating to the elderly and children. I have personally pushed two other key changes—holding down Medicare's deductible and upgrading Medicare's quality assurance system.

For 2 years, I have been pushing Congress to constrain Medicare's deductibles and coinsurance. I am pleased that this bill will constrain Medicare's 1987 hospital deductible and nursing home coinsurance. Instead of rising to an outrageous $572 in 1987, the deductible would be held to $500, an increase which approximates the increase in the elderly's Social Security COLA. I believe we should have made this linkage to the COLA a permanent fixture, but that will have to apparently wait until next year.

On a second front, I launched an effort in 1985 to upgrade Medicare quality assurance. Today we can take a significant step forward in this effort by passing the quality assurance provisions in this bill. Reconciliation contains several improvements which are contained in my quality assurance bills, H.R. 1870 and H.R. 4330. They deserve your strong support.

Again, I believe we need to go much further in the quality area. We must increase the emphasis on quality assurance, expand review to all types of providers, open consumer hotlines, add consumer advisory boards, and create a national quality assurance council. A special area of concern is the absence of quality assurance for care in the home. As for nursing home and home care access, we need to set up a prior authorization system for nursing home and home health care, to have intermediaries be more accurate and uniform, take into account "medical necessity" and "practical matter considerations," and to build the PRO into the appeals process. I would hope that these issues will be part of next year's legislative effort.

I strongly urge your support of the intiatives to improve Medicaid, and to constrain Medicare's deductible and upgrade its quality assurance.

Mr. FAZIO. Mr. Chairman, I rise in support of the reconciliation package, and I urge my colleagues to vote in favor of this measure.

Everyone is aware of the problems associated with the huge and growing deficit. The public declares it to be the No. 1 economic problem. Economists of all persuasions tell us it is not possible to "grow" our way out of the deficit, and if we don't act to reduce it in a reasonable way, we will throw the economy into a recession.

Cutting spending is a difficult process. That is because every program affects individuals. Politicians at the local, State and Federal level talk of the shortage of funds for our infrastructure programs, for the poor and the aged and the list goes on. Whether we are talking about funding a submarine which increases the employment base of an area, or funds to bolster the number of air traffic controllers, tax dollars raised and spent directly or indirectly impact people.

On the other hand it is easy to talk about the problem of the deficit. On the other, it is just as easy to defend program "X" and program "Y." It is also easy to blame the deficit on this policy or that spending program or that tax break. It is not easy to take the action we are being called upon to do today. But we weren't elected to find the easy way out. We were elected to make the hard choices.

We passed our budget resolution earlier this year. Reconciliation is a major part of implementing that resolution. Granted, the reconciliation bill before us is not perfect and no one is claiming it is. What we are saying is the time for rhetoric is over and the time for action is upon us. If we fail to fulfill our responsibilities today, the Gramm-Rudman machine of mindless cuts will take over. Responsible action is needed. I urge you to vote yes.

Mr. DASCHLE. Mr. Chairman, I am deeply troubled by the shift of attention in this measure away from the unique needs of rural hospitals. Rural America is in a state of economic crisis. Crop prices are at depression levels. Land prices have plummeted. And we are seeing record numbers of bankruptcies and foreclosures among farmers. Small businessmen, dependent for survival on a vital farm economy, are closing their doors. My fear is that we soon will see rural hospitals, hit hard by the effects of a depressed rural economy, forced to close their doors as well. This would be a tragedy.

The administration has told hospitals they will only receive a 0.5-percent increase in PPS payments next year, well below the market basket. The measure before us does slightly better, but not enough to meet the rising costs to rural hospitals, which are particularly affected by the PPS rate deficiency because they have a consistently higher Medicare population than their urban counterpart.

The smallest rural hospitals are experiencing a dramatic 12-percent negative patient margin. Hospitals with fewer than 50 beds, 85 percent of which are rural, suffered a negative net patient margin in 1986. I know of several small hospitals in South Dakota which, financially, cannot hold on much longer.

I cannot emphasize enough the serious effect hospital closures would have on my State. South Dakota is a medically underserved area where it is common for patients to travel long distances to the nearest hospital. If the smallest of these hospitals were forced to shut down, it would have tragic human consequences. These institutions desperately need an adequate reimbursement rate under Medicare.

I share the commitment of this administration and the Congress to halt deficit spending. Such commitment, I know, translates into fewer dollars for health care and intense competition within the health care industry for those dollars. Unfortunately, the small rural hospital, which has high Medicare and indigent care populations, has gotten the short end of the stick.

The Senate reconciliation bill calls for a 1.3-percent increase in the PPS rate. While this is less than adequate for the struggling rural hospital, it is better than the 1 percent which the House bill allows.

This administration has ignored rural health care. When the cuts have to be made, the White House would rather ask the elderly or the disadvantaged to bear the burden—never the Defense Department. The Congress has the opportunity to do something positive on this issue by providing a realistic and fair PPS rate for rural hospitals. I urge the House conferees to consider the unique financial needs of rural hospitals when the issue of PPS rates is addressed in conference.

Mr. WALGREN. Mr. Chairman, I urge support of the budget reconciliation bill of 1986. This bill, with all its limitations, reduces the Federal deficit to meet the 1987 Gramm-Rudman target by cutting the deficit by $15 billion, $3 billion more than the Senate bill.

It is important to once again bring attention to how we got to a 1986 deficit of well over $200 billion. In 1979, the Federal deficit was $27.5 billion. By 1985, it ballooned to $212 billion. This rapid runup in deficit spending is due largely to irresponsible tax cuts for the wealthy and for corporate America, pushed through the Congress in 1981 and large yearly

increases in military spending since then. Since 1980, social spending has been reduced almost $50 billion per year while interest costs and military spending have gone up more than four times that amount. The additional $200 billion we are now spending on interest costs and the military is widely recognized as unnecessary. This is the real damage of the Federal deficit, "wasting" $145 billion per year on interest payments required simply to carry the national debt for 12 months—from the start of one budget year to the start of the next—without producing anything for anybody. Interests costs are "waste" in its purest form.

The bill before us is the third in 3 years attempting to restore the balance that became unhooked in 1981. We are trying to make careful cuts to achieve not only a balanced budget but a better balance in Federal priorities.

While not affecting the budget deficit, I would like to highlight several provisions I sponsored in the Energy and Commerce Committee which have been included in this overall legislation that are important in their own way.

MEDICAL PRACTICE VARIATION

The first directs the National Center for Health Services Research to accelerate research on variation in medical practice. Our country has a tremendous variation in acceptable medical treatment. For example, Medicare patients in South Dakota have 69 percent more surgery than those in South Carolina. Why? People in Omaha are three times as likely to be hospitalized as people in San Diego. Women in one part of the country are four times as likely to have a hysterectomy than those living in another area. What can explain this variation in medical practice. Why do we spend much more on medical care in one region of the country than we do in another, even though each area has the same kind of problems?

Our Health Subcommittee heard testimony that Medicare hospitalization costs in the area around the University of Iowa were $734 compared to $1,320 in the Des Moines area. Why? Medicare costs for hospital care for each beneficiary in the Boston area was $1,894 compared to $1,078 per person in New Haven, CT. Why? If the New Haven rate had applied to the Medicare beneficiaries living in Boston, Medicare could have saved $63 million. Researchers say this difference was due to different ways doctors practice medicine from one area to another.

Some variation can be justified: high incidence of black lung disease in coal mining areas; some is not. My amendment would require Medicare to examine the extent and reasons for variations with emphasis on several costly and risky medical treatments.

Better information on variation would provide the medical community with state of the art information. The medical community itself, not the Government, remains responsible for educating physicians and helping them change their practice or reduce unnecessary procedures. In a Vermont project, tonsillectomies declined 46 percent in 4 years even though the kids were no healthier. In New Mexico antibiotic injections dropped 60 percent when a physician feedback program helped the medical community agree on when, and when not, to use this kind of treatment.

Medicare is on shaky financial grounds. Some project bankruptcy in the 1990's. While there is hardly a better use of our tax effort than providing good health care, we must make sure our Medicare dollars are spent wisely.

IMMUNOSUPPRESSIVE DRUGS FOR ORGAN TRANSPLANTS

Another provision I sponsored provides payment for immunosuppressive drugs for Medicare organ transplant patients for the first year after transplantation. Immunosuppressive drugs, like cyclosporine, are necessary to prevent the body from rejecting the transplanted organ. My amendment would pay for such drugs as a Medicare benefit for the first year after transplant.

The Task Force on Organ Transplantation found that some 15 percent of those who need transplants are being denied solely because they cannot pay for the drugs. While my provision would not help all those who need organ transplants, it would permit Medicare patients who cannot afford the drugs to have the same access as those who can. That is only the right thing to do.

Medicare was extended to kidney patients in the first place because of concern that some were being denied lifesaving dialysis due to inability to pay. It would be almost immoral to go back to those days for those whose lives can be saved by transplants simply because someone could not pay for the immunosuppressive drugs required to make the transplant survive.

Ironically, it is both more humane and costs less to transplant kidney patients than to support dialysis. Three years after a kidney transplant many patients can leave the Medicare Program and require no further support. That is what the program should be all about.

ORGAN DONATION COUNSELING

My third provision requires hospitals participating in Medicaid and Medicare to raise the possibility of organ donation with next of kin. Families, of course, would have the right to decline to donate, for whatever reason. But there is a time to ask.

The Task Force on Organ Transplantation recommended that Federal and State legislation require hospitals to establish what are called "routine inquiry" policies. About 22 States currently have such legislation in effect and have found a dramatic increase in the number of organs donated in response to being asked.

This provision is needed to meet the terrible shortage of organs available for donation. Only about 1 in 100 families who could donate organs are now doing so. When approached, about 4 in 5 families donate. There are 40,000 people who could benefit from kidney transplants alone if an adequate supply were available. The shortage of organs is one of the key limiting factors in making the miracle of organ transplants more widely available. We have all heard the heartwrenching pleas of families on TV appealing for organs to save the lives of their loved ones. My provision would help increase the supply of organs so that more of those families who need transplants could get them.

I hope the Congress adopts this bill both to bring down the deficit and make these modest improvements in our health care program.

Mr. SHUMWAY. Mr. Chairman, I cannot support the Omnibus Budget Reconciliation Act of 1986 because it amounts to a gross departure from the original intent of such a bill. Reconciliation should be the process of resolving the differences between appropriations and budget limitations; it should not encompass creation of new spending and avoidance of real spending reductions.

By creating new spending of $3.1 billion in programs such as Medicare, Medicaid, and aid to families with dependent children, the bill misses by far the reconciliation of previous decisions made by this body with the budget and the targets mandated by Gramm-Rudman-Hollings. Not only is it unfair for these new programs to receive funding while other programs perhaps just as worthy do not receive funding or are being cut, but such spending is profane when considering the fact that it is contained in a bill whose sole purpose is to reduce spending.

More important than new spending, however, is that this bill contains no real reduction of Federal spending or the deficit: it amounts to no more than smoke and mirrors. Through asset sales, user fees and accelerated collection, the bill does achieve savings enough to afford the bill's spending splurge and to avoid a Gramm-Rudman-Hollings sequestration this year. But next year, Congress will not have Conrail to sell again nor will Congress to be able to further accelerate collection. The bill's savings are clearly destined to do anything but reduce the deficit in the long run. Given the $108 billion Gramm-Rudman-Hollings deficit reduction target faced by Congress next year, it is reprehensible that Congress is not taking serious steps now to avoid sequestration in the 1988 fiscal year.

I cannot support this bill and I regret that Congress is reneging upon its past commitment to reduce the Federal deficit through this kind of legislative legerdemain.

Mr. McCANDLESS. Mr. Chairman, we have been down this path before. We huff and we puff and we denounce the deficit on a regular basis. In fact, according to the Library of Congress' CONGRESSIONAL RECORD Abstract for the 99th Congress, the deficit has been the topic of debate on no fewer than 1,125 occasions. So it would seem that the problem continues to plague us; not because of a lack of words, but because of a lack of action.

The fiscal year 1986 budget is a classic example. The fiscal year 1986 budget resolution was passed amidst much hoopla and celebration. We were told that we were back on the road of fiscal sanity. We were told that the resolution would reduce the deficit by $57.5 billion. We were told the joyous news that the deficit for fiscal year 1986 would be only $171.9 billion; which, considering the fact that the deficit for the year before was $212 billion, indicated that we were, at the very least, moving in the right direction. That is what we were told those many months ago.

I was not buoyed by the claims. In fact, I denounced the fiscal year 1986 budget resolution as being nothing more than blue smoke and mirrors. I expressed doubts that we would

ever see the promised deficit reductions of $57.5 billion. I am sorry to say that time and events have proven me correct. The projected deficit for fiscal year 1986 is $230 billion—nearly $60 billion over the budget resolution. And that is after the $11.7 billion Gramm-Rudman reduction. Without Gramm-Rudman, the deficit would have exceeded $240 billion—almost a quarter of a trillion dollars in just 1 year.

And we are not done yet. Last week, the House voted to give an additional $200 million in foreign aid to the Philippines. Add that to the fiscal year 1986 deficit. Apparently the House leadership has decided that if we are going to bust the budget, we might as well go in style. This week, in this bill, we are being asked to add another $680 million to the fiscal year 1986 deficit by speeding up revenue sharing payments. That is close to $1 billion added to the deficit in the last 2 weeks. It is probably a good thing that there are only a few days left in fiscal year 1986.

With that sorry history, you would think that the House of Representatives, at the dawn of a new fiscal year, would be eager to redeem itself. Alas, No.

The fiscal year 1987 budget resolution also had promises of budget reductions in the form of reconciliation. The House Budget Committee reported a reconciliation package on July 31, that package claimed a deficit reduction of $7.6 billion. However, in the light of reality, CBO's analysis of package only found $900 million in deficit reduction. OMB only found a $300 million reduction. We now have a new package. Proponents of this new legislation say that it will reduce the deficit by $15.5 billion. Or, if you prefer the numbers of the other body across the Capitol, it's $13.3 billion. However, before anyone gets too excited about the prospect of the Congress actually doing something about the deficit, let's take a closer look at the bill that is before us.

There are no real savings or even a faint effort to confront the long-term deficit crisis. What is proposed is a one shot fire sale of Federal assets which will supposedly raise $8.4 billion. However, as with any forced sale, the price of the assets is likely to be less than the actual fair market value. In addition, the loss of those assets will mean less Federal revenue in the future. There's more. Another $4.1 billion is supposed to be raised by hiring more IRS agents who will ferret out unpaid taxes. Another $3.8 billion will be raised from increased or new fees and taxes. When it comes to spending reductions, this bill provides only $1.9 billion. That's the good news. The bad news is that this bill, which is supposed to cut spending, also provides for new and additional spending of nearly $2 billion.

What a sham. What a travesty. As one Member of Congress put it, "It is a package of golden gimmicks." If we adopt this package, we are in effect telling the American public that we have carefully and thoroughly examined a budget in excess of $1 trillion and in that budget we only found less than two-tenths of 1 percent of waste, fraud, abuse, excess, obsolescence, and otherwise unnecessary spending in all of the Federal budget. Who are we trying to fool?

The deficit crisis is real. We are spending and consuming today and leaving the bills to be paid by our children and grandchildren. We have already left them a legacy of a national debt in excess of $2 trillion.

There are some who argue that the reason the deficit is so high is that taxes are too low. Therefore, they contend, the solution is to raise taxes. I do not accept that. The problem is that Federal spending is out of control and until we come to grips with that problem, additional taxes are not the answer.

In 1982, Congress passed the largest tax increase in history with the promise to reduce spending by $3 for every additional $1 raised. Not only did those spending reductions never materialize, but spending actually increased $1.14 for every new tax dollar. We repeated the process in 1984, again with a promise to cut spending by $1 for every $1 of new tax. Only 20 percent of those spending reductions were ever enacted. Another venture down the road of tax increases is only likely to lead to similar results.

Others point at President Reagan's 1981 tax cut as the culprit responsible for the deficit. I believe that assumption is misguided. Look at the facts. Even with the tax cuts, during the first 6 years of the Reagan administration, the Federal Government has collected as much revenue as it did during the administrations of George Washington through Gerald Ford combined. Let me repeat that. During the first 6 years of the Reagan administration, the Federal Government has collected as much revenue as it did during the combined Presidency of the first 38 Presidents.

Therefore, only after we have thoroughly reexamined all Federal spending, cut out waste and obsolete and unnecessary programs, established our spending priorities, and considered new ways to better utilize Federal resources, then, and only then, should we begin to talk about new or higher taxes.

In conclusion, Mr. Chairman, H.R. 5300 is just another version of the old shell game—"now-you-see-it, now-you-don't" deficit reduction. Therefore, I must vote against H.R. 5300, and I would urge my colleagues to do the same. We need not resort to one time flash in the pan and other sleight of hand tricks. We can do better than this. Let's vote down H.R. 5300 and devise a real and serious plan to confront the deficit crisis.

Mr. GOODLING. Mr. Chairman, I wish to record my grave concern over the smoke and mirrors aspects of the reconciliation bill before us. As an example, let me select an issue which reflects a broken promise made to our country's employers. I am speaking of the further 2-year extension of the Federal unemployment tax [FUTA] on employers.

The 0.2 percent increase originally was enacted to repay funds borrowed for extensive weeks of unemployment compensation. It is now retained as another of our smoke and mirrors measures to avoid making real budget cuts in the H.R. 5300, the omnibus budget reconciliation bill.

The Department of Labor estimates this debt will be paid in 1987. Yet, the tax is being extended, beyond its expiration date of 1987, to 1989. This measure will raise $2.2 billion in additional revenues for reconciliation purposes, and was proposed as savings by the Ways and Means Committee.

Chairman ROSTENKOWSKI gave two reasons this tax should be extended. The first is that it "* * * will allow the Federal unemployment trust fund to build up reserves in anticipation of a downturn in the economy * * *." Regardless of when or whether the chairman anticipates such a downturn, the fact is the trust fund is divided into three accounts, all of which have a legislated cap. Excess funds from one account shift into another, but not outside of the trust fund. According to the Department of Labor, all of these funds will be at or over their legislated caps by the end of fiscal year 1987, that is, they will be full up, without the continuation of this tax. Of course, Representative STARK has legislation, H.R. 4469, waiting in the wings to mandate an extension of benefits with such excess funds.

Mr. ROSTENKOWSKI makes a second point, that the $2.2 billion in revenues will decrease the deficit. Well, like almost every other measure in this bill, it really won't. The money is earmarked for the exclusive use of the FUTA, and therefore will not add to Federal revenue as a whole at all. It will only serve to perpetuate this program—which has served its useful purpose.

This is but one example of the many misleading and illusory provisions of the Omnibus Budget Reconciliation Act. There are very few programs left in the Federal budget to hide behind. I do not relish the task of making real cuts next year, especially considering what choices are left to us.

Mr. RAHALL. Mr. Chairman, I rise today in support of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986. This measure is designed to reduce the fiscal year 1987 deficit by $15 billion, and is expected to be sufficient to avoid across-the-board spending cuts called for in the Gramm-Rudman-Hollings deficit reduction law. Last Friday, the Senate passed a generally similar bill making deficit reductions of $12 billion.

This measure has received a great deal of attention due to the wide reach of its provisions, and the early possibility of a cigarette or gasoline tax. While the proposals to increase the tax levied on cigarettes and gasoline have been soundly put aside, there are many provisions in this bill of concern and interest to me and my fellow West Virginians. While this bill avoids general tax increases and contains only modest spending cuts, the deficit reductions would be produced mainly by the sale of assets, such as Conrail and various loan portfolios, increased user fees, acceleration of certain tax collections, and improved tax compliance. In addition, the reconciliation bill includes some program improvements such as a cap on the Medicare hospital deductible and repeal of the 3-percent threshold for triggering a Social Security cost-of-living adjustment [COLA].

At this point, I would like to point out those provisions of this measure in which I have a particular interest as a representative of West Virginia's Fourth Congressional District.

I strongly support language in the bill which incorporates the text of H.R. 1, the Housing Act, as passed by the House. This authorizes, for fiscal year 1987, sums as may be needed for housing assistance programs administered by the Housing and Urban Development De-

71-059 O-87-27 (Pt. 18)

partment and the Farmers Home Administration. It extends Federal Housing Administration Mortgage Insurance Programs, Federal Flood and Crime Insurance Programs, and reauthorizes the Community Development Block Grant and Urban Development Action Grant Programs.

Additionally, I support the provision of H.R. 5300 which advances the fourth quarter revenue-sharing payment for 1986 so that it occurs in fiscal year 1986 and not in fiscal year 1987. The bill requires that the payment be made before the end of fiscal year 1986, thereby reducing fiscal year 1987 outlays by $680 million.

H.R. 5300 also achieves savings in the Medicare Program through various reforms in payments to hospitals and other providers of services. At the same time, it takes some steps to limit the rapid increases in costs that many elderly patients have been facing—first by capping at $500 the deductible charged for the first day of hospitalization under Medicare, and also by establishing new incentives for doctors to accept the Medicare-determined rates as payment in full instead of billing extra charges directly to their patients. Further, the legislation includes several provisions designed to help assure quality medical care for Medicare patients and to address concerns that the continued ratcheting down of payment rates has led to an erosion of standards of care in some cases.

The bill also takes some steps toward addressing the unmet health needs of the roughly 35 million Americans currently without private or public health insurance. For example, it permits States to expand their Medicaid Programs to cover pregnant women, infants, and elderly and disabled persons whose incomes are below the poverty line but not below the even lower thresholds usually required to qualify for Medicaid. It also includes provisions designed to encourage States to set up insurance pools to help make health coverage available to additional uninsured persons.

Included in this budget reconciliation bill are provisions which provide for the sale of Conrail through a public stock offering. My enthusiasm for this proposal, however, is tempered due to the lack of amendments to the Staggers Rail Act of 1980 in this package. During the Energy and Commerce Committee's consideration of the Conrail sale last week an effort was made to include modest changes to the 1980 act necessary to insure that those shippers who are captive to a single railroad are not subjected to monopolistic railroad pricing and service practices. The vote in committee on this matter was 20 to 20 against the Staggers Act amendments.

During the 98th Congress I and a few of our colleagues from the coal States began the effort to address certain problems that have existed with the ICC's implementation of the Staggers Act. We felt then as we do now that the Commission has turned a deaf ear to the interests of captive shippers as well as to the American consumer. As some of us will remember, in 1980 the Congress sought to balance the revenue needs of the railroad industry with requirements to protect captive shippers from abuses of railroad market dominance. While the railroads have once again grown prosperous and are now in the financial position to expand far beyond their traditional rail operations into many other enterprises, shippers of bulk commodities such as coal have been forsaken by the Commission in its proceedings dealing with maximum rate reasonableness determinations. In 1985, a coalition was formed among shipper groups to push forward with amendments based on my previous legislation. The so-called CURE bill was introduced by BILLY TAUZIN and cosponsored by myself and the gentleman from Kentucky, HAL ROGERS, among many other Members.

This effort ended with the narrow defeat in committee. However, I would like to take this opportunity to commend my dear friend BILLY TAUZIN for his diligent effort to gain enactment of the CURE bill. We fought against great odds and lost but one battle. The war, however, it is not over. For if you are concerned about a viable Conrail, if you are concerned for an independent Conrail, be advised that under this sale proposal the railroad is a sitting duck in the years hence for a takeover by any number of other major carriers. Without the protections we sought in our amendments to the Staggers Rail Act, the monopolistic abuses that currently exist will be greatly magnified in the future if Conrail is under such a scenerio. I believe we will rue the day that we did not act with foresight in this matter.

While this bill is not perfect and even has provisions which I would not necessarily support, I feel I must support this deficit reduction legislation. It is necessary legislation. It is our only means of avoiding the sequestration process created by Gramm-Rudman. I did not support the adoption of Gramm-Rudman, but now, it is the law of the land, and we must all abide by its rules. We must reduce spending now, or suffer the wrath of Gramm-Rudman. I remember the public outcry when vital programs were cut in the first round of Gramm-Rudman cuts. The second round of cuts would be even more devastating to the economy of West Virginia and the Nation. For this reason, I must support this legislation. I must choose to avoid the automatic cuts.

Mr. DENNY SMITH. Mr. Chairman, I rise in opposition to H.R. 5300, the omnibus budget reconciliation bill of 1986.

In my opinion, the bill ought to be retitled the "ominous budget reconciliation bill of 1986" because it foreshadows a disaster with the Federal budget that will make this year's hand wringing over Gramm-Rudman look like a pleasant experience. After an entire year of struggling, we have given up on any serious attempt to cut Federal spending to reduce the deficit. Instead, as one of my colleagues put it regarding this bill, "There's so much smoke you can't see the mirrors."

The bill before us contains every gimmick imaginable to "reduce" the Federal deficit without cutting spending. There's a fire sale on loan asset sales—RHIF, Exim, GSL, College Housing Loans. Small Business loans—you name it, we sell it. The sales may "reduce" the deficit today, but it's a fact these sales will increase the size of the deficit tomorrow.

This bill raises taxes to the tune of $7.9 billion. If it's a user fee, we raise it. If it's an IRS office, we increase its size. And if it's an accounting trick, we use it. Fiscal year 1987 spending is moved on the books to fiscal year 1986 for a large portion of general revenue sharing, a move that will make it all but impossible to reduce the deficit to the Gramm-Rudman target set for 1988.

Mr. Chairman, we can do better than this. We have to do better than this. We must not go home with this bag of tricks during an election year attempting to fool the taxpayers into believing Congress has gotten serious about the deficit. This bill is far from a serious attempt to reduce the deficit, and I urge my colleagues to defeat it.

Mr. FIELDS. Mr. Chairman, I rise in strong support of a provision in this reconciliation bill requiring the Secretary of Energy, through the Energy Information Administration [EIA], to conduct a study of crude oil production and refining in the United States.

I joined with my colleague, Representative BILLY TAUZIN, to offer the energy study provision as an amendment in the Energy and Commerce Committee. The energy study provision instructs the Secretary of Energy to report back to Congress, within 60 days, the findings of the EIA study. The President then has 45 additional days to evaluate the report and determine whether crude and refined product imports have risen or U.S. domestic production has fallen to a level which poses a national security threat.

Committee report language specifically asks EIA to examine: the refined petroleum product needs of the U.S. military; the effect dependence on imported crude will have on U.S. foreign policy; the ability of the United States to resume production from shut-in crude oil and natural gas wells and to restart idled refining capacity; the adequacy of alternative sources of energy; the extent to which the decline in production and, conversely, the increase in consumer demand is occurring in the rest of the free world; the geographic diversification of imported supplies likely to be available to the United States in 1990; the projected free world supply-demand balance in 1990; the current work of private stock compared with historic levels; the likelihood that OPEC will expand its refinery capacity; and, the effect of the economic decline in the oil service and oil field supply industry on future U.S. production.

Since Saudi Arabia began flooding the world oil market with crude in January, prices have plummeted to 50 percent their previous level. Following the oil price plunge, economists painted rosy pictures of the positive effect lower oil prices would have on the U.S. economy. Yet, a booming economy has not occurred. In large part, no boom materialized as a result of the severe depression in the domestic oil and gas production and related industries.

But, the purpose of the EIA study is not to examine the economic distress of oil and gas producing States, although that distress is great. The purpose of the EIA study is twofold: to provide Congress and the administration with reliable energy information and to, then, focus the attention of Congress and the administration on our Nation's dangerous trend toward energy dependency. Rejoicing over low oil prices while ignoring vastly increased imports and reduced domestic crude oil production is irresponsible.

Memories are often short. But, surely we have not forgotten the results of the Arab oil embargo. The same OPEC which acted to depress prices early this year may act again to inflate prices, as it did in the 1970's.

Even if OPEC never actively attempts to gouge the American consumer again, the precarious political situation in the Middle East should make us nervous about overdependency.

Finally, we cannot ignore the possibility that the Soviet Union might block the Strait of Hormuz or otherwise impede oil flow from the Middle East during a military conflict.

A glance at some basic energy statistics should alarm us all. In August 1985, the United States imported 28.7 percent of its total petroleum needs. In August of 1986, that figure had jumped to 41.2 percent. Even more worrisome, imports from the Persian Gulf more than tripled to 16.3 percent, compared with only 4 percent the same month in 1985. Saudi Arabia is now the fourth largest supplier of crude and crude products to the United States.

At the same time, active U.S. drilling rigs plummeted to 740 on August 15. This is a drop from an average of 1,980 in 1985 and a high of 4,530 in December of 1981.

This Energy Information Administration study will provide Congress and the administration with the facts it needs to face the current energy crisis squarely and determine what action is necessary to preserve U.S. energy security.

Mr. JONES of Oklahoma. Mr. Chairman, as we debate the Omnibus Budget Reconciliation Act, I would like to take a moment to discuss one small part of the bill which I am very much opposed to; the extension of the temporary 0.2-percent payroll tax.

This tax was enacted in 1976 solely for the purpose of retiring the debt incurred by borrowing money from General Treasury funds to pay benefits to the unemployed. Employers nationwide, large and small, profitable and unprofitable, shared the burden of this additional tax equally.

But we made a promise to the employers that this tax would expire automatically the year after the debt was paid. The Department of Labor has said that the debt will be repaid next year. Thus, it is only fair that the tax expire in January 1988.

I voted against this extension in committee, and I am opposed to its inclusion in the reconciliation package. This is a breach of faith, and a costly one at that. In my home State, where the economy is already depressed, the extension of this tax will cost employers $26.3 million over 2 years.

Mr. COLEMAN of Texas. Mr. Chairman, I must oppose H.R. 5300, the Omnibus Reconciliation Act of 1986.

While I believe it is imperative that we achieve budgetary savings to meet the Gramm-Rudman-Hollings Deficit Reduction Act and avoid across-the-board sequestration, I do not believe this bill will either achieve the necessary savings nor do I believe all of the savings contained in this bill are sound.

The bill provides for a one-time gain of $9.8 billion in assets sales. This would impose a 0.5 percent Customs user fee on all cargo entering the United States for a revenue gain of $1.8 billion. It includes additional revenues through an extension of the telephone excise tax.

The bill contains $2.185 billion in budget cuts, but also contains an increase in spending of $4.472 for a net increase of $2.287 billion. This is certainly not the direction we should be heading for deficit reduction.

The bill also contains savings which are highly questionable. These include $2.4 billion from greater tax collections as a result of the House-passed Treasury, Postal Service, and general Government appropriations bill which increases the number of IRS personnel. I sit on the subcommittee which drafted that bill, H.R. 5294, and we added those personnel to both increase collections and avoid backlogs, but we did not use that to score the budget deficit, because those are not hard and fast numbers, but rather assumptions. The bill also assumes $846 million through increased penalties for failure to deposit payroll and withholding taxes and substantial understatement of tax liability.

I question whether or not this bill will bring us under the $154 billion deficit level we need to achieve to avoid sequestration. If, by change, it does this year, next year we will be faced with an ever greater and likely impossible task of avoiding sequestration. Even if we raise $10 billion through assets sales, it will only be a one-time gain. If we impose the supposed customs user fees, we will increase costs for consumers on all imports and hurt the economies of our border communities.

While there are provisions contained in the bill with which I agree, such as the cap on Medicare deductible payments for the elderly. I cannot support the entire bill. It takes up in the wrong direction. It is a short-term solution which will pose long-term problems—namely budget cuts or revenue increases in the nature of $75 billion next year. The members of the Budget Committee have worked hard on this bill, but I cannot accept it. I, too, want to avoid the danger sequestration poses to our national security, international position, and defense of our borders, but I do not believe this bill will do the job. I propose we go back to the drawingboard and bring a bill up which makes the cuts we need, $10 billion, to reach our deficit target.

Mr. ACKERMAN. Mr. Chairman, I am going to support passage of H.R. 5300, the fiscal year 1987 Budget Reconciliation Act, but I do so reluctantly because of some major shortcomings contained in the measure.

The fact is, the bill before us does not propose real deficit reduction. The bill does contain modest spending cuts, but half the savings come from selling loan assets held by various Government agencies. These are not true savings. Even though these sales would lower the deficit during 1987, the Government's forgone revenues from collecting principal and interest on the loans will increase the deficit the following year, and perhaps for many years to come. This is a quick fix for raising fast cash, but a dangerous risk that may cause the Government to actually lose money on the sales and endure long-term financial loss as a result.

Another aspect of the bill which I am opposed to is the advanced revenue-sharing payment requirement. The payment is currently scheduled to be made during the first 5 days of fiscal year 1987. However, under the reconciliation bill, the fourth quarter payment will be made before the end of 1986 in order to reduce fiscal year 1987 outlays by $680 million. What we are talking about is juggling the books to create the illusion that we are meeting the Gramm-Rudman targets. This is a flagrant retreat from responsible decisionmaking.

I am also very concerned about provisions in the bill which would cut the fiscal year 1987 discretionary appropriations to bring outlays $1 billion below the amount allocated under the budget resolution by using the Gramm-Rudman formula of indiscriminate, across-the-board cuts. I am strongly opposed to this reckless budget-cutting gimmick because I believe one of Congress' most basic responsibilities is to make spending decisions. It is the branch of the Federal Government closest to the people and should be most responsive to the needs of the people.

Yes; deficit reduction is urgently needed, but Congress can cut the budget without Gramm-Rudman. Let's not forget that Congress has appropriated less than the President requested every year except 4 since World War II. In fiscal year 1986 Congress appropriated $7.8 billion less than it did for fiscal year 1985, and this amount was $5.9 billion less than the President's request. The only appropriations bills which exceeded last year's target levels were for defense and military construction, both at the urging of the White House.

Mr. Chairman, I support a balanced budget, but shifting money from the 1987 budget to the 1986 budget to make it appear as if we are meeting the Gramm-Rudman targets is ludicrous. Congress has a responsibility to make carefully thought-out spending decisions based on the merits of various programs to our society. Let's keep the budget decisions where they belong, in the hands of the people.

Mr. LEATH of Texas. Mr. Chairman, I yield back the balance of my time.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield back the balance of my time.

□ 1540

The CHAIRMAN. Pursuant to House Resolution 558, the bill is considered as having been read for amendment under the 5-minute rule.

The text of H.R. 5300, as introduced and without amendments, is as follows:

H.R. 5300

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE AND TABLE OF CONTENTS

SECTION 1001. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1986".

SEC. 1002. TABLE OF CONTENTS.

Title I. Short Title and Table of Contents.
Title II. House Committee on Agriculture.
Title III. House Committee on Banking, Finance and Urban Affairs.

Title IV. House Committee on Energy and Commerce.

Title V. House Committee on Interior and Insular Affairs.

Title VI. House Committee on Merchant Marine and Fisheries.

Title VII. House Committee on Post Office and Civil Service.

Title VIII. House Committee on Public Works and Transportation.

Title IX. House Committee on Small Business.

Title X. House Committee on Ways and Means.

TITLE II—HOUSE COMMITTEE ON AGRICULTURE

Subtitle A—Sale of Notes Held in the Rural Development Insurance Fund

SEC. 2001. SALE OF RURAL DEVELOPMENT NOTES.

(a) SALES REQUIRED.—The Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes held in the Rural Development Insurance Fund created by section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds not less than—

(1) $552,000,000 from such sales during fiscal year 1988, and

(2) $547,000,000 from such sales during fiscal year 1989.

(b) NONRECOURSE SALES.—Section 309A(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended by striking out the period at the end of the second sentence and inserting in lieu thereof the following: ", including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.".

(c) BORROWER RIGHTS AND OBLIGATIONS.—Any sale of notes, as described in subsection (a), shall not alter the rights or obligations of the borrower specified in the note, except that the Secretary of Agriculture, prior to sale, shall ensure that such notes, as sold, contain no terms for graduation of the borrower to any other source of credit.

(d) ELIGIBILITY TO PURCHASE NOTES.—Notwithstanding any other provision of law, each institution of the Farm Credit System shall be eligible to purchase notes held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institution's interest in the purchased notes), and collect and dispose of, such notes, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and the purchasing institution and as may be approved by the Farm Credit Administration.

(e) LIMITATION ON SALES FROM AGRICULTURAL CREDIT INSURANCE FUND.—During fiscal years 1987 through 1989, no note shall be sold out of the Agricultural Credit Insurance Fund, except in connection with transactions with the Secretary of the Treasury, without prior approval by Congress.

Subtitle B—Prepayment of Loans

SEC. 2011. PREPAYMENT OF REA GUARANTEED LOANS.

(a) AMENDMENT TO RURAL ELECTRIFICATION ACT OF 1936.—The Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) is amended by inserting after section 306 (7 U.S.C. 936) the following new sections:

"SEC. 306A. PREPAYMENT OF LOANS.

"(a) Except as provided in subsection (c), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of this Act may prepay such loan by paying the outstanding principal balance due on the loan, if—

"(1) the loan is outstanding on July 2, 1986;

"(2) private capital, with the existing loan guarantee, is used to replace the loan; and

"(3) the borrower certifies that such prepayment will result in substantial savings to its customers or lessen the threat of bankruptcy of the borrower.

"(b) No sums in addition to the payment of the outstanding principal balance due on the loan shall be charged as the result of such prepayment against the borrower, the fund, or the Rural Electrification Administration.

"(c)(1) A borrower will not be qualified for prepayment under this section if, in the opinion of the Secretary of the Treasury, to prepay in such borrower's case would adversely affect the operation of the Federal Financing Bank.

"(2) Paragraph (1) shall be effective in fiscal year 1987 only for any loan the prepayment of the principal amount of which will cause the cumulative amount of principal on loans prepaid under this section (and under the undesignated paragraph relating to the prepayment of loans by the Rural Electrification and Telephone Systems, of chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986) to exceed $2,415,000,000.

"(d) The Administrator shall permit, subject to subsection (a), prepayments of principal on loans in fiscal year 1987 under this section (or under the undesignated paragraph relating to the prepayment of loans by the Rural Electrification and Telephone Systems, of chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986) in a cumulative amount not less than the amount that, added to the cumulative amount of principal repayments in fiscal year 1986, equals $2,415,000,000.

"SEC. 306B. SALE OR PREPAYMENT OF DIRECT OR INSURED LOANS.

"A direct or insured loan made under this Act shall not be sold or prepaid at a value less than the face value of any outstanding principal balance of such loan.".

(b) CONFORMING AMENDMENT.—Chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986, is amended by striking out the undesignated paragraph relating to the prepayment of loans by the Rural Electrification and Telephone Systems.

(c) REGULATIONS.—The Secretary of Agriculture shall issue regulations to implement this section within 15 days after the date of enactment of this Act. To the extent practicable, the Secretary shall incorporate the regulations issued under the undesignated paragraph relating to the prepayment of loans by the Rural Electrification and Telephone Systems, of Chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986.

Subtitle C—Federal Meat Inspection

SEC. 2021. SHORT TITLE.

This subtitle may be cited as the "Processed Products Inspection Improvement Act of 1986".

SEC. 2022. PURPOSE.

The amendments made by this subtitle are in furtherance of the findings made by Congress in section 2 (21 U.S.C. 602) of the Federal Meat Inspection Act.

SEC. 2023. AMENDMENTS TO FEDERAL MEAT INSPECTION ACT.

(a) MANNER AND FREQUENCY OF INSPECTION.—Section 6 of the Federal Meat Inspection Act (21 U.S.C. 606) is amended by striking out "That for purposes" and all that follows through "*Provided*, That", and inserting in lieu thereof the following:

"For the purposes hereinbefore set forth, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment. Such examination and inspection shall be conducted with such frequency and in such manner as the Secretary deems necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary deems to be appropriate, including—

"(1) the nature and frequency of the processing operations at such establishment;

"(2) the adequacy and reliability of the processing controls and sanitary procedures at such establishment; and

"(3) the history of compliance with inspection requirements in effect under this Act, by the operator of such establishment or anyone responsibly connected with the business (as described in section 401(g) of this Act) that operates such establishment.

All such products found by such inspectors, if any, and by the operator of such establishment to be not adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and passed'; and all such products found by any of such inspectors or by the operator of such establishment to be adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and condemned'. All such condemned products shall be destroyed for human food purposes. The Secretary may suspend inspection at, and thereby remove inspectors from, any establishment that fails to so condemn adulterated meat food products or fails to so destroy condemned meat food products. For purposes of any examination and inspection, such inspectors shall have access to every part of an establishment at all times, by day or night, and without regard to whether such establishment is operated. Notwithstanding the preceding provisions of this section,".

(b) ENFORCEMENT METHODS.—Section 401 of the Federal Meat Inspection Act (21 U.S.C. 671) is amended—

(1) by inserting "(a)" after "Sec. 401.",

(2) in the first sentence—

(A) by striking out "applicant, for" and inserting in lieu thereof "applicant for",

(B) by striking out "any felony, or (2)", and

(C) by inserting before the period at the end thereof "or (2) any felony",

(3) in the second sentence—

(A) by indenting the first word 2 ems so as to create a new paragraph, and

(B) by inserting "(f)" before the first word,

(4) by inserting "(g)" before the first word of the third sentence,

(5) in the fourth sentence—

(A) by striking out "The" and inserting in lieu thereof "(h) Except as provided in subsection (e)(2), the", and

(B) by striking out "this section" and inserting in lieu thereof "subsection (e)", and

(6) by inserting after subsection (a), as so designated by paragraph (1) of this subsection, the following new subsections:

"(b)(1) On the request of the Secretary at the time of the sentencing of an individual who is a person responsibly connected with any business requiring inspection under title I of this Act and who is convicted of a felony involving—

"(A) the intentional adulteration of food (except as defined in section 1(m)(8) of this Act);

"(B) the adulteration of food, as defined in section 1(m)(8) of this Act, with intent to defraud;

"(C) bribery; or

"(D) extortion;

the sentencing court shall issue a temporary order forbidding such individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I of this Act if the court finds that the exercise of operational control by, or the presence of, such individual at the establishment either poses a direct and substantial threat to the public health or safety or, if such individual is convicted of a felony described in subparagraph (B), poses a clear likelihood of significant economic harm to consumers.

"(2) Such order shall terminate—

"(A) whenever the Secretary determines by order, after a hearing on the record, whether such individual should exercise operational control of, or be physically present at, any establishment requiring inspection under title I of this Act, and judicial review, if any, of such determination is completed; or

"(B) ninety days after the issuance of such temporary order by the court if the Secretary does not commence such hearing before the expiration of such ninety days;

whichever occurs earlier.

"(c) Any determination and order of the Secretary issued under subsection (a) or (b) shall be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than thirty days after the effective date of such order, a petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the relevant establishment is doing business. Judicial review of such order shall be upon the record upon which the determination and order are based.

"(d)(1) Subject to paragraph (3), the Secretary may commence a civil action in an appropriate court, as provided in section 404, to withdraw inspection service under title I of this Act with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I of this Act from exercising operational control of, or being present at, any establishment requiring inspection under title I of this Act.

"(2) If the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or such individual has repeatedly failed to comply with the requirements of this Act, or the rules and regulations issued under this Act, in a manner that poses a direct and substantial threat to the public health or safety, then the court shall issue an order—

"(A) withdrawing inspection at such establishment; or

"(B) forbidding such individual to exercise operational control of, or to be physically present at, such establishment;

for such period as the court deems necessary to carry out the purposes of this Act.

"(3) Not less than ninety days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary shall give to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced a written notice that includes—

"(A) a statement that the Secretary intends to commence such action;

"(B) a comprehensive description of the violations of this Act and the regulations issued under this Act alleged by the Secretary; and

"(C) a description of the actions the Secretary considers necessary to be taken by such recipient or such individual to comply with this Act and to eliminate the need to commence such civil action.

"(e)(1) The Secretary may temporarily withdraw inspection service under title I of this Act with respect to any establishment for such period as is necessary to ensure the safe and effective performance of official duties under this Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of such establishment—

"(A) threatened to forcibly assault;

"(B) forcibly assaulted;

"(C) forcibly intimidated; or

"(D) forcibly interfered with;

an employee of the United States engaged in, or on account of, the performance of any of such official duties.

"(2)(A) Notwithstanding paragraph (1), the Secretary may temporarily suspend inspection service under title I of this Act with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on such record, if the Secretary determines that temporary suspension of such inspection service is necessary for the safety of any employee who performs official duties under this Act.

"(B) If the Secretary receives, before or after temporarily suspending such inspection service in accordance with subparagraph (A), adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of such employee will not continue or recur, the Secretary may continue or restore such inspection service on the condition that such assurances are fulfilled.".

(c) WARNING; REPORTING OF VIOLATIONS.—Section 406 of Federal Meat Inspection Act (21 U.S.C. 676) is amended—

(1) in subsection (b) by adding at the end thereof the following:

"In determining whether the public interest could be adequately served by a written notice of warning, the Secretary shall take into account, among other factors—

"(1) the compliance history of such establishment;

"(2) the magnitude of the violation;

"(3) whether compliance with this Act would likely be obtained as a result of such notice; and

"(4) whether such violation is of a minor or technical nature.", and

(2) by adding at the end thereof the following new subsection:

"(c) Unless the Secretary by regulation provides otherwise, before any violation of this Act is reported by the Secretary for prosecution of a criminal proceeding, the Secretary shall give the person alleged to have committed such violation—

"(1) reasonable notice that the Secretary intends to report such violation for prosecution; and

"(2) an opportunity to present to the Secretary, orally or in writing, views with respect to such proceeding.".

(d) CONFORMING AMENDMENTS.—

(1) NIGHTTIME.—Section 9 of the Federal Meat Inspection Act (21 U.S.C. 609) is amended by inserting ", except as provided in section 6," after "equines, and" the first place it appears.

(2) ADMINISTRATION.—Section 21 of the Federal Meat Inspection Act (21 U.S.C. 621) is amended by striking out "and meat food products" and inserting in lieu thereof "thereof, and of meat food products".

(e) CONSTRUCTION OF AMENDMENTS.—The amendments made by this section shall not be construed to authorize the Secretary of Agriculture to refuse to provide inspection under the Federal Meat Inspection Act at an establishment solely because such establishment does not participate in a total plant quality-control program.

SEC. 2024. REENACTMENT OF FORMER PROVISIONS OF LAW.

(a) REENACTMENT.—Effective 6 years after the date of the enactment of this Act, sections 6, 9, 21, 401, and 406 of the Federal Meat Inspection Act (21 U.S.C. 606, 609, 621, 671, 676) are amended to read, respectively, as such sections read immediately before the date of the enactment of this Act.

(b) SAVING PROVISION.—The amendments made by subsection (a) shall not have the effect of releasing or extinguishing any penalty, forfeiture, or liability incurred under the Federal Meat Inspection Act as amended by section 1023, or under the rules or regulations issued under such Act.

SEC. 2025. SENSE OF CONGRESS.

It is the sense of Congress that the Secretary of Agriculture should—

(1) carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act, and

(2) evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I of the Federal Meat Inspection Act, in order to identify the producer of such livestock.

SEC. 2026. ANNUAL REPORT.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(1) any action proposed or taken by the Secretary to implement the amendments made by this subtitle,

(2) any action proposed or taken by the Secretary to carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act,

(3) any action proposed or taken by the Secretary to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under such

title, in order to identify the producer of such livestock, and

(4) any personnel action proposed or taken by the Secretary as a result of the amendments made by this subtitle and any effort made by the Secretary to minimize any adverse economic effect of such amendments on employees of the Department of Agriculture.

SEC. 2027. CONGRESSIONAL REEVALUATION.

Not later than 6 years after the date of the enactment of this Act, Congress shall—

(1) evaluate the operation and effects of the amendments made by this subtitle, for the purpose of determining whether to extend or modify the operation of such amendments, and

(2) enact such legislation as may be necessary to efficiently and effectively carry out the Federal Meat Inspection Act.

SEC. 2028. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) GENERAL EFFECTIVE DATE.—Except as provided in section 2024(a) and in subsection (b) of this section, this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

(b) TEMPORARY APPLICATION OF EXISTING LAW.—Sections 6, 9, and 21 of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), as in effect immediately before the date of the enactment of this Act, shall apply with respect to establishments until the Secretary of Agriculture first issues rules and regulations as provided in the amendment made by section 2023(a) of this Act.

TITLE III—HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SEC. 3001. SALE OF RURAL HOUSING LOANS.

(a) REQUIRED SALES TO PUBLIC.—The Secretary of Agriculture shall take such actions as may be necessary to ensure that loans made under title V of the Housing Act of 1949 are sold to the public in amounts sufficient to provide a net reduction in outlays, from the proceeds of such sales, of not less than—

(1) $1,158,000,000 in fiscal year 1987;

(2) $523,000,000 in fiscal year 1988; and

(3) $546,000,000 in fiscal year 1989.

(b) PROCEDURES AND TERMS OF SALES.—

(1) ESTABLISHMENT OF GUIDELINES.—The Secretary of Agriculture shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including the kind of protections that should be provided to borrowers and terms that will ensure that the sale of the loans will be made at the lowest practicable cost to the Federal Government.

(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Secretary of Agriculture shall use the Federal Financing Bank as an agent to sell the loans, unless the Secretary determines that the sale of loans directly by the Secretary will result in a higher rate of return to the Federal Government. If the Secretary determines to sell loans directly under this paragraph, the Secretary shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Secretary of Agriculture shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) REPORTS BY SECRETARY.—The Secretary of Agriculture shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of the loans. The Secretary shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1989.

(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Secretary of Agriculture described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Secretary as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) RELATION TO OTHER LAW.—The sale of loans under subsection (a) shall not be subject to any requirement under section 517 of the Housing Act of 1949 or any other law that the loans be insured or guaranteed when sold, or to any requirement under paragraph (2) or (3) of subsection (d) of such section 517.

SEC. 3002. SALE OF EXPORT-IMPORT BANK LOANS.

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 15. SALE OF BANK LOANS.

"(a) REQUIRED SALES TO PUBLIC.—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $500,000,000 in fiscal year 1987 from the proceeds of such sales.

"(b) PROCEDURES AND TERMS OF SALES.—

"(1) ESTABLISHMENT OF GUIDELINES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

"(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

"(c) REPORTS TO CONGRESS.—

"(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

"(2) REPORTS BY BANK.—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

"(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

"(d) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan by the Bank under this section shall not be subject to any Federal or State securities law.".

TITLE IV—HOUSE COMMITTEE ON ENERGY AND COMMERCE

Subtitle A—Nuclear Regulatory Commission Annual Charges

SEC. 4001. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

(a) GENERAL AUTHORITY.—The Nuclear Regulatory Commission shall assess and collect annual charges from its licensees on a fiscal year basis, beginning with fiscal year 1987. Such annual charges shall be in addition to any assessment of charges under section 9701 of title 31, United States Code.

(b) AGGREGATE AMOUNT REQUIREMENT.—The aggregate amount of the annual charges under this section for any fiscal year (when added to charges assessed by the

Nuclear Regulatory Commission for such fiscal year under section 9701 of title 31, United States Code) shall be sufficient to recover all of the regulatory costs of the Commission budgeted for such fiscal year, including all costs for—

(1) research activities directly related to the regulation of any licensee of the Commission;

(2) licensing, regulation, and inspection activities with respect to such licensees; and

(3) safeguards activities with respect to such licensees.

(c) ESTABLISHMENT OF ANNUAL CHARGES.—

(1) The amounts of the annual charges established under this section—

(A) shall be based on the relative cost of regulating different categories of licensees and other factors determined to be appropriate by the Nuclear Regulatory Commission, including the impact of such annual charges on research and medical treatment; and

(B) with respect to any utilization or production facility for industrial or commercial purposes issued a license under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)), shall also be based on the rated capacity of such facility.

(2) The amounts of the annual charges under this section shall be established by rule.

(d) TIME OF PAYMENT.—The Nuclear Regulatory Commission may make estimates in assessing annual charges under this section and shall provide that the annual charges assessed under this section shall be paid by the end of the fiscal year for which the annual charges are assessed.

(e) USE OF FUNDS.—To the extent approved in appropriation Acts, amounts collected under this section may be retained and used for costs incurred by the Nuclear Regulatory Commission and shall remain available for such purpose until expended.

(f) REPEAL.—Title VII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking subtitle G.

Subtitle B—Federal Energy Regulatory Commission Annual Charges

SEC. 4101. FEDERAL ENERGY REGULATORY COMMISSION ANNUAL CHARGES.

(a) IN GENERAL.—The Federal Energy Regulatory Commission shall assess and collect annual charges on a fiscal year basis, beginning with fiscal year 1987, from interstate natural gas pipelines, interstate oil pipeline carriers, and public utilities in amounts determined under subsection (b).

(b) AMOUNT OF ASSESSMENTS.—The Commission shall assess and collect charges under this section—

(1) in the case of an interstate natural gas pipeline, in an amount that bears the same relationship to the adjusted costs of the Commission for the fiscal year as the volume of natural gas sold or transported by the pipeline during such year bears to the total volume of natural gas sold or transported by all interstate natural gas pipelines during such year;

(2) in the case of an interstate oil pipeline carrier, in an amount that bears the same relationship to the adjusted costs of the Commission for the fiscal year as the total barrels delivered (subject to the jurisdiction of the Commission) by the pipeline carrier during such year bears to the total barrels delivered (subject to such jurisdiction) by all interstate oil pipeline carriers during such year; and

(3) in the case of a public utility, in an amount that represents the public utility's proportional share of the adjusted costs of the Commission for the fiscal year, taking into consideration the public utility's proportional share of the total of the kilowatt hours transmitted under interchange hour agreements and the total jurisdictional kilowatt hours sold by all public utilities during such fiscal year.

(c) TIME OF ASSESSMENT.—The Commission shall assess charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) TIME OF PAYMENT.—The Commission shall provide that the charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) ADJUSTMENTS.—The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary. Such adjustments shall be made on the basis of the complete data applicable to the fiscal year concerned, as determined by the Commission, and shall be used for making adjustments in assessments made under subsection (b) for the following fiscal year.

(f) USE OF FUNDS.—To the extent approved in appropriation Acts, amounts collected under this section may be retained and used for administrative costs of the Commission and shall remain available for such purpose until expended.

(g) NATURAL GAS CHARGES IN RATES.—The Commission shall provide that charges assessed under this section shall be included in the rates of an interstate natural gas pipeline as a uniform charge on each thousand cubic feet (Mcf) or million Btu (MmBtu), as determined appropriate by the Commission, of natural gas sold or transported by the pipeline.

(h) DEFINITIONS.—For purposes of this section—

(1) the term "adjusted costs of the Commission" means—

(A) in the case of the assessment of charges on interstate natural gas pipelines, costs incurred by the Commission (but not to exceed the amount authorized by law for such costs) in administering the Natural Gas Act and the Natural Gas Policy Act of 1978 for a fiscal year, reduced by the amount of charges assessed by the Commission for such fiscal year under section 9701 of title 31, United States Code, with respect to the regulation of the sale or transportation of natural gas,

(B) in the case of the assessment of charges on interstate oil pipeline carriers, costs incurred by the Commission (but not to exceed the amount authorized by law for such costs) as a result of regulating the transportation of oil under subtitle IV of title 49, United States Code, reduced by the amount of charges assessed by the Commission for such fiscal year under such section 9701 with respect to the regulation of the transportation of oil, and

(C) in the case of the assessment of charges on public utilities, costs incurred by the Commission (but not to exceed the amount authorized by law for such costs) in administering titles II and III of the Federal Power Act (other than for the regulation of cogeneration and small power production under sections 201 and 210 of such Act) for a fiscal year, reduced by the amount of fees collected under such section 9701 for services or benefits rendered under such titles during such fiscal year;

(2) the term "Commission" means the Federal Energy Regulatory Commission;

(3) the term "interstate natural gas pipeline" means any person engaged in the transportation or sale of natural gas subject to the jurisdiction of the Commission under the Natural Gas Act;

(4) the term "pipeline carrier" has the meaning given such term in section 10102 of title 49, United States Code;

(5) the term "natural gas sold or transported" means—

(A) sales or deliveries of natural gas to distribution utilities for sales or use, and

(B) sales or deliveries of natural gas to consumers for ultimate use; and

(6) the term "public utility" has the same meaning given such term by section 201(e) of the Federal Power Act, except that such term does not include a qualifying small power producer or a qualifying cogenerator.

Subtitle C—Petroleum Overcharge Distribution

SEC. 4201. SHORT TITLE.

This subtitle may be cited as the "Petroleum Overcharge Distribution and Restitution Act of 1986".

SEC. 4202. DEPOSIT OF FUNDS.

(a) IN GENERAL.—(1) Amounts determined at any time, pursuant to any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted by the Secretary to enforce the petroleum pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970, to be amounts that are to be paid as restitution for actual or alleged petroleum pricing and allocation violations shall be referred, subject to paragraph (2), to the Secretary and held in appropriate escrow accounts administered for the Secretary by the Secretary of the Treasury.

(2) Amounts described in paragraph (1) and held in an escrow account by a court prior to the date of the enactment of this subtitle may continue to be held by such court, but shall be disbursed, together with any interest thereon, by the Secretary or, as appropriate, by the court only in accordance with the provisions of this subtitle.

(b) EXCEPTION.—Subsection (a) shall not apply to—

(1) amounts actually disbursed before the date of the enactment of this subtitle to any person or governmental entity pursuant to section 155 of Public Law 97-377 or any final judicial or administrative order or judgment (including any settlement agreement or declaratory judgment);

(2) amounts governed by the settlement, approved on July 7, 1986, in In Re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas; and

(3) amounts designated by judicial or administrative order or judgment (including any settlement agreement or declaratory judgment) for disbursement at any time to any specific person (or class of persons) identified in such order or judgment as injured by the violation or alleged violation of the regulations described in subsection (a)(1).

(c) INTEREST.—Consistent with the disbursement requirements of this subtitle, the Secretary of the Treasury shall provide that amounts described in subsection (a) shall earn interest at the maximum rate earned on investments of Federal trust funds by the Secretary of the Treasury in short-term and long-term securities issued by the Federal Government (including minority bank investments).

SEC. 4203. DISBURSEMENT.

(a) IN GENERAL.—(1) All rulings, policies, or other statements, including any administrative order or settlement agreement, issued by any office, official, or employee of the Department of Energy that are inconsistent with the provisions of this subtitle shall be terminated or modified to conform with this subtitle.

(2) All orders, including declaratory judgments, issued by any court after the date of the enactment of this subtitle shall be consistent with the provisions of this subtitle.

(b) DISBURSEMENT OF AMOUNTS AS DIRECT RESTITUTION TO INJURED PERSONS.—(1) The Secretary shall, through the Office of Hearings and Appeals of the Department of Energy, conduct proceedings expeditiously in accordance with subpart V regulations for the purpose of, to the maximum extent possible—

(A) identifying persons or classes of persons injured by any actual or alleged violation of the petroleum pricing and allocation regulations issued pursuant to the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970;

(B) establishing the amount of any overcharge incurred by such persons; and

(C) making restitution, through the disbursement of amounts in the escrow accounts described in section 4202(a), to such persons.

(2) In conducting such proceedings, the Secretary shall take into consideration the reports released pursuant to several orders of the applicable Federal district court in In Re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378.

(c) DETERMINATION OF EXCESS AMOUNT TO BE USED FOR INDIRECT RESTITUTION.—(1) Within 45 days after the beginning of each fiscal year after fiscal year 1986, the Secretary shall, using the best available information available to the Secretary, determine and publish (along with a justification thereof) in the Federal Register the amount held in the escrow accounts described in section 4202(a) which is in excess of the amount that will be needed to make restitution to persons or classes in accordance with subsection (b)(1) of this section and to meet other commitments of such accounts, including the requirements of section 155 of Public Law 97-377. In making such determination, the Secretary shall give primary consideration to assuring that at all times sufficient funds, including a reasonable reserve, are set aside for making such restitution and meeting such other commitments.

(2) The Secretary shall make public the information referred to in the first sentence of paragraph (1).

(d) DISBURSEMENT OF EXCESS AMOUNT AS INDIRECT RESTITUTION TO STATES FOR ENERGY CONSERVATION PROGRAMS.—(1) After the publication of the determination of an excess amount under subsection (c) for a fiscal year, the Secretary shall promptly provide for the disbursement of a portion or all of such excess amount to States for use in energy conservation programs. The amount so disbursed for a fiscal year shall be the smaller of—

(A) $256,000,000; or

(B) the amount determined under subsection (c) to be the excess amount for such fiscal year.

(2) After determining the amount to be made available to the States under paragraph (1), the Secretary shall apportion such amount among each of the energy conservation programs in a manner that will provide funding under this subtitle for the fiscal year concerned for each of such programs in the same proportionate amount that was provided for each of the programs by the Congress for fiscal year 1986. The Secretary shall then make available each amount apportioned for use under an energy conservation program to the Governors of the States in the same manner, to the same extent, under the same rulings and regulations, and for the same uses that Federal appropriated funds are made available to, and used by, the States under such program.

(3) The Secretary shall require that amounts made available to a State under this subsection are used by the State to supplement, and not supplant, funds otherwise available for energy conservation activities under Federal or State law.

(e) DEPOSIT OF REMAINDER OF EXCESS AMOUNT INTO TREASURY AS INDIRECT RESTITUTION.—The amount that remains from the excess amount described in subsection (c) after all disbursements have been made for a fiscal year under subsection (d) shall be deposited by the Secretary of the Treasury into the general fund of the Treasury as indirect restitution for the benefit of the general public.

SEC. 4204. REPORTS.

(a) REPORT ON RECEIPTS AND DISBURSEMENTS.—The Secretary shall transmit, not later than 60 days after the date of the enactment of this subtitle, a report to the Congress containing a clear and complete statement of all receipts, disbursements, and commitments of funds, as of such date of enactment, by the Secretary pursuant to—

(1) any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted at any time by the Secretary to enforce the petroleum pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970; or

(2) section 155 of Public Law 97-377.

(b) REPORT ON COLLECTION OF CERTAIN DEFICIENCY FUNDS.—The Secretary shall report each fiscal year, beginning in fiscal year 1987, on the status of collections by the Secretary of deficiency funds to be deposited into the M.D.L. No. 378 escrow account established by the United States District Court for the District of Kansas until all such deficiency funds have been paid. The Secretary shall, in a manner substantially similar to that required by section 155 of Public Law 97-377 with respect to amounts disbursed under such section, monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the opinion and order of such District Court, dated July 7, 1986, with respect to In Re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, including the use of such funds for administrative costs and attorneys fees.

(c) RECEIPT BY COMMITTEES.—The reports required by this subtitle shall be transmitted to the Committee on Energy and Commerce of the House and the Committee on Energy and Natural Resources of the Senate.

SEC. 4205. TERMINATION.

(a) IN GENERAL.—(1) Except as provided in subsection (b), the provisions of this subtitle shall terminate 90 days after the Secretary—

(A) determines that all of the funds referred to in section 4202(a) have been collected and disbursed as provided in this subtitle; and

(B) submits to Congress the final report required by section 4204.

(2) Such final report shall include the determination (and the justification thereof) referred to in subsection (a)(1)(A). Such report shall also be published in the Federal Register.

(b) EXCEPTION.—The requirements of section 4203(d) shall continue to be applicable to the use by any State of funds received under this subtitle as long as such funds remain available to the State.

SEC. 4206. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Director" means the head of the Office of Hearings and Appeals of the Department of Energy.

(3) The term "subpart V regulations" means the provisions of Subpart V—Special Procedures for Distribution of Refunds (10 CFR 205.280-205.288) and any amendment made after the date of the enactment of this subtitle, and all precedents and decisions under such regulations, but only to the extent that such provisions, precedents, decisions, and amendments are consistent with the provisions of this subtitle.

(4) The term "energy conservation programs" means—

(A) the program under part A of the Energy Conservation and Existing Buildings Act of 1976 (42 U.S.C. 6861 and following);

(B) the programs under part D of title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. 6321 and following);

(C) the program under part G of title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals; 42 U.S.C. 6371 and following); and

(D) the program under the National Energy Extension Service Act (42 U.S.C. 7001 and following).

(5) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, and Indian tribal organizations in the case of any energy conservation program in which such organizations receive a direct grant from the Federal Government.

(6) The term "Governor" means the Governor or the chief executive officer of a State.

(7) The term "person" includes refiners, retailers, resellers, farmer cooperatives, transportation entities, public and private utilities, school districts, Federal, State, and local governmental entities, farmers, and other individuals and their successors.

Subtitle D—Information and Study Requirements

SEC. 4301. INDUSTRIAL ENERGY CONSUMPTION INFORMATION.

(a) TERMINATION OF INDUSTRIAL ENERGY CONSERVATION PROGRAM.—(1) Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 et seq.) is amended by striking out part E.

(2) The table of contents in the first section of such Act (42 U.S.C. 6201) is amended by striking the items relating to part E of title III.

(b) PERIODIC SURVEY OF INDUSTRIAL ENERGY CONSUMPTION.—(1) The Secretary of Energy shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States on at least a triennial basis and in a manner designed to protect, in accordance

with applicable provisions of law, the confidentiality of individual responses.

(2) In conducting each survey under this subsection, the Secretary shall collect at least the following information:

(A) The quantity of fuels consumed by the industries described in paragraph (1).

(B) Energy expenditures of such industries.

(C) Fuel switching capabilities of such industries.

(D) Use by such industries of nonpurchased sources of energy, such as cogeneration and waste byproducts.

(3) This subsection may not be construed to affect the authority of the Secretary of Energy to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

SEC. 4302. CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

(a) IN GENERAL.—To assist the Congress and the President in determining whether domestic crude oil production and petroleum refining capacity are adequate to protect the national security, the Secretary of Energy, acting through the Energy Information Administration, shall conduct a study of such production and capacity.

(b) PUBLIC COMMENT.—The Secretary shall provide notice and a reasonable opportunity for public comment with respect to conducting the study carried out under this section.

(c) REPORTING DATE.—The Secretary shall, within 60 days after the date of the enactment of this Act, transmit to the Congress and the President a copy of the findings and conclusions of the study carried out under this section.

(d) ACTION BY THE PRESIDENT.—The President shall, within 45 days after the date on which such report is transmitted to the Congress, determine the levels at which imports of crude oil and refined petroleum products are a threat to the national security.

Subtitle E—Strategic Petroleum Reserve

SEC. 4401. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1987, 1988, AND 1989.

(a) IN GENERAL.—The following amounts are hereby authorized to be appropriated in accordance with section 660 of the Department of Energy Organization Act for operating expenses for the Strategic Petroleum Reserve to carry out part B of title I of the Energy Policy and Conservation Act for the acquisition, transportation, and injection of petroleum products, as defined for purposes of such part B, for the Reserve and for any drawdown and distribution of the Reserve:

(1) For fiscal year 1987, $200,000,000.

(2) For fiscal year 1988, $291,000,000.

(3) For fiscal year 1989, $479,000,000.

(b) EFFECT ON OTHER AUTHORIZATIONS.—The authorization made by subsection (a) is in lieu of any authorization of appropriation for the expenses described in such subsection for fiscal years 1987, 1988, and 1989.

SEC. 4402. PURCHASE OF STRIPPER WELL OIL.

(a) IN GENERAL.—The Secretary of Energy shall implement this section during any or all of the fiscal years 1987, 1988, and 1989 if such Secretary makes a determination that the implementation of this section is in the national interest and will prevent significant, permanent loss of production of petroleum from stripper well property.

(b) IMPLEMENTATION.—In implementing this section with respect to any of the fiscal years described in subsection (a), the Secretary shall use the smaller of $200,000,000 of the amount, or the total amount, appropriated pursuant to section 4401(a) of this subtitle for the fiscal year concerned to acquire for the Strategic Petroleum Reserve—

(1) crude oil produced in the United States from property classified, on January 1, 1986, as stripper well property within the meaning of the June 1979 energy regulations as defined in section 4996(b)(8) of the Internal Revenue Code of 1954; or

(2) crude oil exchanged for the crude oil described in paragraph (1).

(c) PRICE.—The Secretary may purchase crude oil under this section at a price not in excess of 110 percent of the current daily acquisition cost of crude oil purchased for the Reserve other than under this section.

(d) INDEPENDENT PRODUCERS.—At least 75 percent of the crude oil purchased under this subsection shall be purchased from persons who, at the time of purchase, are independent producers as defined in section 4992(b) of the Internal Revenue Code of 1954.

(e) LIMITATION.—The Secretary may not purchase crude oil under this section during any month if, during the preceding month, the daily average acquisition cost of crude oil for the Reserve exceeded $15 per barrel.

SEC. 4403. FILL RATE OF THE RESERVE; LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.

(a) FILL RATE OF THE RESERVE.—Section 160(c)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6240(c)(3)) is amended—

(1) by striking out "fiscal year 1986 and continuing through fiscal years 1987 and 1988" and inserting in lieu thereof "fiscal year 1987 and continuing through fiscal years 1988 and 1989";

(2) by striking out "527,000,000 barrels" and inserting in lieu thereof "750,000,000 barrels";

(3) by inserting ", to the extent of the availability of appropriated funds," after "the President shall"; and

(4) by striking out "35,000 barrels per day" and inserting in lieu thereof "100,000 barrels per day".

(b) LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.—Section 160(d)(1) of such Act (42 U.S.C. 6240(d)(1)) is amended—

(1) in subparagraph (A), by striking out "527,000,000 barrels" and inserting in lieu thereof "600,000,000 barrels";

(2) in subparagraph (B)—

(A) by striking out "100,000 barrels" and inserting in lieu thereof "80,000 barrels"; and

(B) by striking out "; or" and inserting in lieu thereof a period; and

(3) by striking out subparagraph (C).

SEC. 4404. INFORMATION TO BE CONTAINED IN ANNUAL AND QUARTERLY REPORTS ON SPRO.

(a) ANNUAL REPORT.—Section 165(a) of the Energy Policy and Conservation Act (42 U.S.C. 6245(a)) is amended by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) a detailed statement of the status of the Strategic Petroleum Reserve, including—

"(A) an estimate of the final capacity of the Reserve and the scheduled annual fill rate for achieving such capacity;

"(B) the scheduled monthly fill rate for the 12-month period beginning on the date on which such report is transmitted;

"(C) the type and quality of crude oil to be acquired for the Reserve pursuant to the schedule described in subparagraph (A);

"(D) the schedule of construction of any facilities needed to achieve the final capacity of the Reserve, including a description of the type and location of such facilities and of enhancements and improvements to existing facilities;

"(E) an estimate of the cost of acquiring crude oil and constructing facilities necessary to complete the Reserve;

"(F) a description of the current distribution plan for using the Reserve, including the method of drawdown and distribution to be utilized; and

"(G) an explanation of any changes made in the matters described in subparagraphs (A) through (F) since the transmittal of the previous report under this subsection;".

(b) QUARTERLY REPORT.—Section 165 (b)(2) of such Act (42 U.S.C. 6245(b)(2)) is amended to read as follows:

"(2) Each of the quarterly reports made under paragraph (1) shall contain a description of—

"(A) any change made with respect to the matters described in subparagraphs (A) through (F) of subsection (a)(1) since the last annual report made under such subsection; and

"(B) the scheduled monthly fill rate for the Reserve for the 12-month period beginning on the date on which such quarterly report is transmitted.".

SEC. 4405. IMPROVING NATIONAL ENERGY POLICY.

Section 164 of the Energy Policy and Conservation Act (42 U.S.C. 6244) (relating to naval petroleum reserves) is amended to read as follows:

"COORDINATION OF NATIONAL ENERGY POLICY CONCERNING PETROLEUM RESERVES

"SEC. 164. (a) For the purpose of improving the coordination of national energy policy with respect to the Strategic Petroleum Reserve and the naval petroleum reserves, the President—

"(1) shall, notwithstanding any other provision of law, establish a minimum price for the sale of the United States share of petroleum produced from Naval Petroleum Reserves Numbered 1, 2, and 3 at an amount not less than the higher of—

"(A) 90 percent of the current sales price, as estimated by the Secretary of Energy, of comparable petroleum in the same area; or

"(B) the price of petroleum being purchased for the Strategic Petroleum Reserve, minus the cost of transporting petroleum from the naval petroleum reserve concerned to the nearest storage area of the Strategic Petroleum Reserve, with adjustments for the difference in the quality of the petroleum being purchased for the Strategic Petroleum Reserve and petroleum being produced from the naval petroleum reserve concerned; and

"(2) may, with respect to any production of petroleum from Naval Petroleum Reserves Numbered 1, 2, or 3, establish a production rate that is less than the maximum efficient rate and that is consistent with sound engineering practices and the protection, conservation, maintenance, and testing of such Reserves, if the Secretary determines that the minimum price described in paragraph (1) cannot be attained for the sale of the United States share of petroleum produced from such Reserves.

"(b) To assure a maximum return from the price described in subsection (a)(1), the Secretary may, notwithstanding any other provision of law, enter into a contract or other agreement with respect to such price after 15 days after the Secretary notifies the Attorney General of the proposed contract or other agreement unless, within such 15-day period, the Attorney General advises

the Secretary that such contract or agreement may create or maintain a situation inconsistent with the antitrust laws.".

SUBTITLE F—MEDICARE

TABLE OF CONTENTS OF SUBTITLE

PART 1—PROVISIONS RELATING TO PARTS A AND B

Sec. 4501. Direct costs of graduate medical education.
Sec. 4502. Application of payment limits for home health services on a discipline-specific basis.
Sec. 4503. Establishment of research program.
Sec. 4504. Treatment of group purchasing vendor agreements.
Sec. 4505. Improvements in civil monetary penalty and exclusion provisions.
Sec. 4506. Payment rates for renal services.
Sec. 4507. Improvements in administration of end stage renal disease networks and program.
Sec. 4508. Hospital protocols for organ procurements and standards for organ procurement agencies.
Sec. 4509. COBRA technical corrections.
Sec. 4510. Restricting waiver of requirement of 50 percent non-medicare enrollment for HMOs and CMPs.

PART 2—PROVISIONS RELATING TO PART B

Sec. 4521. Coverage of vision care.
Sec. 4522. Coverage of occupational therapy services.
Sec. 4523. Coverage of services of a physician assistant.
Sec. 4524. Coverage of services of nurse anesthetists.
Sec. 4525. Payment for physicians' services.
Sec. 4526. Guidelines for use of inherent reasonableness authority.
Sec. 4527. Payment for certain cataract surgical procedures.
Sec. 4528. Payment for clinical diagnostic laboratory tests.
Sec. 4529. Payment for parenteral and enteral nutrition supplies.
Sec. 4530. Payment for oxygen therapy services.
Sec. 4531. Additional members for Physician Payment Review Commission.
Sec. 4532. Changing medicare appeal rights.
Sec. 4533. Alzheimer's disease demonstration projects.

PART 1—PROVISIONS RELATING TO PARTS A AND B

SEC. 4501. DIRECT COSTS OF GRADUATE MEDICAL EDUCATION.

(a) CLARIFYING COUNTING OF TIME SPENT IN OUTPATIENT SETTINGS—Section 1886(h)(4) of such Act is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) COUNTING TIME SPENT IN OUTPATIENT SETTINGS.—Such rules shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs costs for the training program in that setting.".

(b) REDUCING MAXIMUM INITIAL RESIDENCY PERIOD.—Section 1886(h)(5)(F)(i) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)(i)) is amended by striking "five years" and inserting "four years".

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall apply to payments for approved residency training programs as of July 1, 1987.

(2) In the case of an approved residency program on or after July 1, 1987, and before July 1, 1988, and for purposes of subparagraph (C) of section 1886(h)(4) of the Social Security Act, the weighting factor shall be .75 for a physician whose weighting factor during the period under such subparagraph—

(A) in the absence of the amendment made by subsection (a), would have been 1.00, but

(B) taking into account the amendment, would otherwise be .50.

SEC. 4502. APPLICATION OF PAYMENT LIMITS FOR HOME HEALTH SERVICES ON A DISCIPLINE-SPECIFIC BASIS.

(a) IN GENERAL.—Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) is amended by inserting after the first sentence the following: "Such limitations shall be applied on an aggregate basis for all home health services furnished by an agency, rather than on a discipline-specific basis, with appropriate adjustment for adminstrative and general costs of hospital-based agencies.".

(b) CONSIDERATIONS IN ESTABLISHING LIMITS.—In establishing limitations under section 1861(v)(1)(L) of the Social Security Act on payment for home health visits, the Secretary of Health and Human Services shall—

(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

(c) GAO REPORT.—The Comptroller General shall study and report to Congress, not later than April 1, 1987, on—

(1) the appropriateness and impact on medicare beneficiaries of applying the per visit cost limits for home health services under section 1861(v)(1)(L) of the Social Security Act on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and

(2) the appropriateness of the percentage limits established by the Secretary of Health and Human Services under such section.

(d) EFFECTIVE DATE.—The amendment made by subsection (a) and subsection (b) shall apply to cost reporting periods beginning on or after July 1, 1985. Subsection (b)(2) shall apply to changes in requirements effected before, on, or after such date.

SEC. 4503. ESTABLISHMENT OF RESEARCH PROGRAM.

(a) IN GENERAL.—Section 1875 of the Social Security Act (42 U.S.C. 1395ll) is amended by adding at the end the following new subsection:

"(c)(1) The Secretary shall establish a program (hereinafter in this subsection referred to as the 'research program') to provide for research with respect to patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness. The research program shall include—

"(A) assessments of the extent of uncertainty regarding appropriateness;

"(B) assessments of the appropriateness of admissions or selection criteria;

"(C) development of improved measures of patient outcome,

"(D) evaluation of patient outcomes, and

"(E) efforts to reduce existing levels of uncertainty or disagreement regarding appropriateness.

"(2) In selecting treatments and procedures to be studied, the Secretary shall give priority to those medical and surgical treatments and procedures—

"(A) for which data indicate a highly (or potentially highly) variable pattern of utilization among beneficiaries under this title in different geographic areas, and

"(B) which are significant (or potentially significant) for purposes of this title in terms of utilization by beneficiaries, length of hospitalization associated with the treatment or procedure, costs to the program, and risk involved to the beneficiary.

"(3) For purposes of carrying out the research program, there shall be available—

"(A) from the Federal Hospital Insurance Trust Fund $4,000,000 for fiscal year 1987 and $5,000,000 for each of fiscal years 1988 and 1989, and

"(B) from the Federal Supplementary Medical Insurance Trust Fund $2,000,000 for fiscal year 1987 and $2,500,000 for each of fiscal years 1988 and 1989.

"(4) Not less than 90 percent of the amount appropriated for any fiscal year to carry out the research program shall be used to fund grants to, and cooperative agreements with, non-Federal entities to conduct research described in paragraph (1). The remainder may be used by the Secretary to provide such research by Federal entities and for administrative costs.

"(5) The research program shall be administered by the National Center for Health Services Research and Health Care Technology established under section 305 of the Public Health Service Act (hereinafter in this subsection referred to as the 'Center'). The Center shall establish application procedures for grants and cooperative agreements, and shall establish peer review panels to review all such applications and all research findings. The Center shall consult with the council on health care technology (established under a grant under section 309 of the Public Health Service Act) in establishing the scope and priorities for the research program and shall report periodically to any such council on the status of the program.

"(6) The Secretary shall make available data derived from the programs under this title and other programs administered by the Secretary for use in the research program.

"(7) The Center shall report to the Committees on Finance and Appropriations of the Senate and the Committees on Ways and Means, Energy and Commerce, and Appropriations of the House of Representatives not later than 18 months after the date of the enactment of this Act, and annually thereafter, with respect to the findings under the research program. In cooperation with appropriate medical specialty groups, the Center shall disseminate such findings as widely as possible, including disseminating such findings to each peer review organization which has a contract under part B of title XI."

(b) PERMITTING SERVICES TO BE PROVIDED UNDER RESEARCH PROGRAM.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by striking the semicolon at the end of subparagraph (D) and inserting ", and", and

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

"(E) in the case of research conducted pursuant to section 1875(c), which is not reasonable and necessary to carry out the purposes of that section;".

SEC. 4504. TREATMENT OF GROUP PURCHASING VENDOR AGREEMENTS.

(a) IN GENERAL.—Sections 1877(b)(3) and 1909(b)(3) of the Social Security Act (42 U.S.C. 1395nn(b)(3), 1396n(b)(3)) are each amended—

(1) by striking "and" at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting "; and", and

(3) by adding at the end the following:

"(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are reimbursed under this title if—

"(i) the person has a written contract with each such vendor and each such individual or entity which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage (not to exceed 3 percent) of the value of the purchases made by each such individual or entity under the contract, and

"(ii) the person discloses to each such individual or entity the amount received from each such vendor with respect to purchases made by or on behalf of the individual or entity.".

(b) EFFECTIVE DATE.—The amendments made by this section apply to payments made before, on, or after the date of the enactment of this Act.

SEC. 4505. IMPROVEMENTS IN CIVIL MONETARY PENALTY AND EXCLUSION PROVISIONS.

(a) COLLATERAL ESTOPPEL EFFECT OF PRIOR FEDERAL CRIMINAL CONVICTIONS.—Section 1128A(b) of the Social Security Act (42 U.S.C. 1320a-7a(b)) is amended by adding at the end the following new paragraph:

"(3) In a proceeding under subsection (a) which—

"(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

"(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.".

(b) AUTHORITY OF HEARING OFFICER TO SANCTION MISCONDUCT.—Such section is further amended by adding at the end the following new paragraph:

"(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

"(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

"(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

"(C) striking pleadings, in whole or in part,

"(D) staying the proceedings,

"(E) dismissal of the action,

"(F) entering a default judgment,

"(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

"(H) refusing to consider any motion or other action which is not filed in a timely manner.".

(c) CLARIFICATION OF EXCLUSION AUTHORITY FOR CERTAIN OFFENDERS.—Section 1128 of such Act (42 U.S.C. 1320a-7) is amended by adding at the end the following new subsection:

"(f) For purposes of subsection (a), a physician or other individual is considered to have been 'convicted' of a criminal offense—

"(1) when a judgment of conviction has been entered against the physician or individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

"(2) when there has been a finding of guilt against the physician or individual by a Federal, State, or local court;

"(3) when a plea of guilty or nolo contendere by the physician or individual has been accepted by a Federal, State, or local court; or

"(4) when the physician or individual has entered into participation in a first offender or other program where judgment of conviction has been withheld.".

(d) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.

(3) The provisions—

(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act, and

(B) of paragraph (4) of such section shall apply to participation in a program entered into on or after the date of the enactment of this Act.

SEC. 4506. PAYMENT RATES FOR RENAL SERVICES.

(a) COMPOSITE RATES FOR DIALYSIS TREATMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may provide for an adjustment of the composite rates established under section 1881(b)(7) of the Social Security Act, but only if the base rate for routine dialysis treatment in a free-standing facility is not less than $117.50, and only if the base rate for routine dialysis treatment in a hospital-based facility is not less than $121.50.

(2) ASSURING PROMPT CONSIDERATION OF EXCEPTION REQUESTS.—Section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended—

(A) in the third sentence, by inserting "and of pediatric facilities" after "isolated, rural areas", and

(B) by inserting after the third sentence the following new sentence: "Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 45 working days after the date the application is filed.".

(3) EFFECTIVE DATE.—(A) Paragraph (1) shall apply to dialysis treatment furnished on or after October 1, 1986.

(B) The amendment made by paragraph (2)(B) shall apply to applications filed on or after October 1, 1986.

(b) PAYMENT FOR PHYSICIANS' SERVICES.—

(1) IN GENERAL.—In establishing the payment rates, under section 1881(b)(3)(B) of the Social Security Act, for physicians' services furnished to individuals determined to have end stage renal disease, the Secretary of Health and Human Services shall provide for such adjustment in the home/facility physician treatment capability ratio (used in establishing such payment rates) as may be appropriate to reduce the average monthly capitation rate to $180 for physicians' services to outpatient maintenance dialysis patients (based on a weighted average by State ESRD population).

(2) EFFECTIVE DATE.—The adjustment under paragraph (1) shall be made in a manner so as to become effective for services furnished on or after August 1, 1986.

(c) REPORT ON PAYMENT RATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for—

(A) a study to evaluate the effects of reductions in the rates of payment under the medicare program for patients with end stage renal disease on their access to care or quality of care, and

(B) a report to Congress on the study by not later than January 1, 1988.

(2) ARRANGEMENTS WITH INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(d) COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—

(1) IN GENERAL.—Section 1861(s)(2) of such Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) by striking "and" at the end of subparagraph (H)(ii),

(B) by inserting "and" at the end of subparagraph (I), and

(C) by inserting after subparagraph (I) the following new subparagraph:

"(J) immunosuppressive drugs furnished to an individual who receives an organ transplant within 1 year after the date of the transplant procedure;".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to immunosuppressive drugs furnished on or after October 1, 1986.

SEC. 4507. IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) REORGANIZATION OF ESRD NETWORK AREAS AND ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (A) of subsection (c)(1) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended to read as follows:

"(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

"(I) establish at least 17 end stage renal disease network areas, and

"(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish a network council of renal dialysis and transplant facilities located in the area, and a medical review board, which has a membership including physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

"(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2).

"(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall solicit applicants for such an agreement in accordance with provisions of law relating to competitive bidding so as to provide an orderly transition.".

(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than January 1, 1987.

(3) SPECIAL TREATMENT OF EXISTING NETWORK ORGANIZATIONS.—In first designating network administrative organizations for areas so established, the Secretary shall designate the network organization (or a combination of such organizations) in operation on the date of the enactment of this Act as the network administrative organization, unless the Secretary determines that none of such organizations meet minimal standards and criteria established under section 1881(c)(1)(A)(ii) of the Social Security Act (as amended by paragraph (1)).

(b) PATIENT REPRESENTATION ON COUNCILS AND MEDICAL REVIEW BOARDS.—Subparagraph (B) of subsection (c)(1) of section 1881 of the Social Security Act is amended to read as follows:

"(B) At least one patient representative shall serve as a member of each network council and each medical review board.".

(c) RESPONSIBILITIES OF NETWORK ORGANIZATIONS.—Subsection (c)(2) of such section is amended—

(1) in subparagraph (A), by inserting before the semicolon the following: "and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs";

(2) in subparagraph (B), by inserting before the semicolon the following: "and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs";

(3) in subparagraph (D), by inserting before the semicolon the following: "and reporting to the Secretary on facilities and providers that are not providing appropriate medical care";

(4) in subparagraph (E), by inserting "and encouraging participation in vocational rehabilitation programs" after "self-care settings and transplantation"; and

(5) by redesignating subparagraphs (D) and (E) as subparagraphs (G) and (H), respectively, and inserting after subparagraph (C) the following new subparagraphs:

"(D) implementing a procedure for evaluating and resolving patient grievances;

"(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board), utilizing standards of care established by the network organization to assure proper medical care;

"(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);".

(d) FACILITY COOPERATION WITH NETWORKS.—The first sentence of subsection (c)(3) of such section is amended by inserting "or to follow the recommendations of the medical review board" after "consistently failed to cooperate with network plans and goals".

(e) INTENT OF CONGRESS RESPECTING MAXIMUM USE OF VOCATIONAL REHABILITATION SERVICES.—The first sentence of subsection (c)(6) of such section is amended by inserting before the period the following: "and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment".

(f) NATIONAL END STAGE RENAL DISEASE REGISTRY.—

(1) ESTABLISHMENT OF REGISTRY.—Subsection (c) of such section is further amended by adding at the end the following new paragraph:

"(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

"(A) the preparation of the annual report to the Congress required under subsection (g);

"(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

"(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

"(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

"(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.".

(2) REPORT.—The Secretary shall submit to the Congress, no later than January 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1).

(g) FUNDING OF ESRD NETWORK ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b)(7) of section 1881 of the Social Security Act is amended by adding at the end the following new sentence: "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to treatment furnished on or after January 1, 1987.

(h) PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES.—

(1) ESTABLISHMENT OF PROTOCOLS.—Paragraph (7) of subsection (f) of section 1881 of the Social Security Act is amended to read as follows:

"(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

"(B) The Secretary shall study and review the appropriateness of establishing protocols on standards and conditions for the reuse (where appropriate) of other dialysis supplies (such as blood lines, transducer filters, and dialyzer caps). If the Secretary determines that the establishment of such a protocol with respect to such a dialysis supply is appropriate, the Secretary may establish such a protocol.

"(C) If a renal disease facility fails to follow a protocol established under this paragraph in the reuse of a dialyzer filter or other dialysis supply, the facility shall be subject to such a penalty as the Secretary may establish.".

(2) DEADLINE AND REPORT.—The Secretary of Health and Human Services—

(A) shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than January 1, 1988, and

(B) shall report to the Congress, not later than January 1, 1988, on the study and review conducted under section 1881(f)(7)(B) of such Act.

(i) EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by subsections (b), (c), and (d) shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (a)(1).

SEC. 4508. HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES.

(a) IN GENERAL.—Title XI of the Social Security Act is amended by inserting after section 1137 the following new section:

"HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES

"SEC. 1138. (a) The Secretary shall provide that no hospital may participate in the programs under title XVIII and XIX unless the hospital establishes protocols for encouraging organ and tissue donation by identifying and assisting potential human organ and tissue donors in a manner that (1) assures that families of potential donors are made aware of the option of organ or tissue donation and their option to decline, and (2) encourages discretion and sensitivity to the circumstances, views, and beliefs of families.

"(b) The Secretary shall provide that no payment may be made under title XVIII or XIX with respect to costs in procuring organs attributable to payments made to an organ procurement agency which—

"(1) is not a qualified organ procurement organization (described in section 371(b) of the Public Health Service Act) or meets the standards to be such an organization, and

"(2) has not been certified (and recertified not less often than once every two years) as meeting the standards for certification of organ procurement agencies established by the Association of Independent Organ Procurement Agencies.".

(b) EFFECTIVE DATES.—(1) Section 1138(a) of the Social Security Act shall apply to hospitals participating in the programs under titles XVIII and XIX of such Act as of July 1, 1987.

(2) Section 1138(b) of such Act shall apply to costs of organs procured on or after January 1, 1988.

SEC. 4509. COBRA TECHNICAL CORRECTIONS.

(a) CORRECTION CONCERNING TRANSITION PERIOD FOR FOREIGN MEDICAL GRADUATES IN DETERMINING PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS.—The matter in section 1886(h)(4)(E)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(E)(ii)), added by 9202(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA"), preceding subclause (I) is amended by inserting "but before July 1, 1987," after "1986,".

(b) ANNOUNCEMENT, RATHER THAN PUBLICATION, OF HMO AND CMP PAYMENT RATES.—(1) The matter in section 1876(a)(1)(A) of the Social Security Act (42 U.S.C. 1395mm(a)(1)(A)) preceding clause (i), as amended by section 9211(d) of COBRA, is amended by striking "publish" and inserting "announce (in a manner intended to provide notice to interested parties)".

(2) The amendment made by paragraph (1) shall apply to determinations of per capita payment rates of payment for 1987 and subsequent years.

(c) PENALTIES FOR BILLING FOR ASSISTANTS AT SURGERY FOR CERTAIN CATARACT OPERATIONS.—(1) Section 1842(k) of the Social Security Act (42 U.S.C. 1395u(k)), added by section 9307(c) of COBRA, is amended by inserting "presents or causes to be presented a claim or" after "willfully" each place it appears.

(2) The amendment made by paragraph (1) shall apply to claims presented after the date of the enactment of this Act.

(d) TEMPORARY USE OF CARRIER PRE-PAYMENT SCREENING AS A SUBSTITUTE FOR PRE-PROCEDURE REVIEW.—For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA and for surgical procedures performed during the period beginning on April 1, 1986, and ending on November 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgical is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition.

(e) EXTENSION OF CONTINUATION PERIOD OF ACCESS: MEDICARE DEMONSTRATION PROJECT.—Section 9221(a) of COBRA is amended by striking "September 30, 1986" and inserting "July 31, 1987".

(f) MISCELLANEOUS TECHNICAL AMENDMENTS.—(1) Paragraph (1) of section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)) is amended—

(A) by striking the "and" inserted at the end of subparagraph (I) by section 9122(a)(2) of COBRA,

(B) by striking the period at the end of subparagraph (J) and inserting ", and", and

(C) by redesignating the subparagraph (I) inserted by section 9403(b) of COBRA as subparagraph (K) and transferring and inserting such subparagraph after subparagraph (J).

(2) Section 9127(b) of COBRA is amended by inserting ", except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year" after "years".

(3) Section 9202(j) of COBRA is amended by inserting "or section 402 of the Social Security Amendments of 1967" after "section 1886(c) of the Social Security Act".

(4) Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)), amended by section 9301(c) of COBRA, is amended—

(A) in paragraph (5), as redesignated by section 9301(c)(3)(D) of COBRA, by striking "such" each place it appears, and

(B) in paragraph (6), as so redesignated, by striking "the the" and inserting "the".

(5) Section 9301(c)(5) of COBRA is amended by striking "1842(b)(7)" and inserting "1842(h)(7)".

(6) The amendments made by this subsection are effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4510. RESTRICTING WAIVER OF REQUIREMENT OF 50 PERCENT NON-MEDICARE ENROLLMENT FOR HMOS AND CMPS.

(a) RESTRICTION ON NEW WAIVERS.—Paragraph (2) of subsection (f) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by striking "if" and all that follows through the end and inserting the following: "to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX.".

(b) SANCTIONS FOR NONCOMPLIANCE.—Such subsection is further amended by adding at the end the following new paragraph:

"(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of payments to the organization under this section for individuals enrolled with the organization after the date the Secretary notifies the organization of such noncompliance.".

(c) EFFECTIVE DATES.—

(1) NEW RESTRICTION.—The amendment made by subsection (a) shall apply to modifications and waivers granted after the date of the enactment of this Act.

(2) SANCTIONS FOR NONCOMPLIANCE.—The amendment made by subsection (b) shall take effect on the date of the enactment of this Act.

(3) EXTENSION OF CURRENT WAIVERS.—In the case of an eligible organization described in paragraph (4), the Secretary of Health and Human Services may provide for an extension of such waiver only if the Secretary determines that the organization has made and is continuing to make reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary. If the Secretary determines that such an organization has failed to comply with such schedule of compliance, the Secretary may provide for the suspension of payments, under section 1876 of the Social Security Act, to the organization for individuals enrolled with the organization after the date the Secretary notifies the organization of such noncompliance.

(4) ORGANIZATIONS COVERED UNDER EXTENSION.—An eligible organization described in this paragraph is an eligible organization that—

(A) as of the date of the enactment of this section, has been granted, under paragraph (2) of section 1876 of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(B) does not meet the requirements for such modification or waiver under the amendment made by subsection (a) of this section.

PART 2—PROVISIONS RELATING TO PART B

SEC. 4521. COVERAGE OF VISION CARE.

(a) DEFINING SERVICES AN OPTOMETRIST CAN PROVIDE.—Clause (4) of section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) is amended to read as follows: "(4) a doctor of optometry, but only with respect to the provision of items or services described in subsection (s) which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after April 1, 1987.

SEC. 4522. COVERAGE OF OCCUPATIONAL THERAPY SERVICES.

(a) COVERAGE.—Subparagraph (C) of section 1832(a)(2) of the Social Security Act (42 U.S.C. 1395k(a)(2)) is amended to read as follows:

"(C) outpatient physical therapy services (other than services to which the second sentence of section 1861(p) applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1861(g));".

(b) LIMITATION ON PAYMENTS.—Section 1833(g) of such Act (42 U.S.C. 1395l(g)) is amended—

(1) by striking "next to last sentence" and inserting "second sentence", and

(2) by adding at the end thereof the following new sentence: "In the case of outpatient occupational therapy services which are described in the second sentence of section 1861(p) through the operation of section 1861(g), with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b).".

(c) CERTIFICATION STANDARD.—(1) Section 1835(a)(2)(C) of such Act (42 U.S.C. 1395n(a)(2)(C)) is amended—

(A) by inserting "or outpatient occupational therapy services" after "outpatient physical therapy services",

(B) in clause (i), by inserting "or occupational therapy services, respectively," after "physical therapy services", and

(C) in clause (ii), by inserting "or qualified occupational therapist, respectively," after "qualified physical therapist".

(2) The second sentence of section 1835(a) of such Act and section 1866(e) of such Act (42 U.S.C. 1395n(a), 1395cc(e)) are each amended—

(A) by inserting "(or meets the requirements of such section through the operation of section 1861(g))" after "1861(p)(4)(A)" and after "1861(p)(4)(B)", and

(B) by inserting "or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services" after "(as therein defined)".

(d) DEFINITION AND INCLUSION WITH OTHER PART B SERVICES.—(1) Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by inserting after subsection (f) the following new subsection:

"Outpatient Occupational Therapy Services

"(g) The term 'outpatient occupational therapy services' has the meaning given the term 'outpatient physical therapy services' in subsection (p), except that 'occupational' shall be substituted for 'physical' each place it appears therein.".

(2) Section 1861(s)(2)(D) of such Act (42 U.S.C. 1395x(s)(2)(D)) is amended by inserting "and outpatient occupational therapy services" after "outpatient physical therapy services".

(3) Section 1861(v)(5)(A) of such Act (42 U.S.C. 1395x(v)(5)(A)) is amended by inserting "(including through the operation of section 1861(g))" after "section 1861(p)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred for outpatient occupational therapy services furnished on or after April 1, 1987.

SEC. 4523. COVERAGE OF SERVICES OF A PHYSICIAN ASSISTANT.

(a) SERVICES COVERED.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended by section 4506(d)(1) of this subtitle, is amended—

(1) by striking "and" at the end of subparagraph (I),

(2) by adding "and" at the end of subparagraph (J), and

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

"(K)(i) services which are performed by a physician assistant (as defined in subsection (aa)(3)) under the supervision of a physician as defined in subsection (r)(1) in a hospital, skilled nursing facility, or as an assistant at surgery and which the physician assistant is legally authorized to perform by the State in which the services are performed, and

"(ii) such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service;".

(b) DETERMINATION OF PAYMENT AMOUNT.—Section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is amended by adding at the end the following: "With respect to services described in section 1861(s)(2)(K) (relating to a physician assistant acting under the supervision of a physician), the prevailing charges shall not exceed 90 percent of the prevailing charges applicable with respect to the physician's performance of the services.".

(c) PAYMENT TO EMPLOYER.—The first sentence of section 1842(b)(6) of such Act (42 U.S.C. 1395u(b)(6)) is amended—

(1) by striking "except that payment may be made (A)(i)" and inserting "except that (A) payment may be made (i)";

(2) by striking "or (B)" and by inserting "(B) payment may be made"; and

(3) by inserting before the period at the end the following: ", and (C) in the case of services described in section 1861(s)(2)(K) where payment is made on an assignment-related basis, payment shall be made to the employer of the physician assistant involved".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1987.

SEC. 4524. COVERAGE OF SERVICES OF NURSE ANESTHETISTS.

(a) COVERAGE OF SERVICES OF A REGISTERED NURSE ANESTHETIST UNDER PART B.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (11) through (14) as paragraphs (12) through (15), respectively;

(2) by striking "and" at the end of paragraph (9);

(3) by striking the period at the end of paragraph (10) and inserting "; and"; and

(4) by inserting after paragraph (10) the following new paragraph:

"(11) services of a registered nurse anesthetist (as defined in subsection (bb)).".

(b) DEFINITION OF SERVICES OF A REGISTERED NURSE ANESTHETIST.—Section 1861 of such Act is amended by inserting after subsection (aa) the following new subsection:

"Services of a Registered Nurse Anesthetist

"(bb)(1) The term 'services of a registered nurse anesthetist' means anethesia services and related care furnished by a registered nurse anesthetist (as defined in paragraph (2)) which the nurse anesthetist is legally authorized to perform as such by the State in which the services are furnished.

"(2) The term 'registered nurse anesthetist' means a registered nurse licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists.".

(c) DIRECT PAYMENT FOR SERVICES.—Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(1) by striking "and" at the end of clause (i),

(2) by striking "; and" at the end of clause (ii) and inserting ", and", and

(3) by adding at the end the following new clause:

"(iii) services of a registered nurse anesthetist; and".

(d) AMOUNT OF PAYMENT.—(1) Section 1833(a)(1) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking "and' at the end of subparagraph (E), and by adding at the end the following: "and (H) with respect to services of a registered nurse anesthetist under section 1861(s)(11), the amounts paid shall be 80 percent of the reasonable charges for such services established by the Secretary in accordance with subsection (l),".

(2) Section 1833 of such Act is further amended by adding at the end the following new subsection:

"(l)(1) With respect to services of a registered nurse anesthetist under section 1861(s)(11), the reasonable charge shall be an amount determined by the Secretary to be consistent with efficient and high quality anesthesia services, taking into account the prevailing rate for such services, but modified to the extent necessary to comply with the requirements of paragraph (2).

"(2) In establishing the reasonable charge for those services, the Secretary shall adjust the reasonable charge to the extent necessary to ensure that the total amount which will be paid under this title for those services in any fiscal year (as estimated by the Secretary) will not exceed the total amount which would be paid under this title for those services in the fiscal year if the services were included as inpatient hospital services and payment for such services was made under part A in the same manner as payment was made in fiscal year 1986, adjusted to take into account changes in prices and technology relating to the adminstration of anesthesia.

"(3) In establishing the reasonable charge for medical direction of services of a registered nurse anesthetist under section 1861(s)(11), the Secretary shall adjust the reasonable charge to the extent necessary to ensure that the total amount which will be paid under this title for such medical direction and such services in any fiscal year (as estimated by the Secretary) will not exceed the total amount which would have been paid but for the enactment of the amendments made by section 4524 of the Budget Reconciliation Act of 1986.

"(4)(A) If an adjustment under paragraph (3) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part—

"(i) the physician may not charge the individual more than 125 percent of the adjusted prevailing charge for the service, and

"(ii) if the physician charges more than such amount, the physician shall refund to the individual (and shall be liable to the individual for) any amounts received in excess of such amount.

"(B) If a physician knowingly and willfully imposes charges or fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(3) Section 1842(j)(2) of such Act (42 U.S.C. 1395u(j)(2)) is amended by inserting "or section 1833(l)(4)" after "(k)".

(e) NOT TREATED AS PART OF INPATIENT HOSPITAL SERVICES.—Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by inserting before the semicolon the following: ", costs of anesthesia services provided by a certified registered nurse anesthetist".

(f) CONFORMING AMENDMENTS TO HOSPITAL PAYMENTS.—(1) Section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4)) is amended by striking ", costs of anesthesia services provided by a certified registered nurse anesthetist,".

(2) Section 1886(d)(5) of such Act (42 U.S.C. 1395ww(d)(5)) is amended by striking subparagraph (E).

(g) OTHER CONFORMING AMENDMENTS.—(1) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by inserting before the period the following: "or are services of a registered nurse anesthetist".

(2) Section 1866(a)(1)(H) of such Act (42 U.S.C. 1395cc(a)(1)(H)) is amended by in-

serting ", and other than services of a registered nurse anesthetist" after "1861(a)(14)".

(3) Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking "paragraphs (11) and (12)" and inserting "paragraphs (12) and (13)".

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after October 1, 1987.

(i) CONSTRUCTION.—Nothing in this section or the amendments made by this section shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.

SEC. 4525. PAYMENT FOR PHYSICIANS' SERVICES.

(a) PAYMENT FOR PARTICIPATING PHYSICIANS.—Section 1842(b)(4)(A)(ii) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)(ii)) is amended by adding at the end the following new subclause:

"(III) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by a participating physician, the Secretary shall treat the additional 1 percent increase permitted on May 1, 1986, under subclause (II), as having been justified by economic changes.".

(b) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICAL ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.

(c) PAYMENT FOR NONPARTICIPATING PHYSICIANS.—

(1) LIMIT ON PREVAILING CHARGES FOR UNASSIGNED CLAIMS.—Section 1842(b)(4)(A) of the Social Security Act is amended by adding at the end the following new clause:

"(iv) For physicians' services furnished on or after January 1, 1987, for which payment is not made on an assignment-related basis, for purposes of the fourth sentence of paragraph (3), the increase that is justified under the index described in that sentence for 1987 is 1 percent.".

(2) LIMIT ON ACTUAL CHARGE INCREASES FOR NONPARTICIPATING PHYSICIANS.—Section 1842(j)(1) of such Act is amended—

(A) by inserting "(A)" after "(j)(1)", and

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

"(B) In the case of a nonparticipating physician for services furnished on or after January 1, 1987, the Secretary shall monitor the physician's actual charges for such services. If such physician knowingly and willfully bills for actual charges in excess of the charges permitted under subparagraph (C), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(C) With respect to services furnished during 1987 for which payment is—

"(i) made on an assignment-related basis, the charges may not exceed the physician's actual charges for the calendar quarter beginning on April 1, 1984, increased by the percentage increase in the medical economic index (under the fourth sentence of paragraph (3)) applicable to physicians' services furnished as of January 1, 1987, or

"(ii) not made on an assignment-related basis, the charges may not exceed the physician's actual charges for the calendar quarter beginning on April 1, 1984, increased by 1 percent.".

(3) CONFORMING AMENDMENT.—Section 1842(b)(4)(D) is amended by adding at the end the following new clause:

"(iv) In determining the customary charges for physicians' services furnished during 1988 and 1989 by a physician, if the physician was a nonparticipating physician in 1987, the Secretary shall not recognize any amount of such charges in 1987 that exceed the limit imposed under subsection (j)(1)(C).".

(d) TERMS DEFINED.—Section 1842(h)(1) of the Social Security Act is further amended by adding at the end the following new sentence: "For purposes of this section, the term 'participating physician' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician, and the term 'nonparticipating physician' refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.".

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall apply to services furnished on or after January 1, 1987.

SEC. 4526. GUIDELINES FOR USE OF INHERENT REASONABLENESS AUTHORITY.

(a) IN GENERAL.—Section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(2) by inserting "(A)" after "(8)", and

(3) by adding at the end the following new subparagraphs:

"(B) The Secretary may provide for an increase or decrease in the reasonable charge otherwise recognized under this section with respect to a specific physicians' service, if the Secretary has made specific findings with respect to that service in accordance with the criteria set forth in subparagraph (A) and with the succeeding provisions of this paragraph.

"(C)(i) In applying subparagraph (A), the Secretary may compare—

"(I) the charges and resource costs for related procedures,

"(II) charges and resource costs for the procedure over a period of time,

"(III) charges for a procedure in different geographic areas, and

"(IV) the charges and allowed payments for a procedure under this part and by other payors.

"(ii) An adjustment under subparagraph (B) on the basis of a comparison of the prevailing charges in different localities may be made only if the Secretary determines that the prevailing charge allowed in one locality is grossly out of line with prevailing charges allowed in other localities after accounting for differences in practice costs.

"(iii) In this subparagraph, 'resource costs' include factors such as the time required to provide a procedure (including pre-procedure evaluation and post-procedure follow-up), the complexity of the procedure, the training required to perform the procedure, and the risk involved in the procedure.

"(D) In determining whether to adjust payment rates under subparagraph (B), the Secretary shall consider—

"(i) the potential impacts on quality, access, and beneficiary liability of the adjustment,

"(ii) likely effects on assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians,

"(iii) the proportion of such procedures for which payment is available under this part, and

"(iv) the prevailing charges of other third-party payors for the procedure.

"(E)(i) Before making an adjustment under subparagraph (B), the Secretary shall—

"(I) publish notice of the proposed adjustment, which shall contain a summary of the study data and an explanation of the basis for the proposed adjustment, and

"(II) provide a period of at least 60 days during which interested parties may comment on the proposed adjustment.

"(ii) Before publishing a notice of proposed adjustment under clause (i)(I), the Secretary shall consult with the Physician Payment Review Commission and shall provide the Commission an opportunity to review and comment on the proposal.

"(iii) An adjustment under subparagraph (B) shall only take effect only after publication of a final notice by the Secretary. In such notice the Secretary shall explain the factors and data that were taken into consideration in making the adjustment and shall respond to any comments made by the Physician Payment Review Commission.

"(F)(i) If an adjustment under subparagraph (B) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part—

"(I) the physician may not charge the individual more than 125 percent of the adjusted prevailing charge for the service, and

"(II) if the physician charges more than such amount, the physician shall refund to the individual (and shall be liable to the individual for) any amounts received in excess of such amount.

"(ii) If a physician knowingly and willfully imposes charges or fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(b) PREVENTION OF EXCESS CHARGES.—Section 1842(j)(2) of such Act is amended by inserting "(b)(8)(F)," before "(k)".

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

SEC. 4527. PAYMENT FOR CERTAIN CATARACT SURGICAL PROCEDURES.

(a) LIMITATIONS.—Section 1842(b)(9) of the Social Security Act (42 U.S.C. 1395u(b)(9)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(2) by inserting "(A)" after "(9)", and

(3) by adding at the end the following new subparagraphs:

"(B) In determining the reasonable charge under paragraph (3) for cataract surgery with intraoccular lens implantation, the prevailing charge for such surgery shall not be recognized to the extent it exceeds 110 percent of the prevailing charge recognized for such surgery without intraoccular lens implantation.

"(C) In determining the reasonable charge under paragraph (3) for cataract surgery anesthesia, the Secretary shall not recognize more than 4 base units (as used for purposes

of determining payment for anesthesia services as of the date of the enactment of this subparagraph) or equivalent amounts.".

(b) LIMITING CHARGES TO BENEFICIARIES.—

(1) IN GENERAL.—Section 1842 of the Social Security Act is amended by adding at the end the following new subsection:

"(l)(1) With respect to the provision of cataract surgery with intraoccular lens implantation and cataract surgery anesthesia furnished by a nonparticipating physician to an individual entitled to benefits under this part—

"(A) the physician may not charge the individual more than 125 percent of the prevailing charge recognized under this part for the services (which, in the case of cataract surgery anesthesia, is based on conversion factors taking into account the base and time units allowed), and

"(B) if the physician charges more than such amount, the physician shall refund to the individual (and shall be liable to the individual for) any amounts received in excess of such amount.

"(2) If a physician knowingly and willfully imposes charges or fails to make refunds in violation of paragraph (1), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act, as amended by section is amended by inserting ", or (l)" after "(k)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1987.

SEC. 4528. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) TREATMENT OF HOSPITAL OUTPATIENT LABORATORIES.—

(1) ELIMINATING SUNSET OF APPLICATION OF PAYMENT PROVISIONS TO HOSPITAL LABORATORIES.—Section 1833(h)(1) of the Social Security Act (42 U.S.C. 1395l(h)(1)) is amended—

(A) in subparagraph (B), by striking "(other than tests performed by a hospital laboratory for outpatients of such hospital)", and

(B) by striking subparagraph (C).

(2) ELIMINATION OF PAYMENT DIFFERENTIAL.—Section 1833(h)(2) of such Act is amended by striking "(or, in the case of a test performed by a hospital laboratory for outpatients of such hospital, 62 percent)".

(3) EFFECTIVE DATE.—The amendments made by this subsection apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.

(b) ELIMINATING REQUIREMENT OF NATIONAL FEE SCHEDULE.—

(1) IN GENERAL.—Section 1833(h)(1)(B) of such Act is amended—

(A) in the first sentence, by striking "during the period beginning on July 1, 1984, and ending on December 31, 1987" and inserting "on or after July 1, 1984", and

(B) by striking the second sentence.

(2) REPORT.—The Secretary of Health and Human Services shall report to Congress, by not later than April 1, 1988, on the advisability and feasibility of establishing national fee schedules for payment for clinical diagnostic laboratory tests under section 1833(h) of the Social Security Act.

(c) PAYMENT FOR TIME AND TRAVEL COSTS TO COLLECT SAMPLES FROM CERTAIN IMMOBILE BENEFICIARIES.—

(1) IN GENERAL.—Section 1833(h)(3) of such Act is amended—

(A) by inserting "(A)" after "provide for and establish", and

(B) by inserting before the period at the end the following: ", and (B) a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility (other than a hospital)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to samples collected on or after January 1, 1987.

(d) STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES.—

(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of the Social Security Act) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on January 1, 1987.

SEC. 4529. PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION SUPPLIES.

The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act to payment for parenteral and enteral nutrition supplies on or after January 1, 1987.

SEC. 4530. PAYMENT FOR OXYGEN THERAPY SERVICES.

(a) MONTHLY PROSPECTIVE FEE SCHEDULES FOR OXYGEN THERAPY SERVICES.—Section 1833 of the Social Security Act (42 U.S.C. 1395l), as amended by section 4524(d)(2) of this subtitle, is amended by adding at the end the following new subsection:

"(m)(1) The Secretary shall establish monthly capitation fee schedules, on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for oxygen therapy services for which payment is made under this part.

"(2)(A) Under each such schedule, payment shall be made under this part on the basis of the number of units of oxygen prescribed for a patient per month without regard to the actual number of units of oxygen so used.

"(B) The Secretary shall require verification of the initial prescription requirements and any subsequent changes therein by laboratory data or such other means deemed appropriate by the Secretary.

"(C) No payment may be made under this part for oxygen therapy services (i) other than to a provider of services with an agreement in effect under section 1866 or on an assignment-related basis (as defined in section 1842(i)(8)) or (ii) furnished more than one year after the date of the prescription for such services.

"(D) No payment may be made under this part for oxygen therapy services furnished pursuant to a prescription of a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, the entity furnishing the oxygen therapy services, except that this prohibition shall not apply with respect to an entity which is the sole supplier (as determined by the Secretary) of oxygen therapy services in a community.

"(E) With respect to payment for oxygen therapy services, the Secretary shall provide that—

"(i) if payment is not made on or before the 22nd calendar day after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) within 22 calendar days after the date a claim for payment under this part is received, the carrier shall notify the entity submitting the claim of any defect or impropriety in the claim (including the lack of any required substantiating documentation) or circumstance requiring special treatment that prevents the claim from being treated as a clean claim and prevents timely payment from being made;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the carrier will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part.

In this subparagraph, the term 'clean claim' means a claim which meets the requirements of this title for payment under this part and the term 'carrier' refers to the appropriate carrier with a contract under section 1842.

"(3) Subject to paragraph (4), the Secretary shall set such fee schedules at 100 percent of the reasonable charge level determined (pursuant to section 1842(b)(3)) for the 12-month period ending June 30, 1986, for oxygen therapy services (excluding any part of such charges relating to the purchase or rental of equipment) furnished in the applicable region, State, or area. Such fee schedules shall be adjusted annually (to become effective January 1 of each year, beginning with 1987) by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (all items; United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes. The Secretary shall also base such fee schedule on the lowest cost medically appropriate means of delivery.

"(4) The Secretary shall provide for a percentage increase (established by the Secretary) in the fee schedule amounts for oxygen therapy services furnished through a portable device. In order to assure the availability of oxygen therapy services for individuals consuming small amounts of oxygen, the Secretary shall provide for a minimum monthly amount for the furnishing of oxygen therapy services.

"(5) Nothing in this subsection shall be construed as requiring the use of any particular type of equipment or device.

"(6) In this subsection and subsection (a), 'oxygen therapy services' means durable medical equipment, accessories, and supplies for the provision of oxygen therapy in a patient's home.".

(b) PAYMENT BASED ON MONTHLY PROSPECTIVE FEE SCHEDULE.—Section 1833(a) of such Act is amended—

(1) in paragraph (1), by striking out "and" before "(H)" and by adding at the end the following: "and (I) with respect to oxygen therapy services (as defined in subsection (m)(6)), the amount paid shall be equal to 80 percent of the amount determined under the monthly prospective fee schedule under subsection (l),"; and

(2) in paragraph (2)—

(A) in subparagraph (B), by striking out "or (D)" and inserting in lieu thereof "(D), or (E)",

(B) by striking out "and" at the end of subparagraph (C),

(C) by inserting "and" at the end of subparagraph (D), and

(D) by inserting after subparagraph (D) the following new subparagraph:

"(E) with respect to oxygen therapy services, 80 percent of the amount determined under the monthly prospective fee schedule under subsection (m);".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to oxygen therapy services furnished on or after January 1, 1987.

(d) REPORT.—The Secretary of Health and Human Services shall study and report to the Congress, not later than July 1, 1988, on the implementation of the amendments made by this section and on the effect of such amendments, including the effects on—

(1) patient outcomes,

(2) the availability of oxygen therapy services to medicare beneficiaries, and

(3) changes in oxygen therapy technology.

SEC. 4531. ADDITIONAL MEMBERS FOR PHYSICIAN PAYMENT REVIEW COMMISSION.

(a) 2 ADDITIONAL MEMBERS.—Section 1845(a)(2) of the Social Security Act (42 U.S.C. 1395w-1(a)(2)) is amended by striking "11 individuals" and inserting "13 individuals".

(b) APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by subsection (a), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

SEC. 4532. CHANGING MEDICARE APPEAL RIGHTS.

(a) REVIEW OF PART B DETERMINATIONS.—(1) Section 1869 of the Social Security Act (42 U.S.C. 1395ff) is amended—

(A) by inserting "or part B" in subsection (a) after "amount of benefits under part A",

(B) by inserting "or part B" in subsection (b)(1)(C) after "part A",

(C) by amending paragraph (2) of subsection (b) to read as follows:

"(2) Notwithstanding paragraph (1)(C), in the case of a claim arising—

"(A) under part A, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $100 and judicial review shall not be available to the individual under that paragraph if the amount in controversy is less than $1,000; or

"(B) under part B, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $500 and judicial review shall not be available to the individual under that paragraph if the aggregate amount in controversy is less than $1,000.

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.", and

(D) by adding at the end the following new paragraph:

"(3) Paragraph (1) shall not be construed as authorizing any administrative law judge to review any national coverage determination under section 1862(a)(1) respecting whether or not a particular type or class of items or services is covered under this title.".

(2) Section 1842(b)(3)(C) of such Act (42 U.S.C. 1395u(b)(3)(C)) is amended by striking "$100 or more" and inserting "at least $100, but not more than $500".

(3) Section 1879(d) of such Act (42 U.S.C. 1395pp(d)) is amended by striking "section 1869(b)" and all that follows through "part B)" and inserting "sections 1869(b) and 1842(b)(3)(C) (as may be applicable)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to items and services furnished on or after January 1, 1987.

SEC. 4533. ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct at least 5 demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act (in this section referred to as "medicare beneficiaries") who are victims of Alzheimer's disease or related disorders.

(b) SERVICES UNDER DEMONSTRATION PROJECTS.—The services provided under demonstration projects must be designed to meet the specific needs of Alzheimer's disease patients and may include—

(1) case management services,

(2) home and community-based services,

(3) mental health services,

(4) outpatient drug therapy,

(5) respite care and other supportive services and counseling for family,

(6) adult day care services, and

(7) other in-home services.

(c) CONDUCT OF PROJECTS.—The demonstration projects shall—

(1) each be conducted over a period of 3 years;

(2) provide each medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge,

(3) be conducted by an entity which either directly or by contract is able to provide such comprehensive evaluations and the additional services (described in subsection (b)) covered by the project;

(4) be conducted in sites which are chosen so as to be geographically diverse and located in States with a high proportion of medicare beneficiaries and in areas readily accessible to a significant number of medicare beneficiaries; and

(5) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in each project.

(d) EVALUATION AND REPORTS.—The Secretary shall provide for an evaluation of the demonstration projects and shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a preliminary report during the third year of the projects, which report shall include a description of the sites at which the projects are being conducted and the services being provided at the different sites, and

(2) a final report upon completion of the projects, which report shall include recommendations for appropriate legislative changes.

(f) FUNDING.—Expenditures (not to exceed $40,000,000 for the projects and $2,000,000 for the evaluation of the projects) made for the demonstration projects shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects.

Subtitle G—Medicaid and Maternal and Child Health

TABLE OF CONTENTS OF SUBTITLE

PART 1—COVERAGE OF INDIVIDUALS

Sec. 4601. Optional coverage for poor pregnant women and infants.
Sec. 4602. Optional coverage of elderly and disabled poor for all medicaid benefits.
Sec. 4603. Optional coverage of poor medicare beneficiaries for medicare cost-sharing expenses.
Sec. 4604. Medicaid eligibility for qualified severely impaired individuals.
Sec. 4605. Clarification of eligibility of homeless individuals.
Sec. 4606. Treatment of income and resources required to be paid under spousal and child support orders.
Sec. 4607. Payment for aliens under medicaid.

PART 2—PROVISION OF SERVICES UNDER WAIVER AUTHORITY

Sec. 4611. Permitting States to offer home and community-based services to low-income individuals with acquired immune deficiency syndrome (AIDS) or with aids-related conditions.
Sec. 4612. Permitting States to offer home and community-based services to low-income individuals with chronic mental illness.
Sec. 4613. Waiver authority for the chronically mentally ill demonstration program.
Sec. 4614. Continuation of "Case-Managed Medical Care for Nursing Home Patients" demonstration project.

PART 3—PAYMENTS

Sec. 4621. Holding States harmless in fiscal year 1987 against a decrease in the federal medical assistance percentage.

PART 4—OTHER QUALITY AND EFFICIENCY MEASURES

Sec. 4631. Independent quality review of HMO services.

Sec. 4632. Clarification of flexibility of State utilization review systems.
Sec. 4633. Clarification of flexibility for State medicaid payment systems for inpatient services.
Sec. 4634. Financial disclosure requirements for HMOs.
Sec. 4635. Delegation to Inspector General of authority over State medicaid fraud control units.
Sec. 4636. COBRA technical corrections and clarifications relating to the medicaid program.
Sec. 4637. Payment for certain long-term care patients in hospitals.

PART 5—MATERNAL AND CHILD HEALTH

Sec. 4641. Authorization of additional funds.
Sec. 4642. Maternal and child health and adoption clearinghouse.

PART 1—COVERAGE OF INDIVIDUALS

SEC. 4601. OPTIONAL COVERAGE FOR POOR PREGNANT WOMEN AND INFANTS.

(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUP.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)), as amended by sections 9505(b)(2) and 9529(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended—

(1) by striking ", or" at the end of subclause (VII) and inserting a semicolon,

(2) by inserting "or" at the end of subclause (VIII), and

(3) by adding at the end the following new subclause:

"(IX) subject to subsection (l)(4), who are described in subsection (l)(1);".

(b) DESCRIPTION OF GROUP.—Section 1902 of such Act is amended by adding at the end the following new subsection:

"(l)(1) An individual described in this paragraph is—

"(A) a woman during pregnancy (and during the 60-day period beginning on the last date of her pregnancy), and

"(B) an infant under one year of age or, in the case described in subsection (e)(7), older,

who is not described in subsection (a)(10)(A)(i) and whose family income does not exceed the maximum income level established by the State under paragraph (2) for a family size equal to the size of the family including the woman or infant. A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover only individuals described in subparagraph (A) or to cover only individuals described in subparagraph (B).

"(2)(A) For purposes of paragraph (1) and subject to subparagraph (B), the State shall establish a maximum income level which is a percentage (not more than 100 percent) of the nonfarm income official poverty line defined by the Office of Management and Budget (and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) The maximum income level established under subparagraph (A) for a family may not be less than the payment level applicable to a family of that size and with no income under the State plan approved under part A of title IV.

"(3) Notwithstanding subsection (a)(17), for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(ii)(IX)—

"(A)(i) no resource standard or methodology may be applied with respect to an individual described in paragraph (1)(A),

"(ii) any resource standard or methodology which is applied with respect to an individual described in paragraph (1)(B) may not be more restrictive than the corresponding resource standard or methodology which is applied under the State plan under part A of title IV,

"(B) the income standard to be applied is the income standard established under paragraph (2), and

"(C) family income shall be determined in accordance with the methodology employed under the State plan under part A of title IV (without regard to section 402(a)(18)), and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

"(4) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) unless the State has in effect, under its plan established under part A of title IV, payment levels that are not less than the payment levels in effect under its plan on April 17, 1986."

(c) LIMITATION OF BENEFITS FOR NEWLY ELIGIBLE PREGNANT WOMEN.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)), as amended by sections 9501 and 9505(b)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended, in the matter after subparagraph (D)—

(1) by striking "and" before "(VI)", and

(2) by inserting before the semicolon at the end the following: ", and (VII) the medical assistance made available to an individual described in subsection (l)(1)(A) who is eligible for medical assistance only because of subparagraph (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, and postpartum services) and to other conditions which may complicate pregnancy".

(d) CONTINUATION OF MEDICAL ASSISTANCE FOR CERTAIN PREGNANT WOMEN DURING PREGNANCY AND FOR CERTAIN INFANTS RECEIVING INPATIENT SERVICES AT ONE YEAR OF AGE.—Section 1902(e) of such Act (42 U.S.C. 1396a(e)), as amended by section 9501(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraphs:

"(6) At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), the plan may provide that any woman described in such subsection and subsection (l)(1)(A) shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last date of her pregnancy.

"(7) If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), in the case of an infant described in subsection (l)(1)(B)—

"(A) who is receiving inpatient services for which medical assistance is provided on the date the infant becomes one year of age, and

"(B) who, but for becoming one year of age, would remain eligible for medical assistance as under such subsection,

the infant shall continue to be treated as an individual described in subsections (a)(10)(A)(ii)(IX) and (l)(1)(B) until the end of the stay for which the inpatient services are furnished.".

(e) CONFORMING AMENDMENTS.—(1) Section 1902(a)(17) of such Act (42 U.S.C. 1396a(a)(17)) is amended by inserting "except as provided in subsection (l)(3)," after "(17)".

(2) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting "for any individual described in section 1902(a)(10)(A)(ii)(IX) or" after "as medical assistance".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance furnished in calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date.

SEC. 4602. OPTIONAL COVERAGE OF ELDERLY AND DISABLED POOR FOR ALL MEDICAID BENEFITS.

(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUPS.—

(1) IN GENERAL.—Subsection (a)(10)(A)(ii) of section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 4601(a) of this subtitle, is amended—

(A) by striking "or" at the end of subclause (VIII),

(B) by striking the semicolon at the end of subclause (IX) and inserting ", or", and

(C) by adding at the end the following new subclause:

"(X) subject to subsection (m)(3), who are described in subsection (m)(1);".

(2) DESCRIPTION OF INDIVIDUALS.—Such section is further amended by adding after subsection (l), added by section 4601(b) of this subtitle, the following new subsection:

"(m)(1) Individuals described in this paragraph are individuals—

"(A) who are 65 years of age or older or are disabled individuals (as determined under section 1614(a)(3)),

"(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

"(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

"(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).".

(b) REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.—Section 1902(m) of such Act, as added by subsection (a)(2), is further amended by adding at the end the following new paragraphs:

"(3) A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X), unless the plan provides

coverage of some of the individuals described in subsection (l)(1).

"(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X)—

"(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments to States for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4603. OPTIONAL COVERAGE OF POOR MEDICARE BENEFICIARIES FOR MEDICARE COST-SHARING EXPENSES.

(a) ELIGIBILITY OF QUALIFIED MEDICARE BENEFICIARY.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by inserting "and" at the end of subparagraph (D), and

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) at the option of a State but subject to subsection (m)(3), for making medical assistance available for medicare cost-sharing (as defined in section 1905(p)(3)) for qualified medicare beneficiaries described in section 1905(o)(1);".

(b) QUALIFIED MEDICARE BENEFICIARY DEFINED.—Section 1905 of such Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

"(p)(1) The term 'qualified medicare beneficiary' means an individual—

"(A) who is entitled to hospital insurance benefits under part A of title XVIII (including an individual entitled to such benefits pursuant to an enrollment under section 1818),

"(B) who, but for section 1902(a)(10)(E) and the election of the State, is not eligible for medical assistance under the plan,

"(C) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

"(D) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

"(2)(A) The income level established under paragraph (1)(C) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State's option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).".

(c) LIMITED, MEDICARE GAP-FILLING BENEFITS.—Section 1902(a)(10) of such Act (42 U.S.C. 1395a(a)(10)), as amended by section 1(c) of this subtitle, is amended, in the matter after subparagraph (D)—

(1) by striking "and" before "(VII)",

(2) by inserting before the semicolon at the end the following: ", and (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1905(p)(1) shall be limited to medical assistance for medicare cost-sharing (described in section 1905(p)(3)), subject to the provisions of subsection (n) and section 1916(b)".

(d) MEDICARE COST-SHARING DEFINED.—Section 1905(p) of such Act, as added by subsection (b), is amended by adding at the end the following:

"(3) The term 'medicare cost-sharing' means the following costs incurred with respect to a qualified medicare beneficiary:

"(A) Premiums under part B.

"(B) Deductibles and coinsurance described in section 1813.

"(C) The annual deductible described in section 1833(b).

"(D) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to '80 percent' therein were deemed a reference to '100 percent'.

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1876.".

(e) PAYMENT AMOUNTS.—Section 1902 of such Act, as amended by sections 4601(b) and 4602(a)(2) of this subtitle, is further amended by adding at the end the following new subsection:

"(n) In the case of medical assistance furnished under this title for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under title XVIII with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.".

(f) REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.—

(1) REQUIRING COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND INCOME STANDARD TO BE USED.—Section 1902(l) of such Act, as added by section 4602(a)(2) of this subtitle, is amended—

(A) in paragraph (3), by inserting "or coverage under subsection (a)(10)(E)" after "subsection (a)(10)(A)(ii)(IX)", and

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

"(5) Notwithstanding subsection (a)(17), for qualified medicare beneficiaries described in section 1905(p)(1)—

"(A) the income standard to be applied is the income standard described in section 1905(p)(1)(C), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.".

(2) EFFECTIVE DATE OF BENEFITS.—Section 1902(e) of such Act, as amended by section 4601(d) of this subtitle, is amended by adding at the end the following new paragraph:

"(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1905(p)(1)), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1903(a), such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.".

(g) CONFORMING AMENDMENTS.—

(1) TREATMENT OF BENEFITS.—Section 1902(a)(10)(C) of such Act (42 U.S.C. 1396a(a)(10)) is amended, in the matter before clause (i), by inserting "or (E)" after "subparagraph (A)".

(2) PAYMENT OF MEDICARE PREMIUMS AND PART A DEDUCTIBLE.—Section 1903(a)(1) of such Act (42 U.S.C. 1396b(a)(1)) is amended—

(A) by inserting "deductible amounts under part A and" after "(including expenditures for",

(B) by inserting "(and, in the case of qualified medicare beneficiaries described in section 1905(p)(1), part A)" after "premiums under part B", and

(C) by striking "or (B)" and inserting "(B) are qualified medicare beneficiaries described in section 1905(o)(1), or (C)".

(3) TIMING OF BENEFITS.—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before subdivision (i), by inserting "or, in the case of a qualified medicare beneficiary described in section 1905(p)(1), if provided after the month in which the individual becomes such a beneficiary" after "makes application for assistance".

(4) COPAYMENTS.—

(A) Section 1902(a)(15) of such Act (42 U.S.C. 1396a(a)(15)) is amended by inserting "are not qualified medicare beneficiaries (as defined in section 1905(p)(1)) but" after "older who".

(B) Subsections (a) and (b) of section 1916 of such Act (42 U.S.C. 1396o) are each amended by striking "section 1902(a)(10)(A)" and inserting "subparagraph (A) or (E) of section 1902(a)(10)".

(h) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4604. MEDICAID ELIGIBILITY FOR QUALIFIED SEVERELY IMPAIRED INDIVIDUALS.

(a) AS CATEGORICALLY NEEDY.—Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)) is amended by inserting "or who are qualified severely impaired individuals (as defined in section 1905(q))" after "title XVI".

(b) DESCRIPTION OF QUALIFIED SEVERELY IMPAIRED INDIVIDUALS.—Section 1905 of such Act (42 U.S.C. 1396d), as amended by section 4603(b) of this subtitle, is amended by

adding at the end the following new subsection:

"(q) The term 'qualified severely impaired individual' means an individual under age 65—

"(1) who received (A) a payment of supplemental security income benefits under section 1611(b) on the basis of blindness or disability, (B) a supplementary payment under section 1616 of this Act or under section 212 of Public Law 93-66 on such basis, (C) a payment of monthly benefits under section 1619(a), or (D) a supplementary payment under section 1616(c)(3), and

"(2) for so long as the Secretary determines that—

"(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under title XVI,

"(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments),

"(C) the lack of eligibility for benefits under this title would seriously inhibit his ability to continue or obtain employment, and

"(D) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under title XVI and this title and attendant care paid for under title XX which would be available to him in the absence of such earnings.".

(c) EFFECTIVE DATE.—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 4605. CLARIFICATION OF ELIGIBILITY OF HOMELESS INDIVIDUALS.

Section 1902(b)(2) of the Social Security Act (42 U.S.C. 1396a(b)(2)) is amended by inserting before the semicolon the following: ", regardless of whether or not the residence is maintained permanently or at a fixed address".

SEC. 4606. TREATMENT OF INCOME AND RESOURCES REQUIRED TO BE PAID UNDER SPOUSAL AND CHILD SUPPORT ORDERS.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by sections 4601(b), 4602(a)(2), and 4603(e) of this part, is further amended by adding at the end the following new subsection:

"(o) In applying subsection (a)(17) and notwithstanding any provision in that subsection to the contrary, in determining the income and resources of an individual who is in an institution, the individual shall not be considered to have available to him or her income or resources which are required to be paid under court order for the support of the individual's spouse or child.".

(b) EFFECTIVE DATE.—(1) Subject to paragraph (2), the amendment made by subsection (a) shall apply to medical assistance furnished on or after the date of the enactment of this Act, without regard to whether or not regulations to implement such amendment is promulgated before such date.

(2) Such amendment shall only apply to States the policy or practice of which (as of July 22, 1986, and without regard to whether or not such policy or practice has been approved by the Health Care Financing Administration) is consistent with section 1902(o) of the Social Security Act (as added by such amendment).

SEC. 4607. PAYMENT FOR ALIENS UNDER MEDICAID.

(a) IN GENERAL.—Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended—

(1) by striking the period at the end of paragraph (7) and inserting "; or", and

(2) by adding at the end the following new paragraph:

"(8) for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or permanently residing in the United States under color of law.".

(b) CONFORMING AMENDMENT.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended by adding at the end the following: "Notwithstanding paragraph (10) or any other provision of this subsection, nothing in this title shall be construed as requiring a State plan to provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to medical assistance furnished to aliens on or after January 1, 1987. The amendment made by subsection (b) shall apply to medical assistance furnished to individuals on and after the date of the enactment of this Act.

PART 2—PROVISION OF SERVICES UNDER WAIVER AUTHORITY

SEC. 4611. PERMITTING STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES TO LOW-INCOME INDIVIDUALS WITH ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) OR WITH AIDS-RELATED CONDITIONS.

(a) PERMITTING HOSPITAL LEVEL OF CARE.—Section 1915(c)(1) of the Social Security Act (42 U.S.C. 1396n(c)(1)), as amended by section 9502(b)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by inserting before the period the following: "or because they have been diagnosed as having acquired immune deficiency syndrome (AIDS) or AIDS-related conditions the cost of treatment with respect to which is reimbursed under the State plan".

(b) COMPUTING EXPENDITURES FOR CERTAIN PATIENTS WITH AIDS OR AIDS-RELATED CONDITIONS.—Section 1915(c)(7) of such Act, as added by section 9502(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended—

(1) by inserting "(A)" after "(7)", and

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

"(B) In making estimates under paragraph (2)(D) in the case of a waiver which applies only to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, who are inpatients in hospitals or in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those respective facilities."

(c) PROVIDING CASE MANAGEMENT SERVICES TO PATIENTS WITH AIDS AND AIDS-RELATED CONDITIONS.—Section 1915(g)(1) of such Act, as added by section 9508(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following: "A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act.

SEC. 4612. PERMITTING STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES TO LOW-INCOME INDIVIDUALS WITH CHRONIC MENTAL ILLNESS.

(a) PERMITTING HOSPITAL LEVEL OF CARE.—Section 1915(c)(1) of the Social Security Act (42 U.S.C. 1396n(c)(1)), as amended by section 9502(b)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by inserting before the period the following: "or because they have chronic mental illness the cost of treatment with respect to which is reimbursed under the State plan".

(b) WAIVER OF COMPARABILITY REQUIREMENT.—The first sentence of section 1915(c)(3) of such Act is amended by striking all that follows "statewideness)" and inserting "and section 1902(a)(10)(B) (relating to comparability of medical assistance).".

(c) COMPUTING EXPENDITURES FOR CERTAIN PATIENTS WITH CHRONIC MENTAL ILLNESS.—Section 1915(c)(7) of such Act, as added by section 9502(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and as amended by section 46011(b) of this subtitle, is amended by adding at the end the following new subparagraph:

"(C) In making estimates under paragraph (2)(D) in the case of a waiver which applies only to individuals with chronic mental illness, who are inpatients in hospitals or in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those respective facilities.".

(d) PROVIDING CASE MANAGEMENT SERVICES TO PATIENTS WITH CHRONIC MENTAL ILLNESS.—Section 1915(g)(1) of such Act, as added by section 9508(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and as amended by section 46011(c) of this subtitle, is amended by adding at the end the following: "A State may limit the provision of case management services under this subsection to individuals with chronic mental illness.".

(e) PROVIDING CERTAIN OTHER SERVICES TO PATIENTS WITH CHRONIC MENTAL ILLNESS.—Section 1915(c)(4)(B) of such Act is amended by inserting before the period at the end the following: "and for day treatment or

other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act.

SEC. 4613. WAIVER AUTHORITY FOR THE CHRONICALLY MENTALLY ILL DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary of Health and Human Services may, in accordance with this section, waive certain provisions of title XIX of the Social Security Act in order to allow States to implement demonstration programs to improve the continuity, quality, and cost-effectiveness of mental health services available to chronically mentally ill medicaid beneficiaries.

(b) CONDITIONS OF WAIVER.—A waiver shall be granted under this subsection with respect to a demonstration program only if—

(1) the demonstration program is receiving funding from the Robert Wood Johnson Foundation and the Department of Housing and Urban Development under their "Program for the Chronically Mentally Ill",

(2) the State provides assurances satisfactory to the Secretary that under such waiver—

(A) the average per capita expenditure estimated by the State in any fiscal year for medical assistance for mental health services provided with respect to individuals covered under the program does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such services for such individuals if the waiver had not been granted, and

(B) there will be no reduction or limitation in benefits to a medicaid beneficiary under the program.

(c) PROVISIONS THAT CAN BE WAIVED.—The authority under this section extends only to the following, as they relate to the provision of mental health services:

(1) A waiver of the requirements of sections 1902(a)(1), 1902(a)(10)(B), 1902(a)(23), and 1902(a)(30) and clauses (i) and (ii) of section 1903(m)(2) of the Social Security Act.

(2) Including as "medical assistance" under the State plan case management services with respect to mentally ill patients, habilitation services (as defined in section 1915(c)(5) of such Act), day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the State may request and the Secretary may approve for individuals covered under the demonstration project.

(d) DURATION OF WAIVER.—(1) A waiver under this section shall be for an initial term of three years which may be extended for an additional two-year term. The request of a State for extension of such a waiver shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(2) The authority to approve a waiver under this section extends only during the five-year period beginning on October 1, 1986.

(d) INCORPORATION OF CERTAIN PROVISIONS.—Subsections (c)(6) and (e)(1) of section 1915 of the Social Security Act shall apply to a waiver under this section in the same manner as they apply to a waiver under that section.

(e) REPORT.—The Secretary shall report, not later than January 1, 1993, to Congress on the cost, accessibility, utilization, and quality of services provided under waivers granted under this section.

(f) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and implementing the amendments made by this part.

SEC. 4614. CONTINUATION OF "CASE-MANAGED MEDICAL CARE FOR NURSING HOME PATIENTS" DEMONSTRATION PROJECT.

(a) APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of title XVIII or XIX of the Social Security Act necessary to provide for continuation, from July 1, 1987, through June 30, 1989, of the "Case-Managed Medical Care for Nursing Home Patients" demonstration project (#95-P-98346/1-01) carried out pursuant to section 222 of the Social Security Amendments of 1972, section 402 of the Social Security Amendments of 1967, and section 1115 of the Social Security Act by the Department of Public Welfare, Commonwealth of Massachusetts.

(b) TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project on July 1, 1986.

PART 3—PAYMENTS

SEC. 4621. HOLDING STATES HARMLESS IN FISCAL YEAR 1987 AGAINST A DECREASE IN THE FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) IN GENERAL.—Section 9528 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

"(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payment to a State under section 1903 of the Social Security Act, the amendments made by subsection (a) shall not apply to a State if the effect of the applying the amendments would be to reduce the amount of payment made to the State under that section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 at the time of its enactment.

PART 4—OTHER QUALITY AND EFFICIENCY MEASURES

SEC. 4631. INDEPENDENT QUALITY REVIEW OF HMO SERVICES.

(a) IN GENERAL.—Section 1902(a)(30) of the Social Security Act (42 U.S.C 1396a(a)(30)) is amended by adding at the end the following new subparagraph:

"(C) provide a utilization and quality control peer review organization (under part B of title XI) or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1903(m), with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General;".

(b) CONFORMING AMENDMENTS.—(1) Section 1902(d) of such Act (42 U.S.C. 1396a(d)) is amended by inserting "(including quality review functions described in subsection (a)(30)(C))" after "medical or utilization review functions".

(2) Section 1903(a)(3)(C) of such Act (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting "or quality review" after "medical and utilization review".

(c) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4632. CLARIFICATION OF FLEXIBILITY OF STATE UTILIZATION REVIEW SYSTEMS.

(a) IN GENERAL.—Section 1902(h) of the Social Security Act, as inserted by the amendment made by section 4633(a) of this subtitle, is further amended by inserting "(1)" after "(h)" and by adding at the end the following new paragraph:

"(2) Nothing in this title (including subsections (a)(4) and (a)(30) of this section) shall be construed as authorizing the Secretary to require that States operate second surgical opinion programs or inpatient hospital preadmission review programs.".

(b) REPORT.—(1) The Secretary of Health and Human Services shall report to Congress, by not later than January 1, 1992, for each State in a representative sample of States—

(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

(C) the extent of geographic variation in the rate of performance of such procedures for small areas within each State and among such States,

(D) the rate at which each such procedure is performed on medicaid patients compared to the rate at which such procedure is performed on privately insured patients, and

(E) with respect to each such procedure, the number of board certified or board eligible physicians in the State who (i) now perform the procedure, and (ii) are willing to provide second opinions (of the type described in section 1164 of the Social Security Act) for the procedure at prevailing payment rates under the State medicaid plan.

(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

(A) The procedure is one which generally can be postponed without undue risk to the patient.

(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

(3) Such report shall also include an identification of those underutilized, medically necessary, diagnostic and treatment procedures and services for which—

(A) a failure to furnish could have an adverse effect on health status, and

(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

(4) In this subsection, the term "medicaid plan" means a State plan approved under title XIX of the Social Security Act.

SEC. 4633. CLARIFICATION OF FLEXIBILITY FOR STATE MEDICAID PAYMENT SYSTEMS FOR INPATIENT SERVICES.

(a) IN GENERAL.—Section 2173 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35, 95 Stat. 809) is amended by adding at the end the following new subsection:

"(d) Section 1902 of such Act is further amended by inserting before subsection (i) the following new subsection:

" '(h) Nothing in this title (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment that may be made under a plan under this title with respect to inpatient hospital services, skilled nursing facility services, or intermediate care facility services, including any such limitation relating to the amount that can reasonably be estimated would have been paid for such services under the reimbursement principles applicable under title XVIII.'. ".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) Act shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).

SEC. 4634. FINANCIAL DISCLOSURE REQUIREMENTS FOR HMOS.

(b) DISCLOSURE OF INTERLOCKING RELATIONSHIPS.—Section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) is amended—

(1) in paragraph (2)(A)—

(A) by striking "and" at the end of clause (vi),

(B) by striking the period at the end of clause (vii) and inserting ", and", and

(C) by adding after clause (vii) the following new clause:

"(viii) such contract provides for disclosure of information in accordance with section 1124 and paragraph (4) of this subsection."; and

(2) by adding at the end the following new paragraph:

"(4)(A) Each health maintenance organization which is not a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 1318(b) of such Act), including the following transactions:

"(i) Any sale or exchange, or leasing of any property between the organization and such a party.

"(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

"(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

"(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.".

(b) APPROVAL OF CONTRACTUAL EXPENDITURES BY HHS.—Section 1903(m)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)(iii) is amended by inserting before the semicolon the following: "and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $100,000".

(c) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall take effect 6 months after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall take effect on the date of the enactment of this Act and shall apply to contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act.

SEC. 4635. DELEGATION TO INSPECTOR GENERAL OF AUTHORITY OVER STATE MEDICAID FRAUD CONTROL UNITS.

Section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q)) is amended by adding at the end the following new sentence:

"The Secretary shall provide (or continue to provide) for the delegation of the Secretary's authority under this subsection to the Inspector General in the Department of Health and Human Services.".

SEC. 4636. COBRA TECHNICAL CORRECTIONS AND CLARIFICATIONS RELATING TO THE MEDICAID PROGRAM.

(a)(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1395d(a)) is amended—

(A) by striking "and" at the end of paragraph (18),

(B) by redesignating paragraph (19) as paragraph (20), and

(C) by inserting after paragraph (18) the following new paragraph:

"(19) case-management services (as defined in section 1915(g)(2)); and".

(2) Section 1902(j) of such Act (42 U.S.C. 1396a(j)), as amended by section 9505(d)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by striking "(19)" and inserting "(20)".

(3) Section 1902(a)(10)(C)(iv) of such Act (42 U.S.C. 1396a(a)(10)(C)(iv)), as amended by section 9505(d)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by striking "through (18)" and inserting "through (19)".

(b) Section 1902(a)(13)(D) of the Social Security Act (42 U.S.C. 1396a(a)(13)(D)), as inserted by section 9505(c)(1)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and as amended and redesignated by paragraphs (2) and (3) of section 9509(a) of such Act, is amended by adding "and" at the end.

(c) Section 9506 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

"(c) EXCEPTION.—The amendment made by subsection (a) shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.".

(d) Section 1903(m)(2)(F) of the Social Security Act (42 U.S.C. 1396b(m)(2)(F)), as amended by section 9517(a)(2)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by striking "in the case" and inserting "In the case".

(e) Section 9517(c)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in subparagraph (A), by adding at the end the following: "For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.";

(2) in subparagraph (B), by striking "(iv)" and inserting "(vi)"; and

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

"(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).".

(f) Section 1919(c) of the Social Security Act (42 U.S.C. 1396r(c)), as added by section 9516(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended—

(1) by striking "and" at the end of paragraph (6),

(2) by striking the period at the end of paragraph (7) and inserting "; and", and

(3) by adding at the end the following new paragraph:

"(8) assure that the existing facility continues to provide active treatment (described in section 1905(d)(2)) to the remaining residents during the phase-out period.".

(g) Section 1920(a) of the Social Security Act (42 U.S.C. 1396s(a)), as added by section 9526 of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and

(B) by inserting after "—(A)" the following: "Section 402(a)(32) of this Act (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

"(B)";

(2) in paragraph (2)—

(A) by inserting "(A)" after the dash, and

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

"(B) Section 1634(b) of this Act (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).";

(3) in paragraph (3), by striking "Section 473(b)" and inserting "Sections 472(h) and 473(b)".

(h) Section 9528(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "1101(a)(8)(P)" and inserting "1101(a)(8)(B)".

(i) The amendments made by this section shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4637. PAYMENT FOR CERTAIN LONG-TERM CARE PATIENTS IN HOSPITALS.

(a) IN GENERAL.—In the case of a State which received a waiver under the authority of section 402(b) of the Social Security Amendments of 1967 with respect to payment methodology for inpatient hospital services under title XVIII and XIX of the

Social Security Act during the 3-year period beginning January 1, 1983, notwithstanding section 1902(a)(13) of such Act, the State may pay under title XIX of such Act for hospital patients receiving services at an inappropriate level of care at the rate for hospital patients receiving an appropriate level of care if the Secretary of Health and Human Services determines that a sufficient number of hospital beds have been decertified in the State to reduce the payments to hospitals under such title in the State by an amount equal to or greater than the amount by which payments to hospitals under such title in such State will increase as a result of the payment of such higher rates for patients receiving inappropriate levels of care.

(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payments for services furnished during the 3-year period beginning January 1, 1986, after the date the Secretary makes the determination described in that subsection.

PART 5—MATERNAL AND CHILD HEALTH

SEC. 4641. AUTHORIZATION OF ADDITIONAL FUNDS.

(a) ADDITIONAL FUNDS.—Section 501 of the Social Security Act (42 U.S.C. 701) is amended by striking "$478,000,000 for fiscal year 1984" and inserting "$553,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $561,000,000 for fiscal year 1989".

(b) SET-ASIDE FOR NEWBORN GENETIC DISORDERS.—Section 502(a)(1) of such Act (42 U.S.C. 702(a)(1)) is amended—

(1) by inserting "(A)" after "(a)(1)", and

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

"(B) Of the amount appropriated under section 501(a), the Secretary shall also retain $7,000,000 in fiscal year 1987, $7,500,000 in fiscal year 1988, and $8,000,000 in fiscal year 1989 for the purpose of carrying out (through grants, contracts, or otherwise) projects for the screening of newborns for sickle-cell anemia and other genetic disorders.".

SEC. 4642. MATERNAL AND CHILD HEALTH AND ADOPTION CLEARINGHOUSE.

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain data and information obtained from studies, research, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

(D) educational programs on adoption,

(E) licensed adoption agencies,

(F) State laws relating to adoption,

(G) intercountry adoption,

(H) statistics on adoption, and

(I) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field; and

(3) disseminate the most current and complete information regarding adoption, including directories compiled, maintained, and revised pursuant to paragraph (2).

TITLE V—HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

SEC. 5001. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

(a) IN GENERAL.—

(1) Beginning with fiscal year 1987, the Nuclear Regulatory Commission shall assess and collect an annual charge from each person described in paragraph (2) in an amount equal to $750 per million watts of the rated thermal capacity of the utilization facility operated by such person.

(2) A person described in paragraph (1) is any person—

(A) who, on the last day of a fiscal year, holds a license issued under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)) that authorizes the person to operate a utilization facility with a rated thermal capacity in excess of 50,000,000 watts; or

(B) whose authority to operate under such a license is in suspension (but has not been revoked) on the last day of the fiscal year.

(b) EXEMPTION FROM CERTAIN CHARGES.—Any person who is assessed an annual charge under this section shall be exempt from any assessment of charges under section 9701 of title 31, United States Code, other than charges for the costs incurred by the Commission in processing the application of such person for an operating license.

(c) USE OF FUNDS.—Amounts collected under this section shall be deposited in the general fund of the Treasury to reimburse the United States for amounts appropriated for use by the Nuclear Regulatory Commission in carrying out its functions.

(d) REPEAL.—Title VII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking subtitle G.

SEC. 5002. ABANDONED MINE RECLAMATION RESEARCH AND DEVELOPMENT.

After the enactment of this Act, the research and demonstration authorities of the Department of the Interior under the provisions of section 401(c)(6) of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) shall be transferred to, and carried out by, the Director of the Bureau of Mines. Research and demonstration projects under such provision shall be selected by a panel appointed by the Director of the Bureau of Mines to be comprised of 9 persons including 4 representatives of State abandoned mine reclamation programs, 4 representatives of the Bureau of Mines and one representative of the Office of Surface Mining Reclamation and Enforcement.

TITLE VI—HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Subtitle A—Ocean Dumping Application and Special Fees

SEC. 6001. Section 104(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1414(b)) is amended to read as follows:

"(b)(1) The Administrator or the Secretary, as the case may be, shall prescribe by regulation and collect from the applicant, unless the applicant is a Federal agency, an application fee in an amount, not to exceed $10,000, that is commensurate with the reasonable administrative costs incurred or expected to be incurred by the Administrator or Secretary in processing the permit.

"(2) The Administrator shall prescribe by regulation, after opportunity for a hearing on the record, and collect a special fee for permits issued under section 102 to recover the costs incurred, or expected to be incurred, in the undertaking of measures by Federal agencies to determine compliance with permit terms, and the undertaking of only the monitoring necessary to make a reasonable assessment of the direct effects on the marine environment caused by disposal activities carried out under the permit. Such fee shall be an amount which will not have a substantial adverse effect on the competitive prospects for commercial implementation of effective and efficient ocean-based waste destruction technologies that otherwise meet the requirements of law.

"(3) The funds collected under paragraphs (1) and (2) shall be deposited as miscellaneous receipts into the general fund of the Treasury."

Subtitle B—Amendment of the Merchant Ship Sales Act of 1946

SEC. 6101. Section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744) is amended to read as follows:

"SEC. 11. (a) The Secretary of Transportation shall maintain a National Defense Reserve Fleet (including the Ready Reserve Force or any component of that fleet) consisting of those vessels owned or acquired that the Secretary, after consultation with the Secretary of the Navy, determines are of value for national defense purposes and that the Secretary of Transportation decides to place and maintain in the national defense reserve fleet.

(b) Except as otherwise provided by law, a vessel in the national defense reserve fleet may be used only for an account of an agency of the United States government during a national emergency, proclaimed by the President, under a charter, contract, or other agreement arranged by the Secretary of Transportation.".

Subtitle C—Amendments to the Merchant Marine Act of 1920

SEC. 6201. Subsection D(a)(5) of section 30 of the Merchant Marine Act of 1920 (46 App. U.S.C. 922) is amended by inserting before "a State", the words "the United States,".

SEC. 6202. Subsection L of section 30 of the Merchant Marine Act of 1920 (46 App. U.S.C. 952) is amended to read as follows:

"Notwithstanding another law, the United States as mortgagee may enforce a preferred mortgage lien in a suit in rem in admiralty under this Act. In a suit in rem in admiralty for the enforcement of the preferred mortgage lien, the district court exercising admiralty jurisdiction may appoint a receiver and, in its discretion, authorize the receiver to operate the mortgaged vessel. When the United States is the mortgagee, the court authorizing the receiver to operate the mortgaged vessel shall order compensation to be paid to the United States for the use of the vessel. The marshal may be authorized and directed by the court to take possession of the mortgaged vessel notwithstanding the fact that the vessel is in the possession or under the control of a person claiming a possessory common-law lien.".

SEC. 6203. When the United States is a mortgagee, section 6202 applies to an obligor that failed to make a payment on a guaranteed obligation after April 1, 1986, under title XI, Merchant Marine Act, 1936 (46 App. U.S.C. 1271).

Subtitle D—Load Line and Tonnage Measurement User Fees

SEC. 6301. Subtitle II of title 46, United States Code, is amended as follows:

(1) The table of chapters at the beginning of the subtitle is amended by—

(A) striking "[PART C—RESERVED FOR LOAD LINES OF VESSELS]" and inserting—

"PART C—LOAD LINES OF VESSELS

"51. Load lines ..... 5101";

and

(B) striking "[PART J—RESERVED FOR MEASUREMENT OF VESSELS]" and inserting—

"PART J—MEASUREMENT OF VESSELS

"141. General 14101
"143. Convention measurement 14301
"145. Regulatory measurement 14501
"147. Penalties ..... 14701".

(2) Immediately after part B, strike "[PART C—RESERVED FOR LOAD LINES OF VESSELS]" and insert the following new part C:

"PART C—LOAD LINES OF VESSELS

"CHAPTER 51—LOAD LINES

Sec.
"5101. Definitions.
"5102. Application.
"5103. Load line requirements.
"5104. Assignment of load lines.
"5105. Load line surveys.
"5106. Load line certificate.
"5107. Delegation of authority.
"5108. Special exemptions.
"5109. Reciprocity for foreign vessels.
"5110. Submersible vessels.
"5111. Providing loading information.
"5112. Loading restrictions.
"5113. Detention of vessels.
"5114. Use of Customs Service officers and employees for enforcement.
"5115. Regulations.
"5116. Penalties.

"§ 5101. Definitions

"In this chapter—

"(1) 'domestic voyage' means movement of a vessel between places in, or subject to the jurisdiction of, the United States, except movement between—

"(A) a place in a territory or possession of the United States or the Trust Territory of the Pacific Islands; and

"(B) a place outside that territory, possession, or Trust Territory.

"(2) 'economic benefit of the overloading' means the amount obtained by multiplying the weight of the overload (in tons) by the lesser of—

"(A) the average freight rate value of a ton of the vessel's cargo for the voyage; or

"(B) $50.

"(3) 'existing vessel' means—

"(A) a vessel on a domestic voyage, the keel of which was laid, or that was at a similar stage of construction, before January 1, 1986; and

"(B) a vessel on a foreign voyage, the keel of which was laid, or that was at a similar stage of construction, before July 21, 1968.

"(4) 'freeboard' means the distance from the mark of the load line assigned under this chapter to the freeboard deck.

"(5) 'freeboard deck' means the deck or other structure the Secretary prescribes by regulation.

"(6) 'minimum safe freeboard' means the freeboard that the Secretary decides cannot be reduced safely without limiting the operation of the vessel.

"(7) 'weight of the overload' means the amount obtained by multiplying the number of inches that the vessel is submerged below the applicable assigned freeboard by the tons-an-inch immersion factor for the vessel at the assigned minimum safe freeboard.

"§ 5102. Application

"(a) Except as provided in subsection (b) of this section, this chapter applies to the following:

"(1) a vessel of the United States.

"(2) a vessel on the navigable waters of the United States.

"(3) a vessel—

"(A) owned by a citizen of the United States or a corporation established by or under the laws of the United States or a State; and

"(B) not registered in a foreign country.

"(4) a public vessel of the United States.

"(5) a vessel otherwise subject to the jurisdiction of the United States.

"(b) This chapter does not apply to the following:

"(1) a vessel of war.

"(2) a recreational vessel when operated only for pleasure.

"(3) a fishing vessel.

"(4) a fish processing vessel of not more than 5,000 gross tons that—

"(A)(i) was constructed as a fish processing vessel before August 16, 1974; or

"(ii) was converted for use as a fish processing vessel before January 1, 1983; and

"(B) is not on a foreign voyage.

"(5) a fish tender vessel of not more than 500 gross tons that—

"(A)(i) was constructed, under construction, or under contract to be constructed as a fish tender vessel before January 1, 1980; or

"(ii) was converted for use as a fish tender vessel before January 1, 1983; and

"(B) is not on a foreign voyage.

"(6) a vessel of the United States on a domestic voyage that does not cross the Boundary Line, except a voyage on the Great Lakes.

"(7) a vessel of less than 24 meters (79 feet) overall in length.

"(8) a public vessel of the United States on a domestic voyage.

"(9) a vessel excluded from the application of this chapter by an international agreement to which the United States Government is a party.

"(10) an existing vessel of not more than 150 gross tons that is on a domestic voyage.

"(11) a small passenger vessel on a domestic voyage.

"(c) On application by the owner and after a survey under section 5105 of this title, the Secretary may assign load lines for a vessel excluded from the application of this chapter under subsection (b) of this section. A vessel assigned load lines under this subsection is subject to this chapter until the surrender of its load line certificate and the removal of its load line marks.

"(d) This chapter does not affect an international agreement to which the Government is a party that is not in conflict with the International Convention on Load Lines currently in force for the United States.

"§ 5103. Load line requirements

"(a) A vessel may be operated only if the vessel has been assigned load lines.

"(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel shall mark and maintain the load lines permanently and conspicuously in the way prescribed by the Secretary.

"§ 5104. Assignment of load lines

"(a) The Secretary shall assign load lines for a vessel so that they indicate the minimum safe freeboard to which the vessel may be loaded. However, if the owner requests, the Secretary may assign load lines that result in greater freeboard than the minimum safe freeboard.

"(b) In assigning load lines for a vessel, the Secretary shall consider—

"(1) the service, type, and character of the vessel;

"(2) the geographic area in which the vessel will operate; and

"(3) applicable international agreements to which the United States Government is a party.

"(c) An existing vessel may retain its load lines assigned before January 1, 1986, unless the Secretary decides that a substantial change in the vessel after those load lines were assigned requires that new load lines be assigned under this chapter.

"(d) The minimum freeboard of an existing vessel may be reduced only if the vessel complies with every applicable provision of this chapter.

"(e) The Secretary may designate by regulation specific geographic areas that have less severe weather or sea conditions and from which there is adequate time to return to available safe harbors. The Secretary may reduce the minimum freeboard of a vessel operating in these areas.

"§ 5105. Load line surveys

"(a) The Secretary may provide for annual, renewal, and other load line surveys.

"(b) In conducting a load line survey, the Secretary shall consider whether—

"(1) the hull and fittings of the vessel—

"(A) are adequate to protect the vessel from the sea; and

"(B) meet other requirements the Secretary may prescribe by regulation;

"(2) the strength of the hull is adequate for all loading conditions;

"(3) the stability of the vessel is adequate for all loading conditions;

"(4) the topsides of the vessel are arranged and constructed to allow rapid overboard drainage of deck water in heavy weather; and

"(5) the topsides of the vessel are adequate in design, arrangement, and equipment to protect crewmembers performing outside tasks necessary for safe operation of the vessel.

"§ 5106. Load line certificate

"(a) On finding that a load line survey of a vessel under this chapter is satisfactory and that the vessel's load lines are marked correctly, the Secretary shall issue the vessel a load line certificate and deliver it to the owner, master, or individual in charge of the vessel.

"(b) The certificate shall be maintained as required by the Secretary.

"§ 5107. Delegation of authority

"(a) The Secretary shall delegate to the American Bureau of Shipping or other similarly qualified organizations the authority to assign load lines, survey vessels, determine that load lines are marked correctly, and issue load line certificates under this chapter.

"(b) Under regulations prescribed by the Secretary, a decision of an organization delegated authority under subsection (a) of this section related to the assignment of a load line may be appealed to the Secretary.

"(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the International Convention on Load Lines, 1966, the authority to assign load

lines, survey vessels, determine that the load lines are marked correctly, and issue an International Load Line Certificate (1966).

"(d) The Secretary may terminate a delegation made under this section after giving written notice to the organization.

"§ 5108. Special exemptions

"(a) The Secretary may exempt a vessel from any part of this chapter when—

"(1) the vessel is entitled to an exemption under an international agreement to which the United States Government is a party; or

"(2) under regulations (including regulations on special operations conditions) prescribed by the Secretary, the Secretary finds that good cause exists for granting an exemption.

"(b) When the Secretary grants an exemption under this section, the Secretary may issue a certificate of exemption stating the extent of the exemption.

"(c) A certificate of exemption issued under subsection (b) of this section shall be maintained as required by the Secretary.

"§ 5109. Reciprocity for foreign vessels

"(a) When the Secretary finds that the laws and regulations of a foreign country related to load lines are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to an international load line agreement to which the United States Government is a party, the Secretary shall accept the load line marks and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter. The Secretary may control the vessel as provided for in the applicable international agreement.

"(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize load lines assigned under this chapter.

"§ 5110. Submersible vessels

"Notwithstanding sections 5103-5105 of this title, the Secretary may prescribe regulations for submersible vessels to provide a minimum level of safety. In developing the regulations, the Secretary shall consider factors relevant to submersible vessels, including the structure, stability, and watertight integrity of those vessels.

"§ 5111. Providing loading information

"The Secretary may prescribe regulations requiring the owner, charterer, managing operator, and agent of a vessel to provide loading information (including information on loading distribution, stability, and margin of strength) to the master or individual in charge of the vessel in a language the master or individual understands.

"§ 5112. Loading restrictions

"(a) A vessel may not be loaded in a way that submerges the assigned load line or the place at which the load line is required to be marked on the vessel.

"(b) If the loading or stability conditions of a vessel change, the master or individual in charge of the vessel, before moving the vessel, shall record in the official logbook or other permanent record of the vessel—

"(1) the position of the assigned load line relative to the water surface; and

"(2) the draft of the vessel fore and aft.

"(c) A vessel may be operated only if the loading distribution, stability, and margin of strength are adequate for the voyage or movement intended.

"(d) Subsections (a) and (b) of this section do not apply to a submersible vessel.

"§ 5113. Detention of vessels

"(a) When the Secretary believes that a vessel is about to leave a place in the United States in violation of this chapter or a regulation prescribed under this chapter, the Secretary may detain the vessel by giving notice to the owner, charterer, managing operator, agent, master, or individual in charge of the vessel.

"(b) A detained vessel may be cleared under section 4197 of the Revised Statutes (46 App. U.S.C. 91) only after the violation has been corrected. If the vessel was cleared before being detained, the clearance shall be withdrawn.

"(c) Under regulations prescribed by the Secretary, the owner, charterer, managing operator, agent, master, or individual in charge of a detained vessel may petition the Secretary to review the detention order.

"(d) After reviewing a petition, the Secretary may affirm, withdraw, or change the detention order. Before acting on the petition, the Secretary may require any independent survey that may be necessary to determine the condition of the vessel.

"(e) The owner of a vessel is liable for the cost incident to a petition for review and any required survey if the vessel is found to be in violation of this chapter or a regulation prescribed under this chapter.

"§ 5114. Use of Customs Service officers and employees for enforcement

"(a) With the approval of the Secretary of the Treasury, the Secretary may use an officer or employee of the United States Customs Service to enforce this chapter and the regulations prescribed under this chapter.

"(b) The Secretary shall consult with the Secretary of the Treasury before prescribing a regulation that affects the enforcement responsibilities of an officer or employee of the Customs Service.

"§ 5115. Regulations

"(a) The Secretary may prescribe regulations to carry out this part.

"§ 5116. Penalties

"(a) Except as otherwise provided in this section, the owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this chapter or a regulation prescribed under this chapter are each liable to the United States Government for a civil penalty of not more than $5,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

"(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel allowing, causing, attempting to cause, or failing to take reasonable care to prevent a violation of section 5112(a) of this title are each liable to the Government for a civil penalty of not more than $10,000 plus an additional amount equal to twice the economic benefit of the overloading. The vessel also is liable in rem for the penalty.

"(c) The master or individual in charge of a vessel violating section 5112(b) of this title is liable to the Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

"(d) A person causing or allowing the departure of a vessel from a place within the jurisdiction of the United States in violation of a detention order issued under section 5113 of this title shall be fined not more than $10,000, imprisoned for not more than one year, or both.

"(e) A person causing or allowing the alteration, concealment, or removal of a mark placed on a vessel under section 5103(b) of this title and the regulations prescribed under this chapter, except to make a lawful change or to escape enemy capture in time of war, shall be fined not more than $10,000, imprisoned for not more than 2 years, or both.".

(3) Immediately after part I, strike "[PART J—RESERVED FOR MEASUREMENT OF VESSELS]" and insert the following new part J:

"PART J—MEASUREMENT OF VESSELS

"CHAPTER 141—GENERAL

"Sec.

"14101. Definitions.

"14102. Regulations.

"14103. Delegation of authority.

"14104. Measurement to determine application of a law.

"§ 14101. Definitions

"In this part—

"(1) 'Convention' means the International Convention on Tonnage Measurement of Ships, 1969.

"(2) 'existing vessel' means a vessel the keel of which was laid or that was at a similar stage of construction before July 18, 1982.

"(3) 'Great Lakes' means—

"(A) the Great Lakes; and

"(B) the St. Lawrence River west of—

"(i) a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island; and

"(ii) on the north side of Anticosti Island, the meridian of longitude 63 degrees west.

"(4) 'vessel engaged on a foreign voyage' means a vessel—

"(A) arriving at a place under the jurisdiction of the United States from a place in a foreign country;

"(B) making a voyage between places outside the United States (except a foreign vessel engaged on that voyage);

"(C) departing from a place under the jurisdiction of the United States for a place in a foreign country; or

"(D) making a voyage between a place within a territory or possession of the United States and another place under the jurisdiction of the United States not within that territory or possession.

"§ 14102. Regulations

The Secretary may prescribe regulations to carry out this part.

"§ 14103. Delegation of authority

"(a) The Secretary may delegate to a qualified person the authority to measure a vessel and issue an International Tonnage Certificate (1969) or other appropriate certificate of measurement under this part.

"(b) Under regulations prescribed by the Secretary, a decision of the person delegated authority under subsection (a) of this section related to measuring a vessel or issuing a certificate may be appealed to the Secretary.

"(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the Convention the authority to measure the vessel and issue an International Tonnage Certificate (1969) under chapter 143 of this title.

"(d) The Secretary may terminate a delegation made under this section after giving written notice to the person.

"§ 14104. Measurement to determine application of a law

"When the application of a law of the United States to a vessel depends on the vessel's tonnage, the vessel shall be measured under this part.

"CHAPTER 143—CONVENTION MEASUREMENT

"Sec.
"14301. Application.
"14302. Measurement.
"14303. International Tonnage Certificate (1969).
"14304. Remeasurement.
"14305. Optional regulatory measurement.
"14306. Reciprocity for foreign vessels.
"14307. Inspection of foreign vessels.

"§ 14301. Application

"(a) Except as otherwise provided in this section, this chapter applies to the following:

"(1) a documented vessel.

"(2) a vessel that is to be documented under chapter 121 of this title.

"(3) a vessel engaged on a foreign voyage.

"(b) This chapter does not apply to the following:

"(1) a vessel of war.

"(2) a vessel of less than 24 meters (79 feet) overall in length.

"(3) a vessel operating only on the Great Lakes, unless the owner requests.

"(4) a vessel (except a vessel engaged on a foreign voyage) the keel of which was laid or that was at a similar stage of construction before January 1, 1986, unless—

"(A) the owner requests; or

"(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

"(5) before July 19, 1994, an existing vessel unless—

"(A) the owner requests; or

"(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

"(c) A vessel made subject to this chapter at the request of the owner may be remeasured only as provided by this chapter.

"(d) After July 18, 1994, an existing vessel (except an existing vessel referred to in subsection (b)(5) (A) or (B) of this section) may retain its tonnages existing on July 18, 1994, for the application of relevant requirements under international agreements (except the Convention) and other laws of the United States. However, if the vessel undergoes a change substantially affecting its tonnage after July 18, 1994, the vessel shall be remeasured under this chapter.

"(e) This chapter does not affect an international agreement to which the United States Government is a party that is not in conflict with the Convention or the application of IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, and A.541 (XIII) of November 17, 1983.

"§ 14302. Measurement

"(a) The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter and the Convention.

"(b) A vessel measured under this chapter may not be required to be measured under another law.

"(c) Unless otherwise provided by law, the measurement of a vessel under this chapter applies to a law of the United States whose applicability depends on a vessel's tonnage, if that law—

"(1) becomes effective after July 18, 1994; or

"(2) is in effect before July 19, 1994, is not enumerated in section 14305 of this title, and is identified by the Secretary by regulation as a law to which this chapter applies.

"§ 14303. International Tonnage Certificate (1969)

"(a) After measuring a vessel under this chapter, the Secretary shall issue, on request of the owner, an International Tonnage Certificate (1969) and deliver it to the owner or master of the vessel.

"(b) The certificate shall be maintained as required by the Secretary.

"§ 14304. Remeasurement

"(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

"(1) the Secretary or the owner alleges an error in its measurement; or

"(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage.

"(b) Except as provided in this chapter or section 14504 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

"§ 14305. Optional regulatory measurement

"(a) On request of the owner of a documented vessel measured under this chapter, the Secretary also shall measure the vessel under chapter 145 of this title. The tonnages determined under that chapter shall be used in applying—

"(1) parts A, B, C, E, F, and G and sections 12106(c) and 12108(c) of this title;

"(2) section 3(d)(3) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 903(d)(3));

"(3) section 4 of the Bridge to Bridge Radiotelephone Act (33 U.S.C. 1203(a));

"(4) section 4(a)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)(3));

"(5) section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183);

"(6) sections 27 and 27A of the Act of June 5, 1920 (46 App. U.S.C. 883 and 883-1);

"(7) Act of July 14, 1956 (46 App. U.S.C. 883a);

"(8) sections 351, 352, 355, and 356 of the Ship Radio Act (47 U.S.C. 351, 352, 354, and 354a);

"(9) section 403 of the Commercial Fishing Industry Vessel Act (46 U.S.C. 3302 note);

"(10) the Officers' Competency Certificates Convention, 1936, and sections 8303 and 8304 of this title;

"(11) the International Convention for the Safety of Life at Sea as provided by IMCO Resolution A.494 (XII) of November 19, 1981;

"(12) the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as provided by IMO Resolution A.540 (XIII) of November 17, 1983;

"(13) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as provided by IMO Resolution A.541 (XIII) of November 17, 1983;

"(14) provisions of law establishing the threshold tonnage levels at which evidence of financial responsibility must be demonstrated; or

"(15) unless otherwise provided by law, any other law of the United States in effect before July 19, 1994, and not listed by the Secretary under section 14302(c) of this title.

"(b) As long as the owner of a vessel has a request in effect under subsection (a)(1) of this section, the tonnages determined under that request shall be used in applying the other provisions of law described in subsection (a)(1) to that vessel.

"§ 14306. Reciprocity for foreign vessels

"(a) When the Secretary finds that the laws and regulations of a foreign country related to measurement of vessels are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to the Convention, the Secretary shall accept the measurement and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter.

"(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize measurements under this chapter. The Secretary may apply measurement standards the Secretary considers appropriate to the vessel, subject to applicable international agreements to which the United States Government is a party.

"§ 14307. Inspection of foreign vessels

"(a) The Secretary may inspect a vessel of a foreign country to verify that—

"(1) the vessel has an International Tonnage Certificate (1969) and the main characteristics of the vessel correspond to the information in the certificate; or

"(2) if the vessel is from a country not a party to the Convention, the vessel has been measured under laws and regulations similar to those of this chapter and the regulations prescribed under this chapter.

"(b) For a vessel of a country that is a party to the Convention, if the inspection reveals that the vessel does not have an International Tonnage Certificate (1969) or that the main characteristics of the vessel differ from those stated on the certificate or other records in a way that increases the gross or net tonnage of the vessel, the Secretary promptly shall inform the country whose flag the vessel is flying.

"(c) For a vessel of a country not a party to the Convention—

"(1) if the vessel has been measured under laws and regulations that the Secretary finds are similar to those of this chapter and the regulations prescribed under this chapter, the vessel shall be deemed to have been issued an International Tonnage Certificate (1969); and

"(2) if the vessel has not been measured as described in clause (1) of this subsection, the Secretary may measure the vessel.

"(d) An inspection under this section shall be conducted in a way that does not delay a vessel of a country that is a party to the Convention.

"CHAPTER 145—REGULATORY MEASUREMENT

"SUBCHAPTER I—GENERAL

"Sec.
"14501. Application.
"14502. Measurement.
"14503. Certificate of measurement.
"14504. Remeasurement.

"SUBCHAPTER II—FORMAL SYSTEMS

"14511. Application.
"14512. Standard tonnage measurement.
"14513. Dual tonnage measurement.

"SUBCHAPTER III—SIMPLIFIED SYSTEM

"14521. Application.
"14522. Measurement.

"SUBCHAPTER I—GENERAL

"§ 14501. Application

"This chapter applies to the following:

"(1) a vessel not measured under chapter 143 of this title if—

"(A) the vessel is to be documented under chapter 121 of this title; or

"(B) the application of a law of the United States to the vessel depends on the vessel's tonnage.

"(2) a vessel measured under chapter 143 of this title if the owner requests that the vessel also be measured under this chapter as provided in section 14305 of this title.

"§ 14502. Measurement

"The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter.

"§ 14503. Certificate of measurement

"The Secretary shall prescribe the certificate to be issued as evidence of a vessel's measurement under this chapter.

"§ 14504. Remeasurement

"(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

"(1) the Secretary or the owner alleges an error in its measurement;

"(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage;

"(3) after being measured under subchapter III of this chapter, the vessel becomes subject to subchapter II of this chapter because the vessel or its use is changed; or

"(4) although not required to be measured under subchapter II of this chapter, the vessel was measured under subchapter II and the owner requests that the vessel be measured under subchapter III of this chapter.

"(b) Except as provided in this section and chapter 143 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

"SUBCHAPTER II—FORMAL SYSTEMS

"§ 14511. Application

"This subchapter applies to a vessel described in section 14501 of this title if—

"(1) the owner requests; or

"(2) the vessel is—

"(A) self-propelled;

"(B) at least 24 meters (79 feet) overall in length; and

"(C) not operated only for pleasure.

"§ 14512. Standard tonnage measurement

"(a) The Secretary shall prescribe regulations for measuring the gross and net tonnages of a vessel under this subchapter. The regulations shall provide for tonnages comparable to the tonnages that could have been assigned under sections 4151 and 4153 of the Revised Statutes of the United States, as sections 4151 and 4153 existed immediately before the enactment of this section.

"(b) On application of the owner or master of a vessel of the United States used in foreign trade, the Secretary may attach an appendix to the vessel's register stating the measurement of spaces that may be deducted from gross tonnage under laws and regulations of other countries but not under those of the United States.

"§ 14513. Dual tonnage measurement

"(a) On application by the owner and approval by the Secretary, the tonnage of spaces prescribed by the Secretary may be excluded in measuring under this section the gross tonnage of a vessel measured under section 14512 of this title. The spaces prescribed by the Secretary shall be comparable to the spaces that could have been excluded under section 2 of the Act of September 29, 1965 (Public Law 89-219, 79 Stat. 891), as section 2 existed immediately before the enactment of this section.

"(b) The Secretary shall prescribe the design, location, and dimensions of the tonnage mark to be placed on a vessel measured under this section.

"(c)(1) If a vessel's tonnage mark is below the uppermost part of the load line marks, each certificate stating the vessel's tonnages shall state the gross and net tonnages when the mark is submerged and when it is not submerged.

"(2) Except as provided in paragraph (1) of this subsection, a certificate stating a vessel's tonnages may state only one set of gross and net tonnages.

"SUBCHAPTER III—SIMPLIFIED SYSTEM

"§ 14521. Application

"This subchapter applies to a vessel described in section 14501 of this title that is not measured under subchapter II of this chapter.

"§ 14522. Measurement

"(a) In this section, "length" means the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

"(b)(1) The Secretary shall assign gross and net tonnages to a vessel based on its length, breadth, depth, other dimensions, and appropriate coefficients.

"(2) The Secretary shall prescribe the way dimensions (except length) are measured and which coefficients are appropriate.

"(c) The resulting gross tonnages, taken as a group, reasonably shall reflect the relative internal volumes of the vessels measured under this subchapter. The resulting net tonnages shall be in approximately the same ratios to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under subchapter II of this chapter.

"(d) Under regulations prescribed by the Secretary, the Secretary may determine the gross and net tonnages of a vessel representative of a designated class, model, or type, and then assign those gross and net tonnages to other vessels of the same class, model, or type.

"CHAPTER 147—PENALTIES

"Sec.
"14701. General violation.
"14702. False statements.

"§ 14701. General violation

"The owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this part or a regulation prescribed under this part are each liable to the United States Government for a civil penalty of not more than $20,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

"§ 14702. False statements

"A person knowingly making a false statement or representation in a matter in which a statement or representation is required by this part or a regulation prescribed under this part is liable to the United States Government for a civil penalty of not more than $20,000 for each false statement or representation. The vessel also is liable in rem for the penalty.".

CONFORMING AND MISCELLANEOUS AMENDMENTS

SEC. 6302. (a) Title 14, United States Code, is amended as follows:

(1) In the analysis of chapter 17, add the following after item 663:

"664. User fees.".

(2) In section 651, strike "preceding fiscal year." and substitute "preceding fiscal year, including amounts collected as provided under section 664 of this title.".

(3) After section 663, add the following new section:

"§ 664. User fees

"(a) Amounts collected under section 9701 of title 31 or another law by the Secretary for a service or thing of value provided by the Coast Guard shall be deposited in the general fund of the Treasury as proprietary receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

"(b) A fee charged for a service or thing of value provided by the Coast Guard must be—

"(1) prescribed as provided under section 9701 of title 31; and

"(2) based on the following:

"(A) fairness;

"(B) the costs to the United States Government;

"(C) the value of the service or thing to the recipient;

"(D) equity among transportation modes;

"(E) effect on the ability of the Coast Guard to perform its duties or functions under this title;

"(F) public policy or interest served; and

"(G) other relevant factors.

"(c) A fee may not be charged for a service or thing of value provided by the Coast Guard if the service or thing of value—

"(1) is required for national defense or emergency search and rescue;

"(2) benefits a large segment of the public; or

"(3) is actually performed by the private sector.

"(d) The Secretary may grant an exemption from the user fee requirements of this section to a person subject to a fee.

"(e) Before January 1 of each year, the Secretary shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate that includes—

"(1) a verification of each activity for which a user fee is collected stating—

"(A) the amount collected in the prior fiscal year; and

"(B) that the amount spent on that activity in that fiscal year are not less than the amount collected; and

"(2) the amount expected to be collected in the current fiscal year for each activity for which a fee is expected to be charged.".

(b) Title 46, United States Code, is amended as follows:

(1) In section 2101—

(A) between clauses (20) and (21), insert the following new clause:

"(20a) 'overall in length' means—

"(A) for a foreign vessel or a vessel engaged on a foreign voyage, the greater of—

"(i) 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the keel (or on a vessel designed with a rake of keel, on a waterline parallel to the designed waterline); or

"(ii) the length from the fore side of the stem to the axis of the rudder stock on that waterline; and

"(B) for any other vessel, the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments."; and

(B) add at the end the following new clause:

"(47) 'vessel of war' means a vessel—

"(A) belonging to the armed forces of a country;

"(B) bearing the external marks distinguishing vessels of war of that country;

"(C) under the command of an officer commissioned by the government of that country and whose name appears in the appropriate service list or its equivalent; and

"(D) staffed by a crew under regular armed forces discipline.".

(2) Section 2102 is amended by striking "chapters 43" and substituting "chapters 37, 43, 51,".

(3) In section 2109, strike "This" and substitute "Except as otherwise provided, this".

(4) In section 2110—

(A) strike "examination of vessels" and substitute "examination of vessels under part B of this subtitle"; and

(B) strike "measurement or".

(5) Section 3701 (5) and (6) is repealed.

(6) In section 12102—

(A) insert the subsection designation "(a)" at the beginning of the text of the section; and

(B) add at the end of the section the following new subsection:

"(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary may issue a temporary certificate of documentation for a vessel before it is measured.".

MISCELLANEOUS PROVISIONS

SEC. 6303. (a) Laws effective after January 1, 1986, that are inconsistent with this subtitle supersede this subtitle to the extent of the inconsistency.

(b) A reference to a law replaced by this subtitle, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this subtitle.

(c) An order, rule, or regulation in effect under a law replaced by this subtitle continues in effect under the corresponding provision of this subtitle until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by this subtitle is deemed to have been taken or committed under the corresponding provision of this subtitle.

(e) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by this subtitle.

(f) If a provision enacted by this subtitle is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this subtitle is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.

(g) The Secretary of Transportation shall—

(1) Before July 19, 1990, submit to Congress—

(A) a study of—

(i) the impact of applying vessel tonnage determined under chapter 143 of title 46 (as enacted by section 6301 of this subtitle), United States Code, in laws of the United States that contain provisions based on tonnage, including an analysis of the number and types of vessels that would become subject to additional laws or more stringent requirements because of that application; and

(ii) the extent to which the tonnage thresholds in laws of the United States whose application is based on tonnage would have to be raised so that additional vessels would not become subject to those laws if their application is based on tonnage determined under chapter 143; and

(B) a recommendation of the levels to which the tonnage thresholds in laws of the United States whose application is based on tonnage should be raised if a complete conversion to the International Convention measurement system under chapter 143 is made.

(2) in conducting the study under clause (1) of this subsection, consult with representatives of the private sector having experience with the operation of vessels likely to be affected by laws of the United States whose application is based on tonnage.

(3) before July 19, 1988, submit to Congress an interim progress report on the study conducted under clause (1) of this subsection.

REPEALS

SEC. 6304. (a) The repeal of a law by this subtitle may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this subtitle:

Revised Statutes

Revised Statutes Section	United States Code	Title Section
4148	46 App.	71
4149	46 App.	72
4151	46 App.	75
4153	46 App.	77
4154	46 App.	81

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		United States Code	
			Volume	Page	Title	Section
Aug. 5 1882	398	2	22	300	46 App.	81
Aug. 27 1935	747		49	888	46 App.	88-88i
Sept. 29 1965	89-219		79	891	46 App.	72, 74, 77, 83-83k
Oct. 1 1973	93-115		87	418	46 App.	86-86i
Sept. 10 1976	94-406	8	90	1236	46 App.	420

Subtitle E—Adjustment of the U.S. Investment Base in the Panama Canal on Which Interest Payments to the U.S. Treasury Are Computed

SEC. 6401. U.S. INVESTMENT INCREASE.

Section 1603(b) of the Panama Canal Act of 1979 (22 U.S.C. 3793(b)) is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and by inserting in lieu thereof "; and", and by adding at the end the following:

"(3) the investment of the United States shall also be increased by the amount of tolls and other receipts that covers interest on the investment of the United States and that has been or is deposited in the Panama Canal Commission Fund as of December 31, 1985.".

SEC. 6402. EFFECTIVE DATE.

The amendment made by section 6401 shall apply to the United States investment beginning on January 1, 1986.

Subtitle F—Comprehensive Oil Pollution Liability and Compensation

SEC. 6501. SHORT TITLE.

This subtitle may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

PART 1—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 6501. DEFINITIONS.

For purposes of this part, the term—

(1) "claim" means a demand in writing for a sum certain;

(2) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(3) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(4) "facility" means a structure, or group of structures, which is either—

(A) located, in whole or in part, on the Outer Continental Shelf and used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf, or

(B) licensed under the Deepwater Port Act of 1974;

(5) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(6) "foreign offshore unit" means a structure or group of structures located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country contiguous to the United States and used for the purpose of exploring for, drilling for, producing, storing, handling, transferring, processing or transporting oil produced from the seabed beneath that territorial sea or from that continental shelf;

(7) "guarantor" means the person, other than the responsible party, who provides evidence of financial responsibility for a responsible party;

(8) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, which causes, or poses a substantial threat, of oil pollution;

(9) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo or in residue from cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(10) "internal waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway;

(11) "lessee" means a person holding a leasehold interest in an oil and gas lease on submerged lands of the outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act;

(12) "licensee" means a person holding a license issued under the Deepwater Port Act of 1974;

(13) "mobile offshore drilling unit" means every watercraft or other contrivance (other than a public vessel of the United States) capable of use as a means of transportation on water and as a means of drilling for oil on the outer Continental Shelf;

(14) "natural resources" means living and nonliving resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(15) "navigable waters" means the waters of the United States, including the territorial sea;

(16) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(17) "oil pollution" means—

(A) the presence of oil in or on the navigable waters or on land within the United States immediately adjacent thereto, or in or on the waters of the contiguous zone—

(i) which has been discharged from a vessel or facility; and

(ii) which has been discharged in quantities which the President has determined may be harmful pursuant to paragraph (4) of subsection (b) of section 311 of the Federal Water Pollution Control Act;

(B) the presence of oil (other than natural seepage) in or on waters outside the territorial limits of the United States and of any foreign country—

(i) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(ii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or from a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port licensed under such Act;

(iii) causing injury to or loss of natural resources; or

(iv) which has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States; and

(C) the presence of oil (other than natural seepage) in or on the waters, including the territorial sea, or adjacent shoreline, of a foreign country—

(i) which has been discharged from a vessel located within the navigable waters;

(ii) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(iii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port under such Act; or

(iv) which, in the case of the waters or adjacent shoreline of Canada, has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States;

(18) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of a pipeline, any person, except the owner, who is responsible for the operation of such pipeline by agreement with the owner;

(19) "Outer Continental Shelf" has the meaning set forth in subsection (a) of section 2 of the Outer Continental Shelf Lands Act;

(20) "owner" means, in the case of a vessel or a pipeline, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel or pipeline, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest in the vessel or pipeline;

(21) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(22) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or any other commercial, legal, or governmental entity;

(23) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government, and

(B) is not engaged in commercial service;

(24) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, and

(B) cleanup costs, other than the costs described in subparagraph (A);

(25) "responsible party" means—

(A) with respect to a vessel or a pipeline, the owner or operator of such vessel or pipeline;

(B) with respect to a facility (other than a deepwater port or pipeline), the lessee or permittee of the area in which such facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which such facility is located where such holder is a different person than the lessee or permittee; and

(C) with respect to a deepwater port, the licensee;

(26) "Secretary" means the Secretary of Transportation;

(27) "ship" means a vessel (other than an inland oil barge) carrying oil in bulk as cargo or in residue from cargo;

(28) "Trust Fund" means the Oil Spill Liability Trust Fund established by section 9505 of the Internal Revenue Code of 1954;

(29) "United States" and "State" mean the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(30) "United States claimant" means any person residing in the United States, the Government of the United States or any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim; and

(31) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 6502. COORDINATION WITH INTERNATIONAL CONVENTIONS.

During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compen-

sation for Oil Pollution Damage, 1984, are in force with respect to the United States, this part shall not apply with respect to damage arising out of or directly resulting from oil pollution or a substantial threat of oil pollution to the extent that compensation is available under such conventions and part 4.

SEC. 6503. DAMAGES AND CLAIMANTS.

(a) DAMAGES FOR WHICH CLAIMS MAY BE ASSERTED.—Claims may be asserted, to the extent provided in this section, for damages for economic loss incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution or the substantial threat of oil pollution for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) reasonable costs incurred in (A) assessing both short-term and long-term injury to, or destruction of, natural resources, (B) preparing a restoration and acquisition plan with respect to the damaged resources, and (C) restoring or acquiring the equivalent of the damaged resources;

(4) loss of subsistence use of natural resources;

(5) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages are sustained during the two-year period beginning on the date the claimant first suffers such loss; and

(6) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) REMOVAL COSTS RECOVERABLE BY ALL CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (1) of subsection (a) by any person.

(2) LIMITATION ON RECOVERY BY RESPONSIBLE PARTY.—(A) The responsible party with respect to a vessel or facility involved in an incident may assert a claim under paragraph (1) of subsection (a) only if he can show that—

(i) he is entitled to a defense to liability under section 6504(c), or

(ii) he is entitled to a limitation of liability under section 6504(b).

(B) A claimant who is not entitled to a defense to liability, but who is entitled to a limitation of liability, may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under section 6504(a) and removal costs incurred by, or on behalf of, the responsible party is limited under section 6504(b).

(c) OTHER DAMAGES RECOVERABLE BY UNITED STATES CLAIMANTS.—

(1) INJURY TO PROPERTY; SUBSISTENCE USE OF NATURAL RESOURCES.—A claim may be asserted under paragraphs (2) and (4) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 6501(17) by any United States claimant, but only if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant.

(2) INJURY TO NATURAL RESOURCES.—A claim may be asserted under paragraph (3) of subsection (a) by the President as trustee for natural resources controlled by the United States or by the Governor of any State for natural resources within the boundary of the State and controlled by the State or a local government within the State.

(3) LOSS OF PROFITS.—A claim may be asserted under paragraph (5) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 6501(17) by any United States claimant, but only if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource or, if such activities are seasonal in nature, 25 percent of the claimant's earnings during the season in which such activities took place.

(4) LOSS OF TAX REVENUE.—A claim may be asserted under paragraph (6) of subsection (a) only by a State or political subdivision thereof.

(d) OTHER DAMAGES RECOVERABLE BY FOREIGN CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) with respect to oil pollution described in subparagraph (C) of section 6501(17) by a foreign claimant who is a resident of the country in which the oil pollution occurs, to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraph (A) of section 6501(17), if—

(A) the foreign claimant is not otherwise compensated for his loss; and

(B) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country of which the claimant is a resident, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(2) SPECIAL RULE FOR CANADIAN CLAIMANTS RESPECTING TRANS-ALASKA PIPELINE OIL.—In the case of any oil pollution described in section 6501(17)(B)(iv) or 6501(17)(C)(iv), a claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) by a resident of Canada without regard to subparagraph (B) of paragraph (1), to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraphs (A) and (B) of section 6501(17).

(e) ATTORNEY GENERAL.—A claim may be asserted under subsection (a) by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this section.

(f) GROUP OF CLAIMANTS.—If the Attorney General fails to act under subsection (e) within sixty days after the date on which the Secretary designates a source under section 6506, any member of a group may assert a claim for damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any claim for damages asserted under this section.

SEC. 6504. LIABILITY.

(a) JOINT, SEVERAL, AND STRICT LIABILITY.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection and subsections (b) and (c), the responsible party with respect to a facility or a vessel (other than a public vessel) that is the source of oil pollution, or poses a substantial threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 6501(24)(A), shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 6503.

(2) SPECIAL RULE FOR MODU'S.—(A) Except as provided in subparagraph (B), in any case in which a mobile offshore drilling unit is being used as a facility and is the source of oil pollution originating on or above the surface of the water or poses a substantial threat of such oil pollution, such unit shall be deemed to be a vessel which is a ship for purposes of this part.

(B) To the extent that damages for which claims may be asserted under section 6503 from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (b)(1)(B)), the mobile offshore drilling unit shall be deemed to be a facility covered by subsection (b)(1)(D), except that for purposes of applying subsection (b)(1)(D) the amount specified in such subsection shall be reduced by the amount for which the responsible party with respect to a ship is liable under subparagraph (A).

(C) In the case of any incident described in subparagraph (A)—

(i) which is caused primarily by willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the mobile offshore drilling unit and the lessee or permittee of the area, or holder of a right of use or easement for the area, in which such unit is located; or

(ii) with respect to which both such owner or operator and such lessee or permittee or holder fail or refuse to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities; such owner or operator and such lessee or permittee or holder shall be jointly, severally, and strictly liable (without limitation under subsection (b)) for all loss for which a claim may be asserted under section 6503.

(b) LIMITS ON LIABILITY.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to an incident shall be limited to—

(A) in the case of a vessel other than a ship or an inland oil barge, $500,000 or $300 per gross ton whichever is greater;

(B) in the case of a ship, $3,000,000 or $420 per gross ton, whichever is greater (but not to exceed $60,000,000);

(C) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater; or

(D) in the case of a facility, $50,000,000.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) when the incident is caused primarily by willful misconduct or gross negligence within the privity or knowledge of a responsible party; or

(B) when a responsible party fails or refuses to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

(3) REPORT.—The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations on liability specified in this subsection.

(c) DEFENSES TO LIABILITY.—

(1) COMPLETE DEFENSES.—Except when the responsible party has failed or refused to report an incident where required by law, there shall be no liability under subsection (a) if the responsible party proves that the incident—

(A) resulted from an act of war, hostilities, civil war, insurrection, or a natural phe-

nomenon of an exceptional, inevitable, and irresistible character, or

(B) was wholly caused by an act or omission of a person other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) PARTIAL DEFENSES.—There shall be no liability under subsection (a)—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(d) LIABILITY OF TRUST FUND.—

(1) GENERAL RULE.—The Trust Fund shall be liable for damages for which claims may be asserted under section 6503 and for which claims are presented under this part, to the extent that the damages are not otherwise compensated.

(2) FOREIGN OFFSHORE UNIT.—In any case where oil, which has been discharged from a foreign offshore unit, causes any economic loss of a type compensable under section 6503 to any United States claimant, the Trust Fund shall be liable to that United States claimant as if the economic loss arose out of or directly resulted from oil pollution or the substantial threat of oil pollution.

(3) CLAIMS EXCEEDING CONVENTION LIABILITY.—During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States, the Trust Fund shall be liable for claims for damages by United States claimants under this part which exceed the compensation available under those conventions.

(4) DEFENSES TO LIABILITY.—Except for the removal costs specified in section 6501(24)(A), there shall be no liability under paragraph (1), (2), or (3)—

(A) where the incident is caused wholly by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or the economic loss is caused by the negligence of that claimant.

(e) LIABILITY FOR INTEREST.—

(1) GENERAL RULE.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under section 6503 for the period described in paragraph (2).

(2) PERIOD FOR WHICH INTEREST IS OWED.—(A) Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claimant is paid, inclusive.

(B) If the responsible party or guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within sixty days after the date upon which the claim is presented, or of the date upon which advertising is begun pursuant to section 6506, whichever is later, the period described in subparagraph (A) shall not include any period before such offer is accepted.

(3) RATE OF INTEREST.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(4) RELATIONSHIP TO LIABILITY LIMITS.—Interest under this subsection shall be in addition to damages for which claims may be asserted under section 6503 and shall be paid without regard to any limitation of liability under subsection (b). The payment of interest under this subsection by a guarantor shall be subject to section 6505(e).

(f) AGREEMENTS.—

(1) LIABILITY NOT TRANSFERABLE.—A responsible party may not transfer the liability imposed under this section to any other person.

(2) INDEMNIFICATION AGREEMENTS.—Nothing in this subtitle shall preclude an agreement whereby a person who, by an agreement with a responsible party, agrees to indemnify the responsible party for the liability imposed under subsection (a).

(g) RELATIONSHIP TO OTHER CAUSES OF ACTION.—Nothing in this part shall bar a cause of action that a responsible party subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(h) RELATIONSHIP TO OTHER LAW.—To the extent that it is in conflict with, or otherwise inconsistent with, any other law (other than part 5 or any amendment made by part 5) relating to liability or the limitation thereof, this section supersedes such other law.

(i) ADMINISTRATIVE COSTS.—The Trust Fund shall not be available for the payment of costs and expenses of administration of this subtitle, unless such costs and expenses are necessary for and incidental to the implementation of this subtitle.

SEC. 6505. FINANCIAL RESPONSIBILITY.

(a) VESSELS.—

(1) REQUIREMENT.—The responsible party with respect to each vessel (except a public vessel or a non-self-propelled vessel that does not carry oil as cargo or fuel) over three hundred gross tons that uses a facility or the navigable waters shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum liability under section 6504 to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 6504. In cases where a responsible party owns or operates more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (B) detain at the facility or at the port or place in the United States, any vessel subject to this subsection that, upon request, does not produce the certification required under this subsection or regulations issued hereunder.

(b) FACILITIES.—The responsible party with respect to each facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 6504. In cases where the responsible party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) METHODS.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods acceptable to the Secretary: evidence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(d) CLAIMS AGAINST GUARANTOR.—Any claim authorized by section 6503(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this part. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this part shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SEC. 6506. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the Secretary receives information of an incident that involves oil pollution, he shall, where possible and appropriate, designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.—If a responsible party or guarantor fails to inform the Secretary, within five days after receiving notifi-

cation of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. Advertisement under the preceding sentence shall begin no later than fifteen days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than thirty days.

(c) ADVERTISEMENT BY THE SECRETARY.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Trust Fund.

SEC. 6507. CLAIMS SETTLEMENT.

(a) PRESENTATION TO RESPONSIBLE PARTY OR GUARANTOR.—Except as provided in subsection (b), all claims shall be presented to the responsible party or guarantor of the source designated under section 6506(a).

(b) PRESENTATION TO TRUST FUND.—Claims may be presented to the Trust Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 6506(c);

(2) by a responsible party who may assert a claim under section 6503(a);

(3) by the Governor of a State for cleanup costs incurred by that State; or

(4) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Trust Fund is liable under section 6504(d)(2).

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 6506(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Trust Fund. Such an election shall be irrevocable and exclusive.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 6504 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Trust Fund.

(e) TRANSMITTAL OF CLAIM AND DOCUMENTS.—In the case of a claim which has been presented to any person under subsection (a) and which is being presented to the Trust Fund under subsection (c) or (d), that person, at the request of the claimant, shall transmit the claim and supporting documents to the Trust Fund. The Secretary may, by regulation, prescribe the documents to be so transmitted and the terms under which they are to be transmitted.

(f) PROCEDURES.—The Secretary shall establish procedures and standards for the prompt appraisal and settlement of claims against the Trust Fund, including procedures for ensuring the rapid and equitable settlement of claims submitted by the Governor of any State for cleanup costs incurred by that State.

(g) USE OF PRIVATE ORGANIZATIONS AND FEDERAL PERSONNEL.—The Secretary may use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Trust Fund and may contract for those facilities and services. To the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, the Secretary may use Federal personnel, on a reimbursable basis, to process claims against the Trust Fund.

(h) JUDICIAL REVIEW.—Any claimant, or any other person suffering legal wrong because of, or adversely affected or aggrieved by, a final determination of the Secretary with respect to a claim, may bring an action for judicial review of the determination in accordance with chapter 7 of title 5, United States Code. Such action shall be brought under section 6509 and shall be the exclusive judicial remedy with respect to such final determination of the Secretary. Such an action shall be filed not later than thirty days after the Secretary issues notification of the final determination. Venue for any such action shall lie in any district wherein the claimant resides, in addition to any district described in section 6509(b).

(i) ACTIONS AGAINST RESPONSIBLE PARTY OR GUARANTOR.—

(1) SERVICE OF PLEADINGS ON TRUST FUND.—In any action brought under this part against a responsible party or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Trust Fund at the same time those pleadings are served upon the opposing parties.

(2) INTERVENTION OF TRUST FUND.—The Trust Fund may intervene as a party as a matter of right in any action in which a complaint has been served upon it under paragraph (1).

(3) ADMISSION OF LIABILITY.—In any action to which the Trust Fund is a party, if the responsible party or his guarantor admits liability under this part, the Trust Fund shall be dismissed therefrom to the extent of the admitted liability.

(4) EFFECT OF JUDGMENT.—If the Trust Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in paragraph (1), the Trust Fund shall be bound by any judgment entered therein, whether or not the Trust Fund was a party to the action.

(5) FAILURE TO SERVE PLEADINGS.—(A) If the plaintiff fails to serve a copy of the complaint upon the Trust Fund as required by paragraph (1), the plaintiff shall not recover from the Trust Fund any sums not paid by the defendant.

(B) If the defendant fails to serve a copy of the initial answer to a complaint upon the Trust Fund as required by paragraph (1), the limitation of liability otherwise permitted by subsection (b) of section 6504 shall not be available to the defendant.

(C) If neither the plaintiff nor the defendant serves a copy of the complaint and all subsequent pleadings upon the Trust Fund as required in paragraph (1), the Trust Fund may serve a motion for a new trial for the purposes specified in this subparagraph. The motion must be served not later than ten days after the Trust Fund has received notice of the entry of the judgment in the action, but in no case later than ninety days after the entry of that judgment. The Trust Fund must establish in its motion that, due to the failure of the plaintiff or defendant to comply with paragraph (1), the Trust Fund failed to receive timely notice of one or more issues raised in the action, which might affect the liability of the Trust Fund in any case brought under this part. When the Trust Fund does so, the court shall open the judgment, if one has been entered, and shall take additional pleadings and testimony on the identified issue or issues. The court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the action.

(j) JOINDER OF PARTIES.—In any action brought against the Trust Fund the plaintiff may join any responsible party or his guarantor, and the Trust Fund may implead any person, who is or may be liable to the Trust Fund.

(k) PERIOD OF LIMITATIONS.—No claim may be presented, nor may any action be commenced for damages recoverable under this part, unless that claim is presented to, or that action is commenced against, a responsible party or his guarantor or against the Trust Fund as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (a) of section 6503, or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SEC. 6508. SUBROGATION.

(a) RIGHT OF SUBROGATION.—Any person, including the Trust Fund, who compensates any claimant for an economic loss compensable under section 6503 shall be subrogated to all rights, claims, and causes of action which that claimant has under this part.

(b) RECOVERY BY TRUST FUND.—

(1) DENIAL OF SOURCE DESIGNATION OR LIABILITY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 6507(b)(1) or 6507(c)(1), the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant;

(B) interest on that amount for the period beginning on the date on which the claim was first presented by the claimant to the Trust Fund or the responsible party or guarantor and ending on the date on which the Trust Fund is paid by the responsible party or guarantor, except that if the Trust Fund offered to the claimant the amount finally paid by the Trust Fund to the claimant in satisfaction of the claim against the Trust Fund the responsible party or guarantor shall not be liable for interest for the period beginning on the date the Trust Fund made such offer and ending on the date on which the claimant accepted such offer; and

(C) all costs incurred by the Trust Fund by reason of the claim of the claimant against the Trust Fund and by reason of the claim of the Trust Fund against the responsible party or guarantor.

(2) FAILURE TO SETTLE WHERE PAYMENT BY TRUST FUND EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund

has compensated a claimant for a claim presented to the Trust Fund under section 6507(c)(2) where the amount the Trust Fund has paid to the claimant exceeds the largest amount, if any, the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid the claimant, except that the portion of such amount in excess of the amount offered to the claimant by the responsible party or guarantor shall be subject to dispute by the responsible party or guarantor;

(B) interest on the portion of such excess, if any, which is recovered by the Trust Fund, for a period determined in the same manner as in paragraph (1)(B); and

(C) all costs incurred by the Trust Fund by reason of the claim of the Trust Fund against the responsible party or guarantor.

(3) FAILURE TO SETTLE WHERE PAYMENT OF TRUST FUND DOES NOT EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 6507(c)(2) where the amount the Trust Fund has paid to the claimant is less than or equal to the largest amount the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant; and

(B) interest—

(i) for the period beginning on the date on which the claim was presented by the claimant to the responsible party or guarantor and ending on the date on which the responsible party or guarantor offered to the claimant the largest amount referred to in this paragraph, except that if the responsible party or guarantor offered such amount within sixty days after the date upon which the claim of the claimant was presented to the responsible party or guarantor or advertising was commenced under section 6506, whichever is later, the responsible party or guarantor shall not be liable for interest for such period; and

(ii) for the period beginning on the date on which the claim of the Trust Fund against the responsible party or guarantor was presented to the responsible party or guarantor to the date on which the Trust Fund is paid, inclusive, except that if the responsible party or guarantor offers to the Trust Fund the amount finally paid to the Trust Fund in satisfaction of the claim of the Trust Fund, interest shall not be paid for the period beginning on the date on which such offer is made and ending on the date on which the Trust Fund accepts that offer, inclusive.

(4) SPECIAL RULES.—For purposes of this subsection—

(A) interest shall be calculated in accordance with section 6504(e); and

(B) costs recoverable under paragraphs (1)(C) and (2)(C) include, but are not limited to, processing costs, investigating costs, court costs, and attorney's fees.

(c) PAYMENT OF CERTAIN INTEREST TO CLAIMANT.—The Trust Fund shall pay over to the claimant that portion of any interest the Trust Fund recovers under subsections (b)(1)(B) and (b)(2)(B) for the period beginning on the date on which the claim of the claimant was first presented to the Trust Fund or the responsible party or guarantor to the date upon which the claimant was paid by the Trust Fund, inclusive.

(d) APPLICATION OF LIABILITY LIMITS.—The Trust Fund is entitled to recover for all interest and costs specified in subsection (b) without regard to any limitation of liability to which the responsible party or guarantor may otherwise be entitled. The payment of such interest and costs by a guarantor shall be subject to section 6505(e).

SEC. 6509. JURISDICTION AND VENUE.

(a) JURISDICTION.—The United States district courts shall have original jurisdiction over all controversies arising under this part and parts 2 and 3, without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Unless otherwise provided in this subtitle, venue shall lie in any district wherein the injury complained of occurred, or wherein the responsible party or guarantor resides, may be found, or has his principal office. For purposes of this section, the Trust Fund resides in the District of Columbia.

SEC. 6510. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this subtitle, or in section 9505 of the Internal Revenue Code of 1954—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for an economic loss compensable under this part, and

(2) no person may be required to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim compensable under this part.

(b) PRESERVATION OF STATE FUNDS.—Nothing in this subtitle or section 9505 of the Internal Revenue Code of 1954 shall affect the authority of any State to establish or continue in effect, and to require any person to contribute to, a fund a purpose of which is to pay for costs or damages arising out of or directly resulting from oil pollution or the substantial threat of oil pollution.

(c) ACTIONS BY TRUST FUND.—Nothing in subsection (a) shall prohibit an action by the Trust Fund under any other provision of law to recover compensation paid under this part.

(d) NO PREEMPTION OF CIVIL PENALTIES.—Nothing in this subtitle or section 9505 of the Internal Revenue Code of 1954 shall affect the authority of the United States or any State or political subdivision thereof to impose, or to determine the amount of, any fine or penalty for any violation of law relating to the discharge, or substantial threat of a discharge, of oil.

SEC. 6511. PENALTIES.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 6505 or the regulations issued thereunder or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 6512. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning on or after October 1, 1986, such sums as may be necessary to carry out this subtitle.

PART 2—REPORT AND COORDINATION WITH OTHER PROVISIONS

SEC. 6521. ANNUAL REPORT.

The Secretary shall report annually to the Congress on the activities of the Trust Fund during the preceding year. The Secretary shall include in any such report any recommendations for legislative changes needed for the Trust Fund to carry out the purposes of this subtitle.

SEC. 6522. COORDINATION WITH OTHER PROVISIONS OF THIS SUBTITLE.

(a) If any provision of this subtitle provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to the Trust Fund, any claim which arises before the effective date of such transfer (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the Trust Fund.

(b) If any provision of this subtitle authorizes amounts to be expended from the Trust Fund which are not authorized by part 5 (or an amendment made by part 5), such provision shall have no force or effect.

PART 3—REGULATIONS, EFFECTIVE DATES, AND SAVINGS PROVISIONS

SEC. 6531. EFFECTIVE DATES.

(a) PROVISIONS TAKING EFFECT ON DATE OF ENACTMENT.—This section, section 6501, section 6502, section 6512, part 2, section 6532(a)(1) and (3), section 6533, 6534, and each provision of part 1 that authorizes the promulgation of regulations shall be effective on the date of the enactment of this subtitle.

(b) PART 4.—Part 4 shall take effect on the first date on which both the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are in force with respect to the United States.

(c) PROVISIONS TAKING EFFECT IN 180 DAYS.—All other provisions of this subtitle, and the regulations issued under this subtitle, shall take effect 180 days after the date of enactment of this subtitle, except that the penalty prescribed by section 6511 for failure to comply with the requirements of section 6505 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this subtitle, whichever is earlier.

(d) REGULATIONS RESPECTING FINANCIAL RESPONSIBILITY.—Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 6532, and in effect on the day immediately preceding the effective date of section 6532 shall remain in force until superseded by regulations issued under part 1.

SEC. 6532. CONFORMING AMENDMENTS.

(a) TRANS-ALASKA PIPELINE AUTHORIZATION ACT.—(1) The first sentence of subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b); 87 Stat. 586) is amended by inserting "in the State of Alaska" after "any area" and by inserting "related to the trans-Alaska oil pipeline" after "any activities". Such subsection

is further amended by inserting at the end thereof the following new sentence: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 6501 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(2) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed. Such repeal shall not affect the applicability of such subsection to claims arising before the effective date of this paragraph. Notwithstanding section 6531, the repeal of—

(A) paragraph (4) of such subsection (establishing the Trans-Alaska Pipeline Liability Fund),

(B) paragraph (5) of such subsection (to the extent it permits costs of administration to be paid from the Fund and permits amounts in the Fund to be invested), and

(C) paragraph (8) of such subsection (permitting recovery by subrogation),

shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under paragraph (3) of this subsection, the rebate of all remaining amounts under paragraph (3) of this subsection, and the completion of all actions required to carry out paragraph (3) of this subsection.

(3)(A) Not later than 210 days after the date of enactment of this paragraph, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary of Transportation the total amount of claims outstanding against such Fund, as of the effective date of paragraph (2) of this subsection. The amount in the Trans-Alaska Pipeline Liability Fund exceeding the total amount certified under the preceding sentence shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(B) After the settlement of all claims described in subparagraph (A) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in such Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(C) Whenever a rebate is made on a pro rata basis to the owners of oil under subparagraph (A) or (B), each such owner's share of the rebate shall be an amount determined by dividing the amount contributed by such owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to such Fund.

(D) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486; 88 Stat. 10) is amended to read as follows:

"SEC. 17. The Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954 shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 6501 of the Comprehensive Oil Pollution Liability and Compensation Act), or the substantial threat of oil pollution, taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subsection (a) is amended by striking out the period at the end of paragraph (17) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence by inserting after "person" the following: "or his employer".

(3) Subparagraph (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking out "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Subparagraph (B) of paragraph (6) of subsection (b) is amended in the first and second sentences by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge".

(5) Subsection (c)(2)(H) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund".

(6) Subsection (d) is amended by striking out the last sentence.

(7) Subsections (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any discharge of oil resulting in damages for which a claim may be asserted under part 1 of this subtitle.

(8) Subsection (i) is amended by striking out "(1)" after "(i)" and by striking out paragraphs (2) and (3).

(9)(A) Subsection (k) is repealed, effective upon the payment from the fund established by such subsection of all claims certified under subparagraph (B) and all remaining amounts to the general fund of the Treasury under subparagraph (B).

(B) Not later than 180 days after the effective date of this paragraph, the Secretary of Transportation shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the fund established by subsection (k) as of the effective date of this paragraph. The amount in such fund exceeding the total amount certified shall be transferred to the general fund of the Treasury. If the amount paid in settlement of such claims is less than the amount so certified, the remainder shall be transferred to the general fund of the Treasury. Any amounts received by the United States under section 311 with respect to such claims after the effective date of the repeal of subsection (k) shall be deposited in the general fund of the Treasury.

(10) Subsection (l) is amended by striking out the second sentence.

(11) Subsection (p) is repealed.

(12) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Oil Spill Liability Trust Fund.".

(d) DEEPWATER PORT ACT OF 1974.—The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.; 88 Stat. 2126) is amended as follows:

(1) Section 4(c)(1) is amended by striking out "section 18(l) of this Act" and inserting in lieu thereof "section 6505 of the Comprehensive Oil Pollution Liability and Compensation Act".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed and subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d), respectively.

(3) Paragraph (3) of subsection (b) of section 18 (as redesignated by paragraph (2)) is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "Oil Spill Liability Trust Fund.".

(4) Subsection (c) of section 18 (as redesignated by paragraph (2)) is amended to read as follows:

"(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Any amounts remaining in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974 shall be deposited in the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund under the Deepwater Port Act of 1974.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 6533. REGULATIONS AND DELEGATION OF AUTHORITY.

The Secretary of Transportation may prescribe regulations to carry out this subtitle.

SEC. 6534. SEPARABILITY.

If any provision of this subtitle or the applicability thereof is held invalid, the remainder of this subtitle shall not be affected thereby.

PART 4—IMPLEMENTATION OF CONVENTIONS

SEC. 6541. RECOGNITION OF THE INTERNATIONAL FUND.

The International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention is recognized under the laws of the United States as a legal person and shall have the capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be a party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International

Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State his agent for service of process in any action against the International Fund in any court in the United States.

SEC. 6542. SERVICE OF PROCESS AND INTERVENTION.

(a) SERVICE OF PROCESS ON FUNDS.—In any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund and the Oil Spill Liability Trust Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) INTERVENTION.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention.

(c) EFFECT OF JUDGMENT.—If the International Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in subsection (a), the International Fund shall be bound by any judgment entered therein, whether or not the International Fund was a party to the action.

SEC. 6543. EXEMPTION FROM TAXATION.

The International Fund and its assets shall be exempt from all direct taxation in the United States.

SEC. 6544. PAYMENT OF CONTRIBUTIONS.

(a) PAYMENTS TO BE MADE FROM OIL SPILL LIABILITY TRUST FUND.—The amount of any contribution to the International Fund which is required to be made under article 10 of the International Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Trust Fund. Before the International Fund Convention enters into force with respect to the United States, the President shall make, and deposit with the Secretary-General of the International Maritime Organization, a declaration under article 14 of the International Fund Convention that the United States assumes the obligation to pay contributions under article 10 of such Convention in respect of oil received within the territory of the United States and that such amount will be paid from the Oil Spill Liability Trust Fund.

(b) INFORMATION.—The Secretary shall, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal installation, or other installation in the United States under article 10 of the International Fund Convention to provide such information relating to that oil as may be necessary to carry out subsection (a).

SEC. 6545. JURISDICTION OF DISTRICT COURTS.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction of all controversies arising under the Civil Liability Convention or the International Fund Convention in—

(1) the territory, including the territorial sea, of the United States, or

(2) the exclusive economic zone of the United States established by Proclamation Numbered 5030, dated March 10, 1983,

without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For purposes of this subsection, the International Fund shall reside in the District of Columbia.

SEC. 6546. RECOGNITION OF JUDGMENTS.

Any final judgment of a court of any nation which is a party to the Civil Liability Convention or the International Fund Convention in an action for compensation under either such convention shall be recognized by any court of the United States or of a State when that judgment has become enforceable in such nation and is no longer subject to ordinary forms of review, except where—

(1) the judgment was obtained by fraud; or

(2) the defendant was not given reasonable notice and a fair opportunity to present his case.

SEC. 6547. FINANCIAL RESPONSIBILITY.

(a) U.S. DOCUMENTED SHIPS.—The owner of each ship which is documented under the laws of the United States and is carrying more than two thousand tons of oil in bulk as cargo shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The Secretary shall issue a certificate to each such owner who complies with this paragraph, in the form and manner required by the Civil Liability Convention.

(b) U.S. OWNED SHIPS.—With respect to any ship owned by the United States, the Secretary shall issue a certificate stating that the ship is owned by the United States and that the ship's liability is covered within the limits of liability prescribed by the Civil Liability Convention.

(c) OTHER SHIPS.—The owner of each ship (other than a ship to which subsection (a) or (b) applies), wherever registered, which is carrying more than two thousand tons of oil in bulk as cargo and which enters or leaves a port or offshore terminal in the United States (including the territorial seas) shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The owner of a ship which is registered in, or flying the flag of, a nation which is a party to the Civil Liability Convention shall be considered to have met the requirements of this paragraph if the ship is carrying a certificate issued by such nation attesting that insurance or other financial security is in force which meets the requirements of such Convention.

(d) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate showing compliance with the requirements of financial responsibility under subsection (a) or (c).

(e) DENYING ENTRY AND DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the United States, any vessel subject to this section that, upon request, does not produce the certificate required under this section or regulations issued hereunder.

SEC. 6548. CIVIL PENALTY.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 6544(b) or 6547, the regulations issued under either such section, or any denial or detention order under section 6547(e) shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions any civil penalty which is subject to imposition or which has been imposed under this subsection. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 6549. WAIVER OF SOVEREIGN IMMUNITY.

The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the International Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SEC. 6550. RULES AND REGULATIONS.

The Secretary may issue such rules and regulations as are necessary to implement the Civil Liability Convention and the International Fund Convention.

SEC. 6551. DEFINITIONS.

For purposes of this part—

(1) terms defined in part 1 have the same meanings when used in this part;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "International Fund" means the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention; and

(4) the term "International Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

PART 5—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 6561. TAX ON PETROLEUM FOR OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Superfund financing rate is 0.79 cent a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c) for any period an amount equal to the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

"(2) OIL SPILL RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after September 30, 1986, and before October 1, 1990."

(2) Subsection (c) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended by striking the period at the end and inserting the following: "that is attributable to the Superfund financing rate under section 4611(c).".

(3) Subsection (b)(1) of section 221 of the Hazardous Substance Response Revenue Act of 1980 (relating to transfers to Superfund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, subparagraph (A) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c)."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986.

SEC. 6562. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under part 1 of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974,

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

"(c) EXPENDITURES.—

"(1) GENERAL EXPENDITURE PURPOSES.—

"(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in section 6501(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 6544 of such Act.

"(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) REFERENCES TO OTHER ACTS.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (3) of section 223(c) of the Hazardous Substance Response Revenue Act of 1980 shall apply for purposes of this subsection.

"(4) FINAL REPAYMENT.—No advance shall be made to the Oil Spill Liability Trust Fund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or in any amendment made by such Act shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986.

Subtitle G—National Offshore Vessel Operators Safety Advisory Committee

SEC. 6601. ESTABLISHMENT AND CONSULTATION.

There is established a National Offshore Vessel Operators Safety Advisory Committee (hereinafter in this subtitle referred to as the "Committee"). The Committee shall advise, consult with, and make recommendations to the Secretary of the department in which the Coast Guard is operating (hereinafter in this subtitle referred to as the "Secretary") on matters relating to the safety aspects of offshore oil, gas, and other mineral operations subject to regulation by the Secretary. The Secretary shall, whenever practicable, consult with the Committee before taking any significant action related to these offshore operations. Any advice or recommendation made by the Committee to the Secretary shall reflect the independent judgment of the Committee on the matter concerned. The Committee is authorized to make available to Congress any information, advice, and recommendations which the Committee is authorized to give to the Secretary. The Committee shall meet at the call of the Secretary, but in any event not less than once during each calendar year. All matters relating to or proceedings of the Committee shall comply with the Federal Advisory Committee Act (5 App. U.S.C.).

SEC. 6602. MEMBERSHIP.

(a) FIFTEEN MEMBERS.—The Committee shall consist of fifteen members, who have particular expertise, knowledge, and experience regarding the transportation and other technology, equipment, and techniques that are used, or are being developed for use, in

the exploration for, or the recovery of, offshore oil, gas, or other mineral resources, as follows:

(1) Two members representing enterprises engaged in the production of oil, gas, or other mineral resources, except that not more than one member may represent companies included on the list of restricted joint bidders prepared by the Department of the Interior;

(2) Two members representing enterprises specializing in offshore drilling;

(3) Two members representing enterprises specializing in the supply of offshore oil, gas, or other mineral exploration or recovery operations by water;

(4) One member representing those engaged in each of the following specialities:

(A) Construction of offshore exploration or recovery facilities;

(B) Diving services related to offshore construction; and

(C) Helicopter services related to offshore construction;

(5) Two members representing individuals employed in offshore operations;

(6) Two members representing environmental interests; and

(7) Two members representing the general public.

(b) APPOINTMENT.—The Secretary shall appoint the members of the Committee after first soliciting nominations by notice published in the Federal Register. The Secretary may request the head of any other Federal agency or department to designate a representative to advise the Committee on matters within the jurisdiction of that agency or department.

(c) CHAIRMAN AND VICE CHAIRMAN.—The Committee shall elect, by majority vote at its first meeting, one of the members of the Committee as the Chairman and one of the members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in, the Office of the Chairman.

(d) MEMBERSHIP TERM.—Terms of members appointed to the Committee shall be for three years, except that the terms of those members first appointed under section 6602(a) (1), (2), and (3) shall be for two years. The Secretary shall, not less often than once a year, publish notice in the Federal Register for solicitation of nominations for membership on the Committee.

SEC. 6603. COMMITTEE ADMINISTRATION.

Members of the Committee who are not officers or employees of the United States shall serve without pay and members of the Committee who are officers or employees of the United States shall receive no additional pay on account of their service on the Committee. While away from their homes or regular places of business, members of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. The Secretary shall furnish to the Committee an executive secretary and the secretarial, clerical, and other services necessary for the conduct of its business. There are authorized to be appropriated such sums as may be necessary to implement the provision of this subtitle.

SEC. 6604. TERMINATION DATE.

The Committee shall terminate on September 30, 1992.

Subtitle H—Repeal of the Act Establishing the National Advisory Committee on Oceans and Atmosphere

SEC. 6701. The National Advisory Committee on Oceans and Atmosphere Act of 1977 (33 U.S.C. 857-13 through 857-18) is repealed.

SEC. 6702. The repeal made by section 6701 takes effect on October 1, 1986.

Subtitle I—Establishment of a Timetable for Completion of Coast Guard Offshore Safety Studies

SEC. 6801. REGULATIONS.

(a) DEADLINE FOR EFFECTIVENESS.—The Secretary of the department in which the Coast Guard is operating (hereafter in this Act referred to as the "Secretary") shall issue final regulations, to become effective before September 1, 1987, pursuant to the advance notice of proposed rulemaking regarding the revision of the regulations on outer Continental Shelf activities (50 Fed. Reg. 9290 (1985)), published March 7, 1985.

(b) CONSIDERATION OF STANDBY VESSELS FOR EVACUATION.—In preparing regulations referred to in subsection (a), the Secretary shall consider requiring standby vessels for the evacuation of personnel from manned installations on the outer Continental Shelf.

SEC. 6802. REPORTS TO CONGRESS.

(a) PRELIMINARY REPORT.—The Secretary shall, before December 31, 1986, submit to the Congress a report setting forth the progress made in preparing the regulations referred to in section 6801(a).

(b) FINAL REPORT.—The Secretary shall, before September 1, 1987, submit to the Congress a report setting forth the justification for the manned installation evacuation procedures contained in the final regulations referred to in section 6801(a).

Subtitle J—Requirement for the Use of American Built Rigs for Exploration and Development on the U.S. Outer Continental Shelf

SEC. 6901. USE OF AMERICAN-BUILT RIGS FOR OCS DRILLING.

Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) is amended by adding at the end the following new subsection:

"(j)(1) Any vessel, rig, platform, or other structure used for the purpose of exploration or production of oil and gas on the outer Continental Shelf south of 49 degrees North latitude shall be built—

"(A) in the United States; and

"(B) from articles, materials, or supplies at least 50 percent of which, by cost, shall have been mined, produced, or manufactured, as the case may be, in the United States.

"(2) The requirements of paragraph (1) shall not apply to any vessel, rig, platform, or other structure which was built, which is being built, or for which a building contract has been executed, on or before October 1, 1986.

"(3) The Secretary may waive—

"(A) the requirement in paragraph (1)(B) whenever the Secretary determines that 50 percent of the articles, materials, or supplies for a vessel, rig, platform, or other structure cannot be mined, produced, or manufactured, as the case may be, in the United States, and

"(B) the requirement in paragraph (1)(A) upon application, with respect to any classification of vessels, rigs, platforms, or other structures on a specific lease, when the Secretary determines that at least 50 percent of such classification, as calculated by number and by weight, which are to be built for exploration or production activities under such lease will be built in the United States in compliance with the requirements of paragraph (1)(A).".

TITLE VII—HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

SEC. 7001. EARLIEST DATE FOR CERTAIN ELECTIONS TO PARTICIPATE IN THE THRIFT SAVINGS PLAN.

Section 206(b) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 594) is amended to read as follows:

"(b)(1) An election may first be made by an employee of the Federal Government or a Member of Congress under section 8351 of title 5, United States Code (as added by subsection (a)(1)), during the election period provided under section 8432(b)(4) of such title. An election by such an employee or Member during that election period shall be effective on the first day of the employee's or Member's first pay period which begins after the last day of that election period.

"(2) The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out this subsection.".

SEC. 7002. CHANGE IN METHOD BY WHICH REVENUE FOREGONE IS COMPUTED FOR CERTAIN CATEGORIES OF MAIL.

(a) IN GENERAL.—Section 3626 of title 39, United States Code, is amended by adding at the end the following:

"(i)(1) As used in this subsection—

"(A) 'reduced-rate category' means any class of mail or kind of mailer for which a rate schedule is established under subsection (a) of this section; and

"(B) 'regular-rate category' means any class or kind of mail other than a class or kind referred to in section 2401(c) of this title.

"(2) This subsection shall be used in determining the costs recovered by revenues plus appropriations for the reduced-rate categories, for the purpose of distinguishing costs to be recovered from rates and fees for regular-rate categories under this chapter, and for the purpose of determining the appropriation requests under section 2401(c) of this title relating to the reduced-rate categories. It shall be assumed that the combination of postage and appropriations to be received for each of the reduced-rate categories will bear the same ratio to the costs attributed as required by section 3622(b)(3) of this title to such respective categories, as the revenues to be received from the most closely corresponding regular-rate category, as estimated in determining the rates for such category, bear to the costs attributed to that regular-rate category as required by section 3622(b)(3) of this title.".

(b) CONFORMING AMENDMENT.—Section 2401(c) of title 39, United States Code, is amended by striking "3626" and inserting "3626(a)-(h)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989, or on the effective date of the next general change in rates and fees under sections 3622 and 3625 of title 39, United States Code, whichever is sooner.

TITLE VIII—HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Subtitle A—Highway Program

SEC. 8001. CONTRACT AUTHORITY.

(a) GENERAL LIMITATION.—Notwithstanding any other provision of law, the total amount of contract authority to be provided for programs funded out of the Highway Trust Fund (other than the Mass Transit Account) shall not exceed—

(1) $13,527,000,000 for fiscal year 1987;

(2) $13,527,000,000 for fiscal year 1988; and

(3) $13,527,000,000 for fiscal year 1989.

(b) EXCEPTIONS.—The limitations imposed by subsection (a) shall not apply to—

(1) the traffic safety grant program carried out by the National Highway Traffic Safety Administration under section 402 of title 23, United States Code;

(2) the maintenance of railroad-highway crossings program under section 145 of H.R. 3129, as reported by the Committee on Public Works and Transportation (the Surface Transportation and Uniform Relocation Assistance Act of 1986), or the conference report relating thereto;

(3) the motor carrier safety grant program under section 404 of the Surface Transportation Assistance Act of 1982; and

(4) the university transportation centers program under section 11(b) of the Urban Mass Transportation Act of 1964.

SEC. 8002. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Notwithstanding any other provision of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed—

(1) $11,975,000,000 for fiscal year 1987;

(2) $11,975,000,000 for fiscal year 1988; and

(3) $11,975,000,000 for fiscal year 1989.

For each of fiscal years 1987, 1988, and 1989, the limitation imposed by this subsection shall be subject to subsections (c), (d), and (e) of section 105 of H.R. 3129, as reported by the Committee on Public Works and Transportation (the Surface Transportation and Uniform Relocation Assistance Act of 1986), or the conference report relating thereto.

(b) EXCEPTIONS.—The limitations imposed by subsection (a) shall not apply—

(1) to obligations specified in subsection (b) of section 105 of H.R. 3129, as reported by the Committee on Public Works and Transportation (the Surface Transportation and Uniform Relocation Assistance Act of 1986), or the conference report relating thereto; and

(2) to obligations under subsection (f) of such section.

(c) LIMITATION ON EXCEPTED OBLIGATIONS.—Notwithstanding any other provision of law, the total of all obligations specified in subsection (b) of such section 105 (other than obligations for the maintenance of railroad-highway crossings program under section 145 of such H.R. 3129 and for the motor carrier safety grant program under section 404 of the Surface Transportation Assistance Act of 1982) and subsection (f) of such section 105 shall not exceed—

(1) $1,070,000,000 for fiscal year 1987;

(2) $1,020,000,000 for fiscal year 1988; and

(3) $1,020,000,000 for fiscal year 1989.

(d) CONFORMING AMENDMENT.—Section 157(b) of title 23, United States Code, is amended by striking out the period at the end of the last sentence and inserting in lieu thereof "and section 8002(c) of the Omnibus Budget Reconciliation Act of 1986.".

SEC. 8003. EMERGENCY RELIEF.

Section 125(b) of title 23, United States Code, is amended by striking out "(and $55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985)" and by inserting after "1985" the following: "or $100,000,000 with respect to natural disasters and catastrophic failures occurring in calendar year 1986".

Subtitle B—Federal Energy Regulatory Commission Annual Charges

SEC. 8101. PROHIBITION ON THE ASSESSMENT AND COLLECTION OF ANNUAL CHARGES.

Notwithstanding any other provision of this Act (including any amendment made by this Act), the Federal Energy Regulatory Commission shall not assess or collect any charges from an interstate natural gas pipeline or an interstate oil pipeline carrier, except those charges assessed or collected pursuant to a law approved before the date of the enactment of this Act.

Subtitle C—Ocean Dumping Amendments

SEC. 8201. SHORT TITLE.

This subtitle may be cited as the "Ocean Dumping Amendments Act of 1986".

SEC. 8202. DUMPING PERMIT PROGRAM.

Section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1412) is amended as follows:

(1) Subsection (a) is amended—

(A) by inserting "(1)" after "(a)";

(B) by striking out ", and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, for which no permit may be issued," and inserting ", and except as provided in paragraphs (2) and (3),";

(C) by striking out "and beaches." in subparagraph (C) and inserting in lieu thereof ", beaches, and wetlands.";

(D) by striking out the last sentence thereof; and

(E) by adding at the end thereof the following new paragraphs:

"(2) No permit may be issued under this title in relation to the following:

"(A) Radiological, chemical, and biological warfare agents.

"(B) High-level radioactive waste.

"(3) No permits may be issued or renewed under this title that authorizes the dumping, or the transportation for purposes of dumping, after December 31, 1986, of municipal sludge, whether or not the sludge is subject to section 104A, unless—

"(A) the sewerage authority or other unit of State or local government operating the plant at which the municipal sludge is generated is in compliance with those requirements of sections 307(b) and 402(b)(8) of the Federal Water Pollution Control Act (33 U.S.C. 1317(b) and 1342(b)(8)) which are related to the quality of municipal sludge; and

"(B) the Administrator, in consultation with the Governor of the State in which the unit is located, finds that a suitable land-based alternative to the ocean disposal of the sludge is not currently available.".

(2) Subsection (c) is amended to read as follows:

"(c)(1) The Administrator shall designate sites at which materials may be dumped pursuant to this section and, after consultation with the Secretary, at which materials may be dumped pursuant to section 103; except that no site may be designated by the Administrator under this subsection until the Administrator undertakes and completes an analysis of the characteristics of the site and its suitability for dumping and of the environmental effects which will likely result from dumping. In undertaking such an analysis of each site, the Administrator shall take into consideration the factors set forth in subsection (a) and shall specifically take into account the following:

"(A) The types and quantities of wastes and pollutants projected to be deposited in, and adjacent to, the site from dumping and other sources.

"(B) The ability of the waters at the site to disperse, detoxify, or neutralize the materials.

"(C) The importance of the site to the surrounding biological community, including the presence of breeding, spawning, nursery or foraging areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of marine organisms.

"(D) The immediate and cumulative effects on human health and on the ecosystem adjacent to the site and the persistent effects on the ecosystem within the site.

Nothing contained in this paragraph shall be construed to limit the authority of the Secretary under section 103 to make independent determinations regarding appropriate locations for dumping.

"(2) The Administrator shall—

"(A) periodically monitor, or cause to be monitored, the effects of the dumping of materials at or adjacent to each site for which the Administrator determines, on the basis of the characteristics of the site and the materials to be dumped, that such monitoring is necessary to accomplish the purposes of this title; and

"(B) at the close of the third year after the site designation and at every three-year interval thereafter until such time as the designation is terminated, estimate the extent of the dumping and other waste inputs that will occur in and adjacent to each site during the next three-year period.

"(3) If at any time the Administrator, on the basis of the factors taken into account under subparagraphs (A) through (D) of paragraph (1), or on the basis of the monitoring or estimates, required under paragraph (2), determines that the site is no longer suitable for such dumping, the Administrator shall—

"(A) limit dumping at the site to certain materials or at certain times or both; or

"(B) suspend or terminate the designation of the site under paragraph (1).

In making a determination under the preceding sentence that a site is no longer suitable for dumping pursuant to section 103, the Administrator shall consult the Secretary.".

(3) Such section is amended by adding at the end thereof the following new subsection:

"(f) No funds authorized under this title may be used to finance, in whole or in part, the dumping of material or the transportation of material for the purpose of dumping, as authorized under this section.".

SEC. 8203. SPECIAL PERMIT PROVISIONS AFFECTING THE DUMPING OF HARMFUL MUNICIPAL SLUDGE AND INDUSTRIAL WASTE.

(a) Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) is further amended by inserting after section 102 the following new section:

"DUMPING OF HARMFUL MUNICIPAL SLUDGE AND INDUSTRIAL WASTE

"SEC. 102A. (a) The Administrator shall—

"(1) end the dumping of harmful municipal sludge into ocean waters and into waters described in section 101(b) as soon as possible after the date of the enactment of this section, except that in no case may any dumping of harmful municipal sludge—

"(A) occur after the last day of the eighteen-month period beginning on such date of enactment; or

"(B) be authorized under this title for other than an eligible authority within the meaning of section 104A(a)(1)(C); and

"(2) end the dumping of industrial waste into such waters, except as provided in subsections (b) and (c).

"(b) On and after the date of the enactment of this section, the Administrator may issue permits under section 102 for the dumping of industrial waste into ocean waters, or into waters described in section 101(b), if the Administrator determines—

"(1) that the proposed dumping is necessary to conduct research—

"(A) on new technology related to ocean dumping, or

"(B) to determine whether the dumping of such substance will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities;

"(2) that the scale of the proposed dumping is such that the dumping will have minimal adverse impact upon the human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities; and

"(3) after consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact.

Each permit issued pursuant to this subsection shall be subject to such conditions and restrictions as the Administrator determines to be necessary to minimize possible adverse impacts of such dumping. No permit issued by the Administrator pursuant to this subsection may have an effective period of more than six consecutive months.

"(c) On and after the date of the enactment of this section, the Administrator may issue emergency permits under section 102 for the dumping of industrial waste into ocean waters, or into waters described in section 101(b), if the Administrator determines that there has been demonstrated to exist an emergency, requiring the dumping of such waste, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used in this subsection, the term 'emergency' refers to situations requiring action with a marked degree of urgency.

"(d) For purposes of this section—

"(1) The term 'harmful municipal sludge' means municipal sludge (as defined in section 3(n)) the ocean dumping of which may be harmful to human health, welfare, amenities, or the marine environment, ecological systems, and economic potentialities. Municipal sludge shall be considered to be harmful, for purposes of this section, if it fails to meet the environmental impact criteria of the Environmental Protection Agency's regulations issued under this title.

"(2) The term 'industrial waste' means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities.".

(b) Section 4 of the Act entitled "An Act to amend the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations to carry out the provisions of such Act for fiscal year 1978", approved November 4, 1977 (33 U.S.C. 1412a), is repealed.

SEC. 8204. CORPS OF ENGINEERS PERMITS.

Section 103(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413(b)) is amended by striking out the last sentence and inserting in lieu thereof the following: "In conducting the independent determination under the preceding sentence, the Secretary shall consider the relative environmental impact of, and shall give equal treatment to, all alternative forms of disposal. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 102(c). The Secretary in consultation with the Administrator shall be responsible for management, including appropriate monitoring, of sites utilized pursuant to this section.".

SEC. 8205. PERMIT CONDITIONS.

Section 104 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1414) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) Permits issued under this title shall designate and include—

"(1) the type of material authorized to be transported for dumping or to be dumped;

"(2) the amount of material authorized to be transported for dumping or to be dumped;

"(3) the location where such transport for dumping will be terminated or where such dumping will occur;

"(4) the length of time for which the permits are valid and their expiration date;

"(5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, to minimize the harm from dumping, which may include measures that the permittee must take to plan, develop, acquire, or implement, as appropriate—

"(A) alternatives for the disposal of the material,

"(B) processes for reducing or eliminating any contaminants in the material, or

"(C) processes for recycling the material;

"(6) after consultation with the Secretary of the Department in which the Coast Guard is operating, any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, for the monitoring and surveillance of the transportation or dumping; and

"(7) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.".

(2) Subsection (b) is amended to read as follows:

"(b)(1) The Administrator or the Secretary, as the case may be, shall prescribe by regulation and collect from the applicant, unless the applicant is a Federal agency, an application fee in an amount, not to exceed $10,000, that is commensurate with the reasonable administrative costs incurred or expected to be incurred by the Administrator or Secretary in processing the permit. The application fee shall be deposited to the principal appropriation account or accounts used to carry out the processing of permits under this title.

"(2)(A) The Administrator shall prescribe by regulation, after opportunity for a hearing on the record, and collect a special fee for permits issued under section 102 to recover the costs incurred, or expected to be incurred, in the undertaking of measures by Federal agencies to determine compliance with permit terms, and the undertaking of only the monitoring necessary to make a reasonable assessment of the direct effects on the marine environment caused by disposal activities carried out under the permit. Such fee shall be an amount which will not have a substantial adverse effect on the competitive prospects for commercial implementation of effective and efficient ocean-based waste destruction technologies that otherwise meet the requirements of law. The special fee shall be deposited to the principal appropriation account or accounts used to carry out site and compliance monitoring, surveillance, and enforcement activities.

"(B) The funds collected under subparagraph (A) may be transferred in part to other Federal agencies for the costs incurred or expected to be incurred in connection with their activities described in subparagraph (A).

"(3) The expenditure of funds raised by these fees shall be subject to appropriations.".

(3) Subsection (e) is redesignated as subsection (e)(1) and after it the following new paragraph is inserted:

"(2) The Administrator and the Secretary shall establish and maintain quality assurance programs to ensure the validity, accuracy, and sufficiency of information submitted to or used by the Administrator or the Secretary in connection with applications for permits or other activities undertaken pursuant to this title. Such quality assurance programs shall encompass, but not be limited to, the design, implementation, and analysis of sampling, testing, and monitoring procedures and results. The Administrator and the Secretary shall each individually report annually, as a part of the report required under section 112 of this title, on the status of implementation of this subsection; except that the first such quality assurance reporting shall be submitted to the Congress no later than one year after the effective date of this subsection.".

(4) The following new subsection is added at the end thereof:

"(j) The Administrator or Secretary, as the case may be, may prescribe such reporting requirements as he or she deems appropriate with regard to actions authorized by permits issued under this title.".

SEC. 8206. SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES.

(a) The Congress finds that the New York Bight Apex is no longer a suitable location for the ocean dumping of municipal sludge.

(b) Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) is further amended by inserting after section 104 the following new section:

"SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

"SEC. 104A. (a) NEW YORK BIGHT APEX.—(1) For purposes of this subsection:

"(A) The term 'Apex' means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

"(B) The term 'Apex site' means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

"(C) The term 'eligible authority' means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

"(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

"(3) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

"(A) December 15, 1987; or

"(B) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under section 102 other than a site within the Apex.

"(4)(A) Within three years after the date of the enactment of this section, the Administrator shall prepare and submit to the Congress a New York Bight Apex Restoration Plan. In preparing the plan, the Administrator shall hold public hearings in order to obtain the views and comments of interested persons.

"(B) The New York Bight Apex Restoration Plan required under subparagraph (A) shall—

"(i) identify and assess the impact of pollutant inputs, such as treated and untreated sewage discharge, industrial outfalls, agricultural and urban runoff, storm sewer overflow, upstream contaminant sources, atmospheric fallout, and dumping that are affecting the water quality and marine resources of the Apex;

"(ii) identify those uses in the Apex that are being inhibited because of those inputs;

"(iii) determine the fate of the contaminants from those inputs and their effect on the marine environment;

"(iv) identify technologies and management practices, and determine the costs, necessary to control those inputs;

"(v) identify impediments to the cleanup of those inputs;

"(vi) devise a schedule of economically feasible projects to implement the controls identified under clause (iv) and to remove the impediments identified under clause (v); and

"(vii) develop recommendations for funding and coordinating various Federal, State, and local government programs necessary to implement the projects devised under clause (vi).

Within six months after the date of the enactment of this section, the Administrator shall submit to the Congress a detailed schedule (and the associated funding requirements) for completing the restoration plan required by this paragraph.

"(5) Within one year after the date of the enactment of this section, the Administrator shall prepare and submit to Congress a report on the technological and economic feasibility of establishing and implementing quality standards for disposal of municipal sludge through ocean or land-based methods. The quality standards shall set forth maximum permissible concentrations of heavy metals, PCB's, persistent plastics, microbiological constituents, pathogens, and any other material found in municipal sludge regarding which the Administrator considers the establishment of maximum permissible concentrations to be warranted.

"(6) In addition to funds authorized under section 111, there are authorized to be appropriated to the Environmental Protection Agency, for purposes of preparing the New York Bight Apex Restoration Plan required under paragraph (4)(A), the following amounts:

"(A) $2,000,000 for fiscal year 1986.

"(B) $2,000,000 for fiscal year 1987.

"(C) $1,000,000 for fiscal year 1988.

"(b) RESTRICTION ON USE OF THE 106-MILE SITE.—The Administrator may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the Administrator and known as the '106-Mile Ocean Waste Dump Site' (as described in 49 F.R. 19005).".

SEC. 8207. CONVENTION ADHERENCE.

Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1416) is amended by adding at the end thereof the following new subsection:

"(g) To the extent that they may do so without relaxing the requirements of this title, and in accordance with chapter 5 of title 5, United States Code, the Administrator and the Secretary shall adhere to and apply the requirements of the Convention, including its annexes, that are binding upon the United States when implementing this title.".

SEC. 8208. TRANSITIONAL PROVISIONS.

Until completion of the site designation or denial of site designation by the Administrator of the Environmental Protection Agency with respect to any areas of ocean waters approved for dumping on an interim basis before July 1, 1982, and any areas of ocean waters used for dumping pursuant to a court order, the amendments made by this subtitle to the Marine Protection, Research, and Sanctuaries Act of 1972 (other than section 102(a) of that Act as amended by section 8202(1) of this Act, other than subsection (c)(2) and (3) of section 102 of that Act as added by section 8202(2) of this Act and other than amendments made by sections 8203, 8205, 8206, 8209, 8210, 8211, 8215, and 8216 of this Act) shall not be applicable to those areas of ocean water.

SEC. 8209. DEFINITIONS.

Section 3 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1402) is amended—

(1) by inserting ", and the subjacent areas," immediately after "those waters" in subsection (b);

(2) by striking out "sewage sludge," in subsection (c) and inserting in lieu thereof "municipal sludge,";

(3) by adding at the end thereof the following new subsection:

"(m) 'Monitoring' means the systematic, time-series observation of materials, contaminants, or pertinent components of the marine ecosystem over a period of time sufficient to determine the existing levels, trends, and natural variations of measured components in the water column, sediments, and biota for the purpose of ensuring that immediate harmful effects of dumping are detected, and cumulative and long-term effects are detected, forecasted, and evaluated. Observations may include, but are not limited to, the following procedures, depending upon the type of waste to be dumped and the characteristics of the site: (1) seasonal sampling and analyses of the infaunal community and sediment for purposes of characterizing structural composition and size distribution; (2) sampling and analyses of sediment and selected organisms to determine levels of hydrocarbon, trace metals, and chemical and pathogenic contaminants identified as constituents of wastes to be dumped; (3) profiling measurements of standard oceanographic parameters including dissolved oxygen, salinity, and water temperature; (4) characterization of large-scale surface topography and megafaunal structure and composition; and (5) sampling and analyses to determine levels of nutrients and organic carbon.

"(n) 'Municipal sludge' means solid, semisolid, or liquid waste generated by a waste water treatment plant of a sewerage authority or other unit of State or local government or a privately owned or operated waste water treatment plant which treats predominantly domestic sewage."; and

(4) by striking out "the Canal Zone," in subsection (d).

SEC. 8210. PENALTIES.

Subsection (b) of section 105 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1415(b)) is amended as follows:

(1) The text is redesignated as paragraph (1) of such subsection.

(2) Paragraph (1), as so redesignated, is amended by adding at the end thereof the following new sentence: "Any action authorized by this section shall be consistent with international law.".

(3) The following new paragraph is added at the end thereof:

"(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this title or who falsifies, tampers with, or knowingly renders inaccurate any monitoring, sampling, or testing device or method required to be maintained or implemented under this title, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both. For purposes of this section, the term 'person' shall mean, in addition to the definition contained in section 3(e) of this title, any responsible corporate officer.".

SEC. 8211. ORDERS.

Section 105(g) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1415) is amended—

(1) by redesignating paragraph (5) as paragraph (6) and by inserting immediately after paragraph (4) the following:

"(5) Upon application of any person, the district courts of the United States shall have jurisdiction to order the Administrator to implement in a timely manner the site designation provisions of this title for those sites for which site designation proceedings are incomplete and at which dumping is authorized pursuant to permits issued under sections 102 and 103. Nothing in this paragraph is intended to affect the conduct of any dumping activity under a permit issued under this title pending the completion of site designation proceedings. Paragraph (4) of this subsection shall not apply to any suit brought pursuant to this paragraph."; and

(2) by striking out "injunctive" in paragraph (6), as so redesignated.

SEC. 8212. SCHEDULE FOR COMPLETION.

The Administrator of the Environmental Protection Agency shall establish a schedule for expeditiously completing the study and designation or denial of designation of all areas of ocean waters approved before July 1, 1982, for dumping on an interim basis and areas of ocean waters used for dumping pursuant to a court order. The Administrator shall submit this schedule to Congress not later than the one hundred and eightieth day after the date of enactment of this subtitle.

SEC. 8213. ANNUAL REPORTS.

Section 112 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1421) is amended to read as follows:

"SEC. 112. In March of each year, the Administrator and the Secretary shall each individually report to the Congress on the administration of this title during the previous calendar year.".

SEC. 8214. AUTHORIZATION OF APPROPRIATIONS.

Section 111 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1420) is amended by striking out "and" immediately following "fiscal year 1981," and inserting "and not to exceed $8,864,000 for each of fiscal years 1986, 1987, and 1988," immediately after "fiscal year 1982,".

SEC. 8215. EXTENSION OF UNITED STATES AUTHORITY.

(a) Whenever in this section there is a reference to a section, subsection or paragraph of existing law, the reference is to the Marine Protection, Research, and Sanctuaries Act of 1972, as amended.

(b) Section 2(c)(2) is amended by striking out "territorial sea or the contiguous" and insert in lieu thereof the following: "territorial sea or the exclusive economic".

(c) Section 3 is amended by adding at the end thereof the following new subsection:

"(o) 'exclusive economic zone' means the zone established by Proclamation Numbered 5030, dated March 10, 1983.".

(d) Section 101(b) is amended to read as follows:

"(b) Except as may be authorized by a permit issued pursuant to section 102 of this title, and subject to regulations issued pursuant to section 108 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into the exclusive economic zone of the United States.".

SEC. 8216. RELATION TO OTHER FEDERAL LAW.

Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1416) is amended by adding at the end thereof the following new paragraph:

"(h) Nothing in this Act shall affect or modify the rights or liabilities of any person under other Federal law with respect to damage caused by noncompliance with any requirement of this Act or any permit issued under this Act.".

SEC. 8217. PERMIT FEE STUDY.

(a) As used in this section, the term "Federal waste disposal program" means any program under which the United States Government regulates the disposal, discharge, or emission of materials or substances that cause environmental pollution.

(b) The Administrator of the Environmental Protection Agency shall prepare a report regarding the permit fee systems that are applied in implementing Federal waste disposal programs. The report shall include—

(1) a description of the permit fee system applied in administering each Federal waste disposal program;

(2) an evaluation of the extent to which each permit fee system described under paragraph (1) recovers the costs expended by the United States Government in administering the related program;

(3) if the evaluation under paragraph (2) indicates that more of the costs to the United States Government in administering any waste disposal program should be borne by the permittees, recommendations for changing the permit system to achieve that result;

(4) an analysis of those conditions under which, and the extent to which, permit fees should be used—

(A) to encourage or discourage the use of particular disposal, discharge, or emission alternatives, or

(B) to encourage waste reduction, reuse, or recycling; and

(5) any legislative proposals that the Administrator considers appropriate in view of the results of the matters addressed under paragraphs (1) through (4).

(c) The report required under subsection (b) shall be prepared and submitted to the Speaker of the House of Representatives and the majority leader of the Senate for referral to the appropriate committees of Congress within eighteen months after the date of the enactment of this subtitle.

Subtitle D—Water Resources

SEC. 8301. ENGINEERING AND DESIGN STUDIES.

Section 10 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 22, 1944 (58 Stat. 901), is amended by inserting after "and the local organizations." the following: "The Secretary is authorized to undertake further studies for engineering and design with appropriate non-Federal sponsors for a project not to exceed 200,000 acre feet of additional flood control and other storage benefits at the existing facility and not to exceed 800,000 acre feet of additional flood control and other storage benefits to alleviate flood and irrigation problems that exist in the existing service area and to report on such study to Congress.".

Subtitle E—Highway, Airport, and Inland Waterways Trust Funds

SEC. 8401. BUDGETARY TREATMENT OF HIGHWAY, AIRPORT, AND INLAND WATERWAYS TRUST FUND OPERATIONS.

(a) IN GENERAL.—The receipts and disbursements of the Highway Trust Fund, the Airport and Airway Trust Fund, and the Inland Waterways Trust Fund allocable to the transportation-related operations of each such Trust Fund—

(1) shall not be included in the totals of—

(A) the budget of the United States Government as submitted by the President, or

(B) the congressional budget (including allocations of budget authority and outlays provided therein), and

(2) shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(b) TRANSPORTATION-RELATED OPERATIONS.—For purposes of subsection (a), the receipts and disbursements allocable to the transportation-related operations—

(1) of the Highway Trust Fund are the disbursements, and the receipts allocable to such disbursements, under—

(A) paragraph (1) of section 9503(c) of the Internal Revenue Code of 1954 (relating to expenditures from the Highway Trust Fund for the Federal-aid highway program), and

(B) paragraph (3) of section 9503(e) of such Code (relating to expenditures from the Mass Transit Account);

(2) of the Airport and Airway Trust Fund are the disbursements, and the receipts allocable to such disbursements, under paragraph (1) of section 9502(d) of the Internal Revenue Code of 1954 (relating to expenditures from the Airport and Airway Trust Fund for the airport and airway program); and

(3) of the Inland Waterways Trust Fund are the disbursements, and the receipts allocable to such disbursements, under section 204(a) of the Inland Waterways Revenue Act of 1978 (relating to the expenditures from the Inland Waterways Trust Fund for navigation construction and rehabilitation projects on inland waterways).

SEC. 8402. ADJUSTMENTS OF AUTHORIZATIONS AND APPROPRIATIONS OUT OF THE AIRPORT AND AIRWAY TRUST FUND.

The Airport and Airway Improvement Act of 1982 is amended by adding at the end the following new section:

"SEC. 533. ADJUSTMENTS OF AUTHORIZATIONS AND APPORTIONMENTS.

"(a) ESTIMATES OF UNFUNDED AVIATION AUTHORIZATIONS AND NET AVIATION RECEIPTS.—Not later than March 31 of each year, the Secretary of Transportation, in consultation with the Secretary of the Treasury, shall estimate—

"(1) the amount which would (but for this section) be the unfunded aviation authorizations at the close of the next fiscal year, and

"(2) the net aviation receipts for the 24-month period beginning at the close of such fiscal year.

"(b) PROCEDURE WHERE THERE IS EXCESS UNFUNDED AVIATION AUTHORIZATIONS.—If the Secretary of Transportation determines for any fiscal year that the amount described in subsection (a)(1) exceeds the amount described in subsection (a)(2), the Secretary shall determine the amount of such excess.

"(c) ADJUSTMENT OF AUTHORIZATIONS WHERE UNFUNDED AUTHORIZATIONS EXCEED 2 YEARS' RECEIPTS.—

"(1) DETERMINATION OF PERCENTAGE.—If the Secretary of Transportation determines that there is an excess referred to in subsection (b), the Secretary of Transportation shall determine the percentage which—

"(A) such excess, is of

"(B) the total of the amounts authorized to be appropriated and the amounts available for obligation from the Airport and Airway Trust Fund for the next fiscal year.

"(2) ADJUSTMENT OF AUTHORIZATIONS.—If the Secretary of Transportation determines a percentage under paragraph (1), each amount authorized to be appropriated or available for obligation from the Airport and Airway Trust Fund for the next fiscal year shall be reduced by such percentage.

"(d) AVAILABILITY OF AMOUNTS PREVIOUSLY WITHHELD.—If, after an adjustment has been made under subsection (c)(2), the Secretary of Transportation determines that the amount described in subsection (a)(1) does not exceed the amount described in subsection (a)(2) or that the excess referred to in subsection (b) is less than the amount previously determined, each amount authorized to be appropriated or available for obligation that was reduced under subsection (c)(2) shall be increased, by an equal percentage, to the extent the Secretary of Transportation determines that it may be so increased without causing the amount described in subsection (a)(1) to exceed the amount described in subsection (a)(2) (but not by more than the amount of the reduction). The Secretary of Transportation shall apportion amounts made available for apportionment by reason of the preceding sentence. Any funds apportioned pursuant to the preceding sentence shall remain available for the period for which they would be available if such apportionment took effect with the fiscal year in which they are apportioned pursuant to the preceding sentence.

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

"(1) UNFUNDED AVIATION AUTHORIZATIONS.—The term 'unfunded aviation authorizations' means, at any time, the excess (if any) of—

"(A) the total amount authorized to be appropriated or available for obligation from the Airport and Airway Trust Fund which has not been appropriated or obligated, over

"(B) the amount available in the Airport and Airway Trust Fund at such time to make such appropriations or to liquidate such obligations (after all other unliquidated obligations at such time which are payable from the Airport and Airway Trust Fund have been liquidated).

"(2) NET AVIATION RECEIPTS.—The term 'net aviation receipts' means, with respect to any period, the excess of—

"(A) the receipts (including interest) of the Airport and Airway Trust Fund during such period, over

"(B) the amounts to be transferred during such period from such Fund under section 9502(d) of the Internal Revenue Code of 1954 (other than paragraph (1) thereof).

"(f) REPORTS.—Any estimate under subsection (a) and any determination under subsection (b), (c), or (d) shall be reported by the Secretary of Transportation to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.".

SEC. 8403. ADJUSTMENTS OF AUTHORIZATIONS AND APPROPRIATIONS OUT OF THE INLAND WATERWAYS TRUST FUND.

(a) ESTIMATES OF UNFUNDED INLAND WATERWAYS AUTHORIZATIONS AND NET INLAND WATERWAYS RECEIPTS.—Not later than March 31 of each year, the Secretary of the Army, in consultation with the Secretary of the Treasury, shall estimate—

(1) the amount which would (but for this section) be the unfunded inland waterways authorizations at the close of the next fiscal year, and

(2) the net inland waterways receipts at the close of the next fiscal year.

(b) PROCEDURE WHERE THERE IS EXCESS UNFUNDED INLAND WATERWAYS AUTHORIZATIONS.—If the Secretary of the Army determines for any fiscal year that the amount described in subsection (a)(1) exceeds the amount described in subsection (a)(2), the Secretary shall determine the amount of such excess.

(c) ADJUSTMENT OF AUTHORIZATIONS WHERE UNFUNDED AUTHORIZATIONS EXCEED RECEIPTS.—

(1) DETERMINATION OF PERCENTAGE.—If the Secretary of the Army determines that there is an excess referred to in subsection (b), the Secretary of the Army shall determine the percentage which—

(A) such excess, is of

(B) the total of the amounts authorized to be appropriated and the amounts available for obligation from the Inland Waterways Trust Fund for the next fiscal year.

(2) ADJUSTMENT OF AUTHORIZATIONS.—If the Secretary of the Army determines a percentage under paragraph (1), each amount authorized to be appropriated or available for obligation from the Inland Waterways Trust Fund for the next fiscal year shall be reduced by such percentage.

(d) AVAILABILITY OF AMOUNTS PREVIOUSLY WITHHELD.—If, after an adjustment has been made under subsection (c)(2), the Secretary of the Army determines that the amount described in subsection (a)(1) does not exceed the amount described in subsection (a)(2) or that the excess referred to in subsection (b) is less than the amount previously determined, each amount authorized to be appropriated or available for obligation that was reduced under subsection (c)(2) shall be increased, by an equal percentage, to the extent the Secretary of the Army determines that it may be so increased without causing the amount described in subsection (a)(1) to exceed the amount described in subsection (a)(2) (but not by more than the amount of the reduction).

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

(1) UNFUNDED INLAND WATERWAYS AUTHORIZATIONS.—The term "unfunded inland waterways authorizations" means, at any time, the excess (if any) of—

(A) the total amount authorized to be appropriated or available for obligation from the Inland Waterways Trust Fund which has not been appropriated or obligated, over

(B) the amount available in the Inland Waterways Trust Fund at such time to make such appropriations.

(2) NET INLAND WATERWAYS RECEIPTS.—The term "net inland waterways receipts" means, with respect to any period, the receipts (including interest) of the Inland Waterways Trust Fund during such period.

(f) REPORTS.—Any estimate under subsection (a) and any determination under subsection (b), (c), or (d) shall be reported by the Secretary of the Army to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Environment and Public Works of the Senate.

SEC. 8404. CONFORMING AMENDMENTS AND LIMITATIONS TO THE BUDGET PROCESS.

(a) EXEMPTION FROM SEQUESTRATION ORDER.—Section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905; 99 Stat. 1083) is amended—

(1) by inserting after the 1st undesignated paragraph (relating to activities resulting from private donations) the following new undesignated paragraph:

"Airport and Airway Trust Fund (69-8106-0-7-402; 69-8107-0-7-402; 69-8108-0-7-402; 69-8104-0-7-402);"; and

(2) by inserting after the 14th undesignated paragraph (relating to health professions) the following new undesignated paragraphs:

"Highway Trust Fund (20-8102-0-7-401; 69-8019-0-7-401; 69-8020-0-7-401; 69-8099-0-7-401);

"Inland Waterways Trust Fund (20-8861-0-7-301);".

(b) TREATMENT OF TRUST FUND RECEIPTS FOR DEFICIT CALCULATION PURPOSES.—Section 3(6) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the second sentence the following new sentences: "In calculating the deficit for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 and in calculating the excess deficit for purposes of sections 251 and 252 of such Act of 1985 (notwithstanding section 8401(a) of the Omnibus Budget Reconciliation Act of 1986) for any fiscal year, the receipts of the Highway Trust Fund (including the Mass Transit Account), the Airport and Airway Trust Fund, and the Inland Waterways Trust Fund allocable to the transportation-related operations of each such Trust Fund for such fiscal year shall be included in total revenues for such fiscal year, and the disbursements allocable to the transportation-related operations of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year. For purposes of the preceding sentence, the receipts and disbursements allocable to the transportation-related operations of such Trust Funds shall be those described in section 8401(b) of the Omnibus Budget Reconciliation Act of 1986.".

(c) LIMITATIONS ON CONGRESSIONAL BUDGET PROCESS.—Section 310 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end the following new subsection:

"(h) LIMITATION ON CHANGES TO THE HIGHWAY, AIRPORT AND AIRWAY, AND INLAND WATERWAYS TRUST FUNDS.—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider—

"(1) any concurrent resolution on the budget for any fiscal year, or any amendment thereto or conference report thereon, that assumes or contains in the aggregate totals or functional categories provided for by section 301(a) any amount of budget authority or budget outlays from the Highway Trust Fund, the Airport and Airway Trust Fund, or the Inland Waterways Trust Fund,

"(2) any concurrent resolution on the budget for any fiscal year, or any amendment thereto or conference report thereon, that contains reconciliation instructions with respect to the Highway Trust Fund, the Airport and Airway Trust Fund, or the Inland Waterways Trust Fund, or

"(3) to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains recommendations with respect to the Highway Trust Fund, the Airport and Airway Trust Fund, or the Inland Waterways Trust Fund.".

(d) CONFORMING ENFORCEMENT PROCEDURES.—Sections 302(c), 302(f), 303(a), 311(a), and 402 of the Congressional Budget and Impoundment Control Act of 1974 shall not apply to any bill, resolution, or amendment (including a conference thereon) which provides contract authority or budget outlays from the Highway Trust Fund or the Airport and Airway Trust Fund or budget authority or budget outlays from the Inland Waterways Trust Fund.

SEC. 8405. EFFECTIVE DATE.

This subtitle (including the amendments made by this subtitle) shall take effect October 1, 1987, except that the amendments made by section 8404(a) shall take effect March 15, 1987.

Subtitle F—Comprehensive Oil Pollution Liability and Compensation

SEC. 8500. SHORT TITLE.

This subtitle may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

PART 1—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 8501. DEFINITIONS.

For purposes of this part, the term—

(1) "claim" means a demand in writing for a sum certain;

(2) "cleanup costs" means costs of reasonable measures taken, after an incident has

occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(3) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(4) "facility" means a structure, or group of structures, which is either—

(A) located, in whole or in part, on the Outer Continental Shelf and used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf, or

(B) licensed under the Deepwater Port Act of 1974;

(5) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(6) "guarantor" means the person, other than the responsible party, who provides evidence of financial responsibility for a responsible party;

(7) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, which causes, or poses a substantial threat, of oil pollution;

(8) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo or in residue from cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(9) "internal waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway;

(10) "lessee" means a person holding a leasehold interest in an oil and gas lease on submerged lands of the outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act;

(11) "licensee" means a person holding a license issued under the Deepwater Port Act of 1974;

(12) "mobile offshore drilling unit" means every watercraft or other contrivance (other than a public vessel of the United States) capable of use as a means of transportation on water and as a means of drilling for oil on the outer Continental Shelf;

(13) "natural resources" means living and nonliving resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(14) "navigable waters" means the waters of the United States, including the territorial sea;

(15) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(16) "oil pollution" means—

(A) the presence of oil in or on the navigable waters or on land within the United States immediately adjacent thereto, or in or on the waters of the contiguous zone—

(i) which has been discharged from a vessel or facility; and

(ii) which has been discharged in quantities which the President has determined may be harmful pursuant to paragraph (4) of subsection (b) of section 311 of the Federal Water Pollution Control Act;

(B) the presence of oil (other than natural seepage) in or on waters outside the territorial limits of the United States and of any foreign country—

(i) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(ii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or from a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port licensed under such Act;

(iii) causing injury to or loss of natural resources; or

(iv) which has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States; and

(C) the presence of oil (other than natural seepage) in or on the waters, including the territorial sea, or adjacent shoreline, of a foreign country—

(i) which has been discharged from a vessel located within the navigable waters;

(ii) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(iii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port under such Act; or

(iv) which, in the case of the waters or adjacent shoreline of Canada, has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States;

(17) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of a pipeline, any person, except the owner, who is responsible for the operation of such pipeline by agreement with the owner;

(18) "Outer Continental Shelf" has the meaning set forth in subsection (a) of section 2 of the Outer Continental Shelf Lands Act;

(19) "owner" means, in the case of a vessel or a pipeline, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel or pipeline, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest in the vessel or pipeline;

(20) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or any other commercial, legal, or governmental entity;

(22) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government, and

(B) is not engaged in commercial service;

(23) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, and

(B) cleanup costs, other than the costs described in subparagraph (A);

(24) "responsible party" means—

(A) with respect to a vessel or a pipeline, the owner or operator of such vessel or pipeline;

(B) with respect to a facility (other than a deepwater port or pipeline), the lessee or permittee of the area in which such facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which such facility is located where such holder is a different person than the lessee or permittee; and

(C) with respect to a deepwater port, the licensee;

(25) "Secretary" means the Secretary of Transportation;

(26) "ship" means a vessel (other than an inland oil barge) carrying oil in bulk as cargo or in residue from cargo;

(27) "Trust Fund" means the Oil Spill Liability Trust Fund established by section 9505 of the Internal Revenue Code of 1954;

(28) "United States" and "State" mean the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(29) "United States claimant" means any person residing in the United States, the Government of the United States or any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim; and

(30) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 8502. COORDINATION WITH INTERNATIONAL CONVENTIONS.

During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States, this part shall not apply with respect to damage arising out of or directly resulting from oil pollution or a substantial threat of oil pollution to the extent that compensation is available under such conventions and part 4.

SEC. 8503. DAMAGES AND CLAIMANTS.

(a) DAMAGES FOR WHICH CLAIMS MAY BE ASSERTED.—Claims may be asserted, to the extent provided in this section, for damages for economic loss incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution or the substantial threat of oil pollution for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) reasonable costs incurred in (A) assessing both short-term and long-term injury to, or destruction of, natural resources, (B) preparing a restoration and acquisition plan with respect to the damaged resources, and

(C) restoring or acquiring the equivalent of the damaged resources;

(4) loss of subsistence use of natural resources;

(5) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages are sustained during the two-year period beginning on the date the claimant first suffers such loss; and

(6) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) REMOVAL COSTS RECOVERABLE BY ALL CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (1) of subsection (a) by any person.

(2) LIMITATION ON RECOVERY BY RESPONSIBLE PARTY.—(A) The responsible party with respect to a vessel or facility involved in an incident may assert a claim under paragraph (1) of subsection (a) only if he can show that—

(i) he is entitled to a defense to liability under section 8504(c), or

(ii) he is entitled to a limitation of liability under section 8504(b).

(B) A claimant who is not entitled to a defense to liability, but who is entitled to a limitation of liability, may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under section 8504(a) and removal costs incurred by, or on behalf of, the responsible party is limited under section 8504(b).

(c) OTHER DAMAGES RECOVERABLE BY UNITED STATES CLAIMANTS.—

(1) INJURY TO PROPERTY; SUBSISTENCE USE OF NATURAL RESOURCES.—A claim may be asserted under paragraphs (2) and (4) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 8501(16) by any United States claimant, but only if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant.

(2) INJURY TO NATURAL RESOURCES.—A claim may be asserted under paragraph (3) of subsection (a) by the President as trustee for natural resources controlled by the United States or by the Governor of any State for natural resources within the boundary of the State and controlled by the State or a local government within the State.

(3) LOSS OF PROFITS.—A claim may be asserted under paragraph (5) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 8501(16) by any United States claimant, but only if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource or, if such activities are seasonal in nature, 25 percent of the claimant's earnings during the season in which such activities took place.

(4) LOSS OF TAX REVENUE.—A claim may be asserted under paragraph (6) of subsection (a) only by a State or political subdivision thereof.

(d) OTHER DAMAGES RECOVERABLE BY FOREIGN CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) with respect to oil pollution described in subparagraph (C) of section 8501(16) by a foreign claimant who is a resident of the country in which the oil pollution occurs, to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraph (A) of section 8501(16), if—

(A) the foreign claimant is not otherwise compensated for his loss; and

(B) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country of which the claimant is a resident, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(2) SPECIAL RULE FOR CANADIAN CLAIMANTS RESPECTING TRANS-ALASKA PIPELINE OIL.—In the case of any oil pollution described in section 8501(16)(B)(iv) or 8501(16)(C)(iv), a claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) by a resident of Canada without regard to subparagraph (B) of paragraph (1), to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraphs (A) and (B) of section 8501(16).

(e) ATTORNEY GENERAL.—A claim may be asserted under subsection (a) by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this section.

(f) GROUP OF CLAIMANTS.—If the Attorney General fails to act under subsection (e) within sixty days after the date on which the Secretary designates a source under section 8506, any member of a group may assert a claim for damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any claim for damages asserted under this section.

SEC. 8504. LIABILITY.

(a) JOINT, SEVERAL, AND STRICT LIABILITY.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection and subsections (b) and (c), the responsible party with respect to a facility or a vessel (other than a public vessel) that is the source of oil pollution, or poses a substantial threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 8501(23)(A), shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 8503.

(2) SPECIAL RULE FOR MODU'S.—(A) Except as provided in subparagraph (B), in any case in which a mobile offshore drilling unit is being used as a facility and is the source of oil pollution originating on or above the surface of the water or poses a substantial threat of such oil pollution, such unit shall be deemed to be a vessel which is a ship for purposes of this part.

(B) To the extent that damages for which claims may be asserted under section 8503 from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (b)(1)(B)), the mobile offshore drilling unit shall be deemed to be a facility covered by subsection (b)(1)(D), except that for purposes of applying subsection (b)(1)(D) the amount specified in such subsection shall be reduced by the amount for which the responsible party with respect to a ship is liable under subparagraph (A).

(C) In the case of any incident described in subparagraph (A)—

(i) which is caused primarily by willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the mobile offshore drilling unit and the lessee or permittee of the area, or holder of a right of use or easement for the area, in which such unit is located; or

(ii) with respect to which both such owner or operator and such lessee or permittee or holder fail or refuse to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities;

such owner or operator and such lessee or permittee or holder shall be jointly, severally, and strictly liable (without limitation under subsection (b)) for all loss for which a claim may be asserted under section 8503.

(b) LIMITS ON LIABILITY.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to an incident shall be limited to—

(A) in the case of a vessel other than a ship or an inland oil barge, $500,000 or $300 per gross ton whichever is greater;

(B) in the case of a ship, $3,000,000 or $420 per gross ton, whichever is greater (but not to exceed $60,000,000);

(C) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater; or

(D) in the case of a facility, $50,000,000.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) when the incident is caused primarily by willful misconduct or gross negligence within the privity or knowledge of a responsible party; or

(B) when a responsible party fails or refuses to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

(3) REPORT.—The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations on liability specified in this subsection.

(c) DEFENSES TO LIABILITY.—

(1) COMPLETE DEFENSES.—Except when the responsible party has failed or refused to report an incident where required by law, there shall be no liability under subsection (a) if the responsible party proves that the incident—

(A) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character, or

(B) was wholly caused by an act or omission of a person other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) PARTIAL DEFENSES.—There shall be no liability under subsection (a)—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(d) LIABILITY OF TRUST FUND.—

(1) GENERAL RULE.—The Trust Fund shall be liable for damages for which claims may be asserted under section 8503 and for

which claims are presented under this part, to the extent that the damages are not otherwise compensated.

(2) DEFENSES TO LIABILITY.—Except for the removal costs specified in section 8501(23)(A), there shall be no liability under paragraph (1), (2), or (3)—

(A) where the incident is caused wholly by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or the economic loss is caused by the negligence of that claimant.

(e) LIABILITY FOR INTEREST.—

(1) GENERAL RULE.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under section 8503 for the period described in paragraph (2).

(2) PERIOD FOR WHICH INTEREST IS OWED.—(A) Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claimant is paid, inclusive.

(B) If the responsible party or guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within sixty days after the date upon which the claim is presented, or of the date upon which advertising is begun pursuant to section 8506, whichever is later, the period described in subparagraph (A) shall not include any period before such offer is accepted.

(3) RATE OF INTEREST.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(4) RELATIONSHIP TO LIABILITY LIMITS.—Interest under this subsection shall be in addition to damages for which claims may be asserted under section 8503 and shall be paid without regard to any limitation of liability under subsection (b). The payment of interest under this subsection by a guarantor shall be subject to section 8505(e).

(f) AGREEMENTS.—

(1) LIABILITY NOT TRANSFERABLE.—A responsible party may not transfer the liability imposed under this section to any other person.

(2) INDEMNIFICATION AGREEMENTS.—Nothing in this subtitle shall preclude an agreement whereby a person who, by an agreement with a responsible party, agrees to indemnify the responsible party for the liability imposed under subsection (a).

(g) RELATIONSHIP TO OTHER CAUSES OF ACTION.—Nothing in this part shall bar a cause of action that a responsible party subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(h) RELATIONSHIP TO OTHER LAW.—To the extent that it is in conflict with, or otherwise inconsistent with, any other law (other than part 5 or any amendment made by part 5) relating to liability or the limitation thereof, this section supersedes such other law.

(i) ADMINISTRATIVE COSTS.—The Trust Fund shall not be available for the payment of costs and expenses of administration of this subtitle, unless such costs and expenses are necessary for and incidental to the implementation of this subtitle.

SEC. 8505. FINANCIAL RESPONSIBILITY.

(a) VESSELS.—

(1) REQUIREMENT.—The responsible party with respect to each vessel (except a public vessel or a non-self-propelled vessel that does not carry oil as cargo or fuel) over three hundred gross tons that uses a facility or the navigable waters shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum liability under section 8504 to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 8504. In cases where a responsible party owns or operates more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (B) detain at the facility or at the port or place in the United States, any vessel subject to this subsection that, upon request, does not produce the certification required under this subsection or regulations issued hereunder.

(b) FACILITIES.—The responsible party with respect to each facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the responsibile party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 8504. In cases where the responsibile party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) METHODS.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods acceptable to the Secretary: evidence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(d) CLAIMS AGAINST GUARANTOR.—Any claim authorized by section 8503(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this part. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this part shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SEC. 8506. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the Secretary receives information of an incident that involves oil pollution, he shall, where possible and appropriate, designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.—If a responsible party or guarantor fails to inform the Secretary, within five days after receiving notification of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. Advertisement under the preceding sentence shall begin no later than fifteen days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than thirty days.

(c) ADVERTISEMENT BY THE SECRETARY.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Trust Fund.

SEC. 8507. CLAIMS SETTLEMENT.

(a) PRESENTATION TO RESPONSIBLE PARTY OR GUARANTOR.—Except as provided in subsection (b), all claims shall be presented to the responsible party or guarantor of the source designated under section 8506(a).

(b) PRESENTATION TO TRUST FUND.—Claims may be presented to the Trust Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 8506(c);

(2) by a responsible party who may assert a claim under section 8503(a); or

(3) by the Governor of a State for cleanup costs incurred by that State.

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 8506(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Trust Fund. Such an election shall be irrevocable and exclusive.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 8504 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Trust Fund.

(e) TRANSMITTAL OF CLAIM AND DOCUMENTS.—In the case of a claim which has been presented to any person under subsection (a) and which is being presented to the Trust Fund under subsection (c) or (d), that person, at the request of the claimant, shall transmit the claim and supporting documents to the Trust Fund. The Secretary may, by regulation, prescribe the documents to be so transmitted and the terms under which they are to be transmitted.

(f) PROCEDURES.—The Secretary shall establish procedures and standards for the prompt appraisal and settlement of claims against the Trust Fund, including procedures for ensuring the rapid and equitable settlement of claims submitted by the Governor of any State for cleanup costs incurred by that State.

(g) USE OF PRIVATE ORGANIZATIONS AND FEDERAL PERSONNEL.—The Secretary may use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Trust Fund and may contract for those facilities and services. To the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, the Secretary may use Federal personnel, on a reimbursable basis, to process claims against the Trust Fund.

(h) JUDICIAL REVIEW.—Any claimant, or any other person suffering legal wrong because of, or adversely affected or aggrieved by, a final determination of the Secretary with respect to a claim, may bring an action for judicial review of the determination in accordance with chapter 7 of title 5, United States Code. Such action shall be brought under section 8509 and shall be the exclusive judicial remedy with respect to such final determination of the Secretary. Such an action shall be filed not later than thirty days after the Secretary issues notification of the final determination. Venue for any such action shall lie in any district wherein the claimant resides, in addition to any district described in section 8509(b).

(i) ACTIONS AGAINST RESPONSIBLE PARTY OR GUARANTOR.—

(1) SERVICE OF PLEADINGS ON TRUST FUND.—In any action brought under this part against a responsible party or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Trust Fund at the same time those pleadings are served upon the opposing parties.

(2) INTERVENTION OF TRUST FUND.—The Trust Fund may intervene as a party as a matter of right in any action in which a complaint has been served upon it under paragraph (1).

(3) ADMISSION OF LIABILITY.—In any action to which the Trust Fund is a party, if the responsible party or his guarantor admits liability under this part, the Trust Fund shall be dismissed therefrom to the extent of the admitted liability.

(4) EFFECT OF JUDGMENT.—If the Trust Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in paragraph (1), the Trust Fund shall be bound by any judgment entered therein, whether or not the Trust Fund was a party to the action.

(5) FAILURE TO SERVE PLEADINGS.—(A) If the plaintiff fails to serve a copy of the complaint upon the Trust Fund as required by paragraph (1), the plaintiff shall not recover from the Trust Fund any sums not paid by the defendant.

(B) If the defendant fails to serve a copy of the initial answer to a complaint upon the Trust Fund as required by paragraph (1), the limitation of liability otherwise permitted by subsection (b) of section 8504 shall not be available to the defendant.

(C) If neither the plaintiff nor the defendant serves a copy of the complaint and all subsequent pleadings upon the Trust Fund as required in paragraph (1), the Trust Fund may serve a motion for a new trial for the purposes specified in this subparagraph. The motion must be served not later than ten days after the Trust Fund has received notice of the entry of the judgment in the action, but in no case later than ninety days after the entry of that judgment. The Trust Fund must establish in its motion that, due to the failure of the plaintiff or defendant to comply with paragraph (1), the Trust Fund failed to receive timely notice of one or more issues raised in the action, which might affect the liability of the Trust Fund in any case brought under this part. When the Trust Fund does so, the court shall open the judgment, if one has been entered, and shall take additional pleadings and testimony on the identified issue or issues. The court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the action.

(j) JOINDER OF PARTIES.—In any action brought against the Trust Fund the plaintiff may join any responsible party or his guarantor, and the Trust Fund may implead any person, who is or may be liable to the Trust Fund.

(k) PERIOD OF LIMITATIONS.—No claim may be presented, nor may any action be commenced for damages recoverable under this part, unless that claim is presented to, or that action is commenced against, a responsible party or his guarantor or against the Trust Fund as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (a) of section 8503, or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SEC. 8508. SUBROGATION.

(a) RIGHT OF SUBROGATION.—Any person, including the Trust Fund, who compensates any claimant for an economic loss compensable under section 8503 shall be subrogated to all rights, claims, and causes of action which that claimant has under this part.

(b) RECOVERY BY TRUST FUND.—

(1) DENIAL OF SOURCE DESIGNATION OR LIABILITY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 8507(b)(1) or 8507(c)(1), the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant;

(B) interest on that amount for the period beginning on the date on which the claim was first presented by the claimant to the Trust Fund or the responsible party or guarantor and ending on the date on which the Trust Fund is paid by the responsible party or guarantor, except that if the Trust Fund offered to the claimant the amount finally paid by the Trust Fund to the claimant in satisfaction of the claim against the Trust Fund the responsible party or guarantor shall not be liable for interest for the period beginning on the date the Trust Fund made such offer and ending on the date on which the claimant accepted such offer; and

(C) all costs incurred by the Trust Fund by reason of the claim of the claimant against the Trust Fund and by reason of the claim of the Trust Fund against the responsible party or guarantor.

(2) FAILURE TO SETTLE WHERE PAYMENT BY TRUST FUND EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 8507(c)(2) where the amount the Trust Fund has paid to the claimant exceeds the largest amount, if any, the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid the claimant, except that the portion of such amount in excess of the amount offered to the claimant by the responsible party or guarantor shall be subject to dispute by the responsible party or guarantor;

(B) interest on the portion of such excess, if any, which is recovered by the Trust Fund, for a period determined in the same manner as in paragraph (1)(B); and

(C) all costs incurred by the Trust Fund by reason of the claim of the Trust Fund against the responsible party or guarantor.

(3) FAILURE TO SETTLE WHERE PAYMENT OF TRUST FUND DOES NOT EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 8507(c)(2) where the amount the Trust Fund has paid to the claimant is less than or equal to the largest amount the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant; and

(B) interest—

(i) for the period beginning on the date on which the claim was presented by the claimant to the responsible party or guarantor and ending on the date on which the responsible party or guarantor offered to the claimant the largest amount referred to in this paragraph, except that if the responsible party or guarantor offered such amount within sixty days after the date upon which the claim of the claimant was presented to

the responsible party or guarantor or advertising was commenced under section 8506, whichever is later, the responsible party or guarantor shall not be liable for interest for such period; and

(ii) for the period beginning on the date on which the claim of the Trust Fund against the responsible party or guarantor was presented to the responsible party or guarantor to the date on which the Trust Fund is paid, inclusive, except that if the responsible party or guarantor offers to the Trust Fund the amount finally paid to the Trust Fund in satisfaction of the claim of the Trust Fund, interest shall not be paid for the period beginning on the date on which such offer is made and ending on the date on which the Trust Fund accepts that offer, inclusive.

(4) SPECIAL RULES.—For purposes of this subsection—

(A) interest shall be calculated in accordance with section 8504(e); and

(B) costs recoverable under paragraphs (1)(C) and (2)(C) include, but are not limited to, processing costs, investigating costs, court costs, and attorney's fees.

(c) PAYMENT OF CERTAIN INTEREST TO CLAIMANT.—The Trust Fund shall pay over to the claimant that portion of any interest the Trust Fund recovers under subsections (b)(1)(B) and (b)(2)(B) for the period beginning on the date on which the claim of the claimant was first presented to the Trust Fund or the responsible party or guarantor to the date upon which the claimant was paid by the Trust Fund, inclusive.

(d) APPLICATION OF LIABILITY LIMITS.—The Trust Fund is entitled to recover for all interest and costs specified in subsection (b) without regard to any limitation of liability to which the responsible party or guarantor may otherwise be entitled. The payment of such interest and costs by a guarantor shall be subject to section 8505(e).

SEC. 8509. JURISDICTION AND VENUE.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction over all controversies arising under this part and parts 2 and 3, without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Unless otherwise provided in this subtitle, venue shall lie in any district wherein the injury complained of occurred, or wherein the responsible party or guarantor resides, may be found, or has his principal office. For purposes of this section, the Trust Fund resides in the District of Columbia.

SEC. 8510. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this subtitle, or in section 9505 of the Internal Revenue Code of 1954—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for an economic loss compensable under this part,

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for damages for an economic loss described in section 8503(a), except that, for a period of three years beginning on the effective date of this section, any State which on such date has in effect a statute that requires such contributions may continue to require such contributions within the limits established by such statute as those limits exist on such date, and

(3) no person may be required to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim compensable under this part.

(b) STATE FINANCING OF PREPARATION FOR OIL POLLUTION CLEANUP.—Nothing in this subtitle shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment or to finance other preparations for responding to a discharge of oil which affects such State.

(c) ACTIONS BY TRUST FUND.—Nothing in subsection (a) shall prohibit an action by the Trust Fund under any other provision of law to recover compensation paid under this part.

SEC. 8511. PENALTIES.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 8505 or the regulations issued thereunder or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 8512. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning on or after October 1, 1985, such sums as may be necessary to carry out this subtitle.

PART 2—REPORT AND COORDINATION WITH OTHER PROVISIONS

SEC. 8601. ANNUAL REPORT.

The Secretary shall report annually to the Congress on the activities of the Trust Fund during the preceding year. The Secretary shall include in any such report any recommendations for legislative changes needed for the Trust Fund to carry out the purposes of this subtitle.

SEC. 8602. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) If any provision of this subtitle provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to the Trust Fund, any claim which arises before the effective date of such transfer (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the Trust Fund.

(b) If any provision of this subtitle authorizes amounts to be expended from the Trust Fund which are not authorized by part 5 (or an amendment made by part 5), such provision shall have no force or effect.

PART 3—REGULATIONS, EFFECTIVE DATES, AND SAVINGS PROVISIONS

SEC. 8701. EFFECTIVE DATES.

(a) PROVISIONS TAKING EFFECT ON DATE OF ENACTMENT.—This section, section 8501, section 8502, section 8512, part 2, section 8702(a)(1) and (3), section 8703, 8704, and each provision of part 1 that authorizes the promulgation of regulations shall be effective on the date of the enactment of this subtitle.

(b) PART 4.—Part 4 shall take effect on the first date on which both the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are in force with respect to the United States.

(c) PROVISIONS TAKING EFFECT IN 180 DAYS.—All other provisions of this subtitle, and the regulations issued under this subtitle, shall take effect 180 days after the date of enactment of this subtitle, except that the penalty prescribed by section 8511 for failure to comply with the requirements of section 8505 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this subtitle, whichever is earlier.

(d) REGULATIONS RESPECTING FINANCIAL RESPONSIBILITY.—Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 8702, and in effect on the day immediately preceding the effective date of section 8702 shall remain in force until superseded by regulations issued under part 1.

SEC. 8702. CONFORMING AMENDMENTS.

(a) TRANS-ALASKA PIPELINE AUTHORIZATION ACT.—(1) The first sentence of subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b); 87 Stat. 586) is amended by inserting "in the State of Alaska" after "any area" and by inserting "related to the trans-Alaska oil pipeline" after "any activities". Such subsection is further amended by inserting at the end thereof the following new sentence: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 8501 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(2) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed. Such repeal shall not affect the applicability of such subsection to claims arising before the effective date of this paragraph. Notwithstanding section 8701, the repeal of—

(A) paragraph (4) of such subsection (establishing the Trans-Alaska Pipeline Liability Fund),

(B) paragraph (5) of such subsection (to the extent it permits costs of administration to be paid from the Fund and permits amounts in the Fund to be invested), and

(C) paragraph (8) of such subsection (permitting recovery by subrogation),

shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under paragraph (3) of this subsection, the rebate of all remaining amounts under paragraph (3) of this subsection, and the completion of all actions required to carry out paragraph (3) of this subsection.

(3)(A) Not later than 210 days after the date of enactment of this paragraph, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary of Transportation the total amount of claims outstanding against such Fund, as of the effective date of paragraph (2) of this subsection. The amount in the Trans-Alaska Pipeline Liability Fund exceeding the total amount certified under the preceding sentence shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(B) After the settlement of all claims described in subparagraph (A) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in such Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(C) Whenever a rebate is made on a pro rata basis to the owners of oil under subparagraph (A) or (B), each such owner's share of the rebate shall be an amount determined by dividing the amount contributed by such owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to such Fund.

(D) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486; 88 Stat. 10) is amended to read as follows:

"SEC. 17. The Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954 shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 8501 of the Comprehensive Oil Pollution Liability and Compensation Act), or the substantial threat of oil pollution, taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subsection (a) is amended by striking out the period at the end of paragraph (17) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence by inserting after "person" the following: "or his employer".

(3) Subparagraph (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking out "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Subparagraph (B) of paragraph (6) of subsection (b) is amended in the first and second sentences by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge".

(5) Subsection (c)(2)(H) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund".

(6) Subsection (d) is amended by striking out the last sentence.

(7) Subsections (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any discharge of oil resulting in damages for which a claim may be asserted under part 1 of this subtitle.

(8) Subsection (i) is amended by striking out "(1)" after "(i)" and by striking out paragraphs (2) and (3).

(9)(A) Subsection (k) is repealed, effective upon the payment from the fund established by such subsection of all claims certified under subparagraph (B) and all remaining amounts to the general fund of the Treasury under subparagraph (B).

(B) Not later than 180 days after the effective date of this paragraph, the Secretary of Transportation shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the fund established by subsection (k) as of the effective date of this paragraph. The amount in such fund exceeding the total amount certified shall be transferred to the general fund of the Treasury. If the amount paid in settlement of such claims is less than the amount so certified, the remainder shall be transferred to the general fund of the Treasury. Any amounts received by the United States under section 311 with respect to such claims after the effective date of the repeal of subsection (k) shall be deposited in the general fund of the Treasury.

(10) Subsection (l) is amended by striking out the second sentence.

(11) Subsection (p) is repealed.

(12) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Oil Spill Liability Trust Fund.".

(d) DEEPWATER PORT ACT OF 1974.—The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.; 88 Stat. 2126) is amended as follows:

(1) Section 4(c)(1) is amended by striking out "section 18(l) of this Act" and inserting in lieu thereof "section 8505 of the Comprehensive Oil Pollution Liability and Compensation Act".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed and subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d), respectively.

(3) Paragraph (3) of subsection (b) of section 18 (as redesignated by paragraph (2)) is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "Oil Spill Liability Trust Fund.".

(4) Subsection (c) of section 18 (as redesignated by paragraph (2)) is amended to read as follows:

"(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Any amounts remaining in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974 shall be deposited in the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund under the Deepwater Port Act of 1974.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 8703. REGULATIONS AND DELEGATION OF AUTHORITY.

The Secretary of Transportation may prescribe regulations to carry out this subtitle.

SEC. 8704. SEPARABILITY.

If any provision of this subtitle or the applicability thereof is held invalid, the remainder of this subtitle shall not be affected thereby.

PART 4—IMPLEMENTATION OF CONVENTIONS

SEC. 8801. RECOGNITION OF THE INTERNATIONAL FUND.

The International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention is recognized under the laws of the United States as a legal person and shall have the capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be a party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State his agent for service of process in any action against the International Fund in any court in the United States.

SEC. 8802. SERVICE OF PROCESS AND INTERVENTION.

(a) SERVICE OF PROCESS ON FUNDS.—In any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund and the Oil Spill Liability Trust Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) INTERVENTION.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention.

(c) EFFECT OF JUDGMENT.—If the International Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in subsection (a), the International Fund shall be bound by any judgment entered therein, whether or not the International Fund was a party to the action.

SEC. 8803. EXEMPTION FROM TAXATION.

The International Fund and its assets shall be exempt from all direct taxation in the United States.

SEC. 8804. PAYMENT OF CONTRIBUTIONS.

(a) PAYMENTS TO BE MADE FROM OIL SPILL LIABILITY TRUST FUND.—The amount of any contribution to the International Fund which is required to be made under article 10 of the International Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall

be paid to the International Fund from the Oil Spill Trust Fund. Before the International Fund Convention enters into force with respect to the United States, the President shall make, and deposit with the Secretary-General of the International Maritime Organization, a declaration under article 14 of the International Fund Convention that the United States assumes the obligation to pay contributions under article 10 of such Convention in respect of oil received within the territory of the United States and that such amount will be paid from the Oil Spill Liability Trust Fund.

(b) INFORMATION.—The Secretary shall, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal installation, or other installation in the United States under article 10 of the International Fund Convention to provide such information relating to that oil as may be necessary to carry out subsection (a).

SEC. 8805. JURISDICTION OF DISTRICT COURTS.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction of all controversies arising under the Civil Liability Convention or the International Fund Convention in—

(1) the territory, including the territorial sea, of the United States, or

(2) the exclusive economic zone of the United States established by Proclamation Numbered 5030, dated March 10, 1983,

without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For purposes of this subsection, the International Fund shall reside in the District of Columbia.

SEC. 8806. RECOGNITION OF JUDGMENTS.

Any final judgment of a court of any nation which is a party to the Civil Liability Convention or the International Fund Convention in an action for compensation under either such convention shall be recognized by any court of the United States or of a State when that judgment has become enforceable in such nation and is no longer subject to ordinary forms of review, except where—

(1) the judgment was obtained by fraud; or

(2) the defendant was not given reasonable notice and a fair opportunity to present his case.

SEC. 8807. FINANCIAL RESPONSIBILITY.

(a) U.S. DOCUMENTED SHIPS.—The owner of each ship which is documented under the laws of the United States and is carrying more than two thousand tons of oil in bulk as cargo shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The Secretary shall issue a certificate to each such owner who complies with this paragraph, in the form and manner required by the Civil Liability Convention.

(b) U.S. OWNED SHIPS.—With respect to any ship owned by the United States, the Secretary shall issue a certificate stating that the ship is owned by the United States and that the ship's liability is covered within the limits of liability prescribed by the Civil Liability Convention.

(c) OTHER SHIPS.—The owner of each ship (other than a ship to which subsection (a) or (b) applies), wherever registered, which is carrying more than two thousand tons of oil in bulk as cargo and which enters or leaves a port or offshore terminal in the United States (including the territorial seas) shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The owner of a ship which is registered in, or flying the flag of, a nation which is a party to the Civil Liability Convention shall be considered to have met the requirements of this paragraph if the ship is carrying a certificate issued by such nation attesting that insurance or other financial security is in force which meets the requirements of such Convention.

(d) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate showing compliance with the requirements of financial responsibility under subsection (a) or (c).

(e) DENYING ENTRY AND DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the United States, any vessel subject to this section that, upon request, does not produce the certificate required under this section or regulations issued hereunder.

SEC. 8808. CIVIL PENALTY.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 8804(b) or 8807, the regulations issued under either such section, or any denial or detention order under section 8807(e) shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions any civil penalty which is subject to imposition or which has been imposed under this subsection. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 8809. WAIVER OF SOVEREIGN IMMUNITY.

The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the International Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SEC. 8810. RULES AND REGULATIONS.

The Secretary may issue such rules and regulations as are necessary to implement the Civil Liability Convention and the International Fund Convention.

SEC. 8811. DEFINITIONS.

For purposes of this part—

(1) terms defined in part 1 have the same meanings when used in this part;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "International Fund" means the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention; and

(4) the term "International Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

PART 5—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 8901. TAX ON PETROLEUM FOR OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Superfund financing rate is 0.79 cent a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel.".

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c) for any period an amount equal to the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods.".

(d) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

"(2) OIL SPILL RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after September 30, 1985, and before October 1, 1990.".

(2) Subsection (c) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended by striking the period at the end and inserting the following: "that is attributable to the Superfund financing rate under section 4611(c).".

(3) Subsection (b)(1) of section 221 of the Hazardous Substance Response Revenue Act of 1980 (relating to transfers to Super-

fund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, subparagraph (A) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c).".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 8902. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under part 1 of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974,

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

"(c) EXPENDITURES.—

"(1) GENERAL EXPENDITURE PURPOSES.—

"(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in section 8501(23)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 8804 of such Act.

"(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) REFERENCES TO OTHER ACTS.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (3) of section 223(c) of the Hazardous Substance Response Revenue Act of 1980 shall apply for purposes of this subsection.

"(4) FINAL REPAYMENT.—No advance shall be made to the Oil Spill Liability Trust Fund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or in any amendment made by such Act shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

Subtitle G—Prohibition on Loan Sales

SEC. 8951. PROHIBITION.

A loan made under the Public Works and Economic Development Act of 1965 or under section 254 of the Trade Act of 1974 shall not be sold to private interests, except with the consent of the borrower, and a contract shall not be entered into with private interests to sell or administer any such loan.

TITLE IX—HOUSE COMMITEE ON SMALL BUSINESS

SEC. 9001. This title may be cited as the "Corporation for Small Business Investment Charter Act".

SEC. 9002. Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended—

(1) by inserting before the semicolon in paragraph (3) the following: ", or a company qualified to conduct business with the Corporation under section 357 of this Act";

(2) by inserting before the semicolon at the end of paragraph (5) the following: ", except that for purposes of title III the term means one which, together with its affiliates, is independently owned and operated, is not dominant in its field of operations and—

"(A) does not have net worth in excees of $7,000,000 and does not have an average net income, after Federal income taxes, for the preceding two years in excess of $2,500,000 (average net income to be computed without benefit of any carryover loss), except that such net worth and net income limitations shall be adjusted effective January 1 of each year following the effective date of this Act. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the implicit price deflator for gross national product published by the United States Department of Commerce, with 1986 being the initial year for adjustment; or

"(B) Otherwise qualifies under size standards for financial assistance established by the Administration under the Small Busines Act, as amended (Public Law 163, Eighty-third Congress).";

(3) by striking "and" at the end of paragraph (7);

(4) by striking the period at the end of paragraph (8) and inserting in lieu thereof a semicolon; and

(5) by inserting after paragraph (8) the following new paragraphs:

"(9) the term 'Corporation' means the Corporation for Small Business Investment, as constituted under this Act; the Corporation shall be classified as and considered to be a corporate instrumentality of the United States;

"(10) the term 'Board of Directors' means the Board of Directors of the Corporation;

"(11) the term 'disadvantaged small business concern' means a small business concern owned by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

"(12) the term 'law' includes any law of the United States or any State (including any rule of law or of equity);

"(13) the term 'organization' means any corporation, partnership, association, business trust, or other business entity;

"(14) the term 'security' has the meaning ascribed to it by section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1));

"(15) the term 'small business investment security' shall include—

"(A) debentures, bonds, promissory notes, obligations or securities issued by small business investment companies; and

"(B) such other small business investment company securities as determined by the Corporation;

"(16) the term 'private capital' means the combined private paid-in capital and paid-in surplus of a corporate small business investment company, or in the case of an unincorporated small business investment company, the permanent partnership capital; and

"(17) the term 'licensee in good standing' means a small business investment company which was approved by the Administration to operate under the provisions of this Act and was issued a license as provided in section 301 of this Act, unless such licensee (A) is in default under the provisions of preferred securities or debentures and such preferred securities or debentures have been declared due and payable by the Administration, or (B) is in liquidation by the Administration for regulatory reasons.".

SEC. 9003. Title III of the Small Business Investment Act of 1958 is amended by adding the following new section at the end thereof:

"TRANSFER AND PHASE-OUT

"SEC. 322. (a) A licensee in good standing shall have a period of three months from the date the Administration receives notice under section 352(h) of this Act in which to qualify under section 357(a) or section 359(a) of this Act.

"(b) Within six months after the Administration receives notice under section 352(h) of this Act, the Administration shall promulgate final rules and regulations to effect the orderly termination of operations of any licensee in good standing that is not qualified under section 357(a) or section 359(b) of this Act, and the Administration shall enter into an agreement with the Corporation which provides for the administration of such rules and regulations by the Corporation.

"(c) The final rules and regulations adopted by the Administration for termination of the operations of any licensee under subsection (b) of this section shall, among other things, suspend such licensee's authority under this title to obtain financial assistance from the Administration and shall require revocation of the license of any such licensee effective within two years after the publication of such rules and regulations, except that the license revocation for any such licensee which has outstanding debentures or preferred securities as provided in this title shall be within two years after such debentures or securities are due or paid, whether voluntarily or otherwise.

"(d) The Administration shall furnish to the Corporation all books and records of the Administration necessary to carry out the provisions of this title within thirty days after written request by the Corporation unless the Administrator certifies to the Corporation that such books and records are not available within such time: *Provided*, That the Administration shall not furnish information on any individual licensee unless the licensee has entered an agreement for the release of such information. Any such information received by the Corporation shall be kept confidential by the Corporation, its officers, agents and employees, under the same provisions which would have been applicable if it had been retained by the Administration.".

SEC. 9004. Title III of the Small Business Investment Act of 1958 is amended—

(1) by amending the table of contents to read as follows:

"TITLE III—SMALL BUSINESS INVESTMENT COMPANIES

"PART A

"Sec. 301. Organization of small business investment companies.
"Sec. 302. Capital requirements.
"Sec. 303. Borrowing power.
"Sec. 304. Provision of equity capital for small-business concerns.
"Sec. 305. Long-term loans to small-business concerns.
"Sec. 306. Aggregate limitations.
"Sec. 307. Exemptions.
"Sec. 308. Miscellaneous.
"Sec. 309. Revocation and suspension of licenses; cease and desist orders.
"Sec. 310. Examinations and investigations.
"Sec. 311. Injunctions and other orders.
"Sec. 312. Conflicts of interest.
"Sec. 313. Removal or suspension of directors and officers of licensees.
"Sec. 314. Unlawful acts and omissions by officers, directors, employees, or agents; breach of fiduciary duty.
"Sec. 315. Penalties and forfeitures.
"Sec. 316. Jurisdiction and service of process.
"Sec. 317. Interest subsidy.
"Sec. 318. Joint ownership of companies, benefits.
"Sec. 319. Preferred stock asset coverage requirement, exemption.
"Sec. 320. Guaranteed obligations not eligible for purchase by Federal Financing Bank.
"Sec. 321. Issuance and guarantee of trust certificates.
"Sec. 322. Transfer and phase-out.

"PART B

"Sec. 351. Purposes.
"Sec. 352. The Corporation for Small Business Investment.
"Sec. 353. Common and preferred stock.
"Sec. 354. Obligations and securities.
"Sec. 355. Legal investments and exempt securities.
"Sec. 356. Loan and investment operations.
"Sec. 357. Qualification of small business investment companies.
"Sec. 358. Operations of small business investment companies.
"Sec. 359. Special small business investment companies.
"Sec. 360. Audits and reports.
"Sec. 361. Transfer of SBA guaranteed securities to the Corporation.
"Sec. 362. Participating Incentive Revolving Fund.";

and

(2) by inserting the following heading prior to section 301:

"PART A".

SEC. 9005. Title III of the Small Business Investment Act of 1958 is amended by inserting the following new sections at the end thereof:

"PART B

"PURPOSES

"SEC. 351. The Congress hereby declares that the purposes of Part B of this title are—

"(1) to establish a Government-sponsored private corporation which will be financed by private capital and which will serve as a secondary market and warehousing facility for loans and investments in small business investment companies, including loans guaranteed by the Small Business Administration, and will provide liquidity for small business loans and investments;

"(2) to encourage the formation of new small business investment companies and to stimulate and supplement the orderly and necessary flow of private equity capital and long-term loan funds to and improve the distribution of investment capital available for small-business concerns as defined under this Act; and

"(3) to provide for an orderly transfer of certain functions of, and securities guaranteed or owned by, the Small Business Administration to the Corporation for Small Business Investment as constituted under this title.

"THE CORPORATION FOR SMALL BUSINESS INVESTMENT

"SEC. 352. (a) There is hereby created a body corporate to be known as the Corporation for Small Business Investment (hereinafter referred to as the 'Corporation'). The Corporation shall have succession until dissolved. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof. Offices may be established by the Corporation in such other place or places it may deem necessary or appropriate for the conduct of its business.

"(b) The Corporation, including its franchise, capital, reserves, surplus, mortgages, or other security holdings, and income, shall be exempt from all taxation now or hereafter imposed by any State, or by any county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

"(c) Within sixty days of the date of enactment of part B of this title, an interim Board of Directors of the Corporation shall be appointed by the President, one of whom the President shall designate as interim Chairman. The interim Board shall consist of five members, two of whom shall be representative of small business, two of whom shall be representative of small business investment companies, and one of whom shall be the Administrator. The interim Board shall arrange for an initial offering of common stock and take whatever other actions are necessary to proceed with the operations of the Corporation.

"(d) The Corporation shall have a permanent Board of Directors which shall consist of fifteen persons. When small business investment companies have purchased and fully paid for $15,000,000 of common stock of the Corporation, the holders of such common stock shall elect ten members to the Board of Directors. The President shall appoint the remaining five directors.

"(e) At the time the events described in subsection (d) of this section have occurred, the interim Board shall turn over the affairs of the Corporation to the permanent Board of Directors. The directors appointed by the President shall serve at the pleasure of the President and until their successors have been appointed and have qualified. The Board shall at all times have as members appointed by the President at least one person from a small business investment company operating under section 359 of this Act, and two persons who shall be representative of small business. The directors elected by the common shareholders shall each be elected for a term ending on the date of the next annual meeting of the common stockholders of the Corporation, and shall serve until their successors have

been elected and have qualified. Any appointive seat on the Board which becomes vacant shall be filled by appointment of the President. Any elective seat on the Board which becomes vacant after the annual election of the directors shall be filled by the Board, but only for the unexpired portion of the term.

"(f) The Board shall determine the general policies which shall govern the operations of the Corporation. The Board shall select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the executive officers of the Corporation and shall discharge all such executive functions, powers and duties.

"(g) The Corporation shall have power—

"(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

"(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

"(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

"(4) to conduct its business, carry out its operations, and have officers and exercise the powers granted by this section in any State without regard to any qualification, licensing or similar statute in any State;

"(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

"(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Corporation;

"(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

"(8) to appoint such attorneys, officers, employees, and agents as may be required, determine their qualifications, define their duties, fix their compensation, require bonds for them and fix the penalty thereof; and

"(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

"(h) When the permanent Board of Directors is duly constituted and the Corporation is ready to conduct business, it shall so notify the Administration.

"COMMON AND PREFERRED STOCK

"SEC. 353. (a)(1) The Corporation shall have voting common stock, having such par value as may be fixed by its Board of Directors from time to time, which may be issued only to small business investment companies. Each share of voting common stock shall be vested with all voting rights, each share being entitled to one vote with rights of cumulative voting at all elections of directors. The free transferability of the voting common stock at all time to any person, firm, corporation, or other entity shall not be restricted except for the restriction in subparagraph (5)(B) of this subsection and except that, as to the Corporation, it shall be transferable only on the books, of the Corporation. The initial maximum number of shares of voting common stock that the Corporation may issue and have outstanding shall be 100,000,000 shares. The maximum number of shares of voting common stock may be increased or decreased by the affirmative vote of the holders of at least a majority of the total outstanding shares.

"(2) The Corporation is authorized to issue nonvoting common stock having such par value as may be fixed by its Board of Directors from time to time. The initial maximum number of shares of nonvoting common stock that the Corporation may issued and have outstanding shall be 100,000,000 shares. The maximum number of shares of nonvoting common stock may be increased or decreased by the affirmative vote of the holders of at least a majority of the total outstanding shares. Any nonvoting common share issued shall be fully transferable, except that, as to the Corporation, it shall be transferable only on the books of the Corporation.

"(3) The holders of the voting or nonvoting common stock shall not have preemptive rights.

"(4) In order to accumulate funds for its capital surplus account from private sources—

"(A) the Corporation shall require each small business investment company to make payments of nonrefundable capital contributions not to exceed two per centum of the private capital of each such company;

"(B) the Corporation also may require each small business investment company to make payments of nonrefundable capital contributions not to exceed two per centum of any increases in the private capital of each such company; and

"(C) the Corporation also may require each small business investment company which sells a small business investment security to the Corporation to make, or commit to make, a nonrefundable capital contribution not to exceed one per centum of the unpaid principal balance of such security;

"(5)(A) The Corporation, from time to time, shall issue to each small business investment company its voting common stock evidencing any capital contributions made pursuant to paragraph (4) of this subsection.

"(B) Such voting common stock shall be retained by such companies for a period of not less than three years, subject to such conditions as may be established by the Corporation.

"(C) In addition, the Corporation may issue shares of nonvoting common stock in return for appropriate payments into capital or capital and surplus.

"(D) Such dividends as may be declared by the Board of Directors in its discretion shall be paid by the Corporation to the holders of its voting and nonvoting common stock.

"(6) Notwithstanding any other provision of law, any depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A), shall be authorized to make payments to the Corporation of the capital contributions referred to in this subsection, to receive stock of the Corporation evidencing such capital contributions, to dispose of such stock, subject to the provisions of this title.

"(b)(1) The Corporation is authorized to issue nonvoting preferred stock, having such par value as may be fixed by its Board of Directors from time to time. Any preferred share issued shall be freely transferable, except that, as to the Corporation, it shall be transferable only on the books of the Corporation.

"(2) The holders of the preferred shares shall be entitled to such rate of cumulative dividends and such shares shall be subject to such redemption or other conversion provisions as may be provided for at the time of issuance. No dividends shall be payable on any share of common stock at any time when any dividend is due on any share of preferred stock and has not been paid. The Corporation may prescribe that any class of preferred stock of the Corporation may be converted into voting or nonvoting common stock of the Corporation.

"(3) In the event of any liquidation, dissolution, or winding up of the Corporation's business, the holders of the preferred shares shall be paid in full at par value thereof, plus all accrued dividends, before the holders of the common shares receive any payment.

"OBLIGATIONS AND SECURITIES

"SEC. 354. (a) The Corporation is authorized to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Corporation. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Corporation shall determine, with the approval of the Secretary of the Treasury. Such obligations may be redeemable at the option of the Corporation before maturity in such manner as may be stipulated therein. The Corporation shall insert appropriate language in each of its obligations issued under this section and under section 356 clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the Corporation. The Corporation is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price. Any obligation or security of the Corporation may be issued and sold in definitive form, in book entry form or in such other form, with or without delivery of physical evidence of ownership, as shall be prescribed by the Corporation.

"(b) For the purposes of this section, the Corporation is authorized to issue obligations which are subordinated to any or all other obligations of the Corporation, including subsequent obligations. The obligations issued under this section shall have such maturities and bear such rate or rates of interest as may be determined by the Corporation and may be made redeemable at the option of the Corporation before maturity in such manner as may be stipulated in such obligations. Any of such obligations may be convertible into shares of common stock in such manner, at such price or prices, and such time or times as may be stipulated therein.

"(c) The Secretary of the Treasury, in his discretion, may purchase any obligations issued by the Corporation pursuant to subsection (a) of this section as now or hereafter in force and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act (40 Stat. 228), as amended, as now or hereafter in force, and the purposes for which securities may be issued under such Act, as now or hereafter in force, are extended to include such purchases. The authorities provided to the Secretary of the Treasury by the preceding sentence shall be effective only to such extent and in such amounts as are provided in advance in appropriations Acts.

The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $500,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be on terms and conditions as shall be determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations to the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, on such terms and conditions and at such price or prices as the Secretary may determine, any of the obligations acquired by the Secretary under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this section shall be treated as public debt transactions of the United States.

"LEGAL INVESTMENTS AND EXEMPT SECURITIES

"SEC. 355. All obligations issued by the Corporation pursuant to sections 354 and 356, all preferred stock issued by the Corporation pursuant to section 353(b) and all obligations guaranteed by the Corporation pursuant to section 356 shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All stock and obligations issued by the Corporation shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. The Corporation shall, for the purposes of section 14(b)(2) of the Federal Reserve Act (12 U.S.C. 355(2)), be deemed to be an agency of the United States. The obligations of the Corporation shall be deemed to be obligations of the United States for purposes of section 3124 of title 31, United States Code. For the purpose of section 101(39) of title 11, United States Code, the Corporation shall be deemed to be an agency of the United States; however, for the purpose of section 101(33) of title 11, United States Code, the Corporation shall not be deemed to be a governmental unit, but instead shall be deemed to be a corporation.

"LOAN AND INVESTMENT OPERATIONS

"SEC. 356. (a) After the permanent Board of Directors has been duly constituted and the debentures purchased as provided in section 361 of this Act, the Corporation is authorized, subject to the provisions of this section, pursuant to commitments or otherwise, to make advances on the security of, purchase, or repurchase, service, sell or resell, offer participations or pooled interests or otherwise deal in, at prices and on terms and conditions determined by the Corporation, small business investment securities.

"(b) Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect, in any State, a security or ownership interest in small business investment securities created by the Corporation or by any eligible small business investment company may be perfected either through the taking of possession of such securities or by the filing of notice of such interest in such securities in the manner provided by such State law for perfection of security or ownership interests in accounts.

"(c) The Corporation is authorized to guarantee securities based on or secured by pools or trusts of the small business investment securities eligible for purchase by the Corporation under this section and to act either as issuer or as guarantor of such securities issued by an eligible small business investment company. Such securities shall bear interest at a rate equal to the rate on the underlying small business investment securities less an allowance for servicing and other expenses as determined by the Corporation.

"(d) Securities issued pursuant to subsection (c) of this section may be in the form of debt obligations secured by pools of loans, or trust certificates of beneficial ownership in such pools of loans or both. Small business investment securities set aside pursuant to the offering of participations or pooled interests shall at all times provide for payments that, in the reasonable judgment of the Corporation, are adequate to ensure the timely principal and interest payments on such securities.

"(e) Nothing contained in this section shall be construed to impede small business investment companies operating under section 359 of this Act from receiving a proportionate and fair share of available funds.

"QUALIFICATION OF SMALL BUSINESS INVESTMENT COMPANIES

"SEC. 357. (a) The Corporation shall establish appropriate criteria for the qualification of small business investment companies to conduct business with the Corporation. Such criteria may include, among other things, the general business reputation and character of the owners and management of the small business investment company, and the probability of successful operations of such small business investment company, including adequate profitability and financial soundness. Licensees in good standing which make capital contributions and acquire and maintain common stock of the Corporation pursuant to section 353(a) of this Act, contract with the Corporation pursuant to the provisions of section 358(a) of this Act, and authorize the release of records to the Corporation pursuant to section 322(d) of this Act shall be deemed to be qualified under this section.

"(b) Each small business investment company authorized to operate under the authority of Part B of this title shall have private capital of not less than $1,000,000. In all cases, such private capital shall be in an amount adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently.

"(c) Notwithstanding the provisions of section 23A of the Federal Reserve Act (12 U.S.C. 371c), ownership interests in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire ownership interests in any small business investment company if, upon the making of that acquisition the aggregate amount of ownership interest in small business investment companies then held by the bank would exceed five per centum of its capital and surplus.

"(d) Each small business investment company shall have authority to purchase stock issued by the Corporation and to borrow money and to issue its debenture bonds, promissory notes, or other obligations under such general conditions and subject to such rules as the Corporation may prescribe.

"(e) Thirty days after the Administration receives notice from the Corporation pursuant to section 352(h) of this Act, the provisions of sections 301-306 inclusive, sections 308-318 inclusive, and sections 320 and 321, of this Act shall be inapplicable to small business investment companies which qualify under section 357(a) or section 359(a) of this Act and which remain qualified to conduct business with the Corporation.

"(f) All specific references to small business investment companies operating under the Small Business Investment Act of 1958 in any law of the United States, or regulations promulgated thereunder by any agency of the United States Government, or any law of any State in effect on the effective date of part B of this title, shall be deemed to refer to and include small business investment companies operating under the provisions of such Part.

"OPERATIONS OF SMALL BUSINESS INVESTMENT COMPANIES

"SEC. 358. (a) The Corporation shall enter into agreements with small business investment companies qualified under section 357 or section 359 of this Act governing the operations of such companies, in accordance with the provisions and purposes of this title.

"(b) Each small business investment company is authorized to provide equity capital and loans to small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the rules of the Corporation. Equity investments and loans made under this section may be made directly or in cooperation with other investors or lenders on a participation or guaranteed basis. Each small business investment company may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services.

"(c) Small business investment companies shall engage only in the activities contemplated by this title and in no other activities.

"(d) For the purpose of eliminating conflicts of interest which may be detrimental to small-business concerns, to small business investment companies, to the shareholders or partners of either, to the Corporation, or to the purposes of part B of this title, the Corporation shall adopt rules to govern transactions with any officer, director, shareholder, or partner of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, or partner of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company.

"(e) The Corporation shall adopt rules which shall provide that small business investment companies, either singularly or jointly, shall not be permitted to assume control over small-business concerns except on a temporary basis if reasonably necessary for the protection of its investment and then only under restrictions as determined by the Corporation.

"(f) Except as otherwise provided by the rules of the Corporation, financings of small-business concerns by small business investment companies shall be for a minimum period of five years. In the case of small business investment companies operating under section 359 of this Act, financings shall be for the minimum period of four years, except as otherwise provided by the rules of the Corporation.

"(g) Without the approval of the Corporation, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this title for any single enterprise shall not exceed 20 per centum of the private capital of such company. In the case of small business investment companies operating under section 359 of this Act, the limitation shall be 30 per centum.

"(h) Small business investment companies shall not provide financing to a small-business concern for re-lending, foreign investments, passive investments or the acquisition of farm land. For purposes of this subsection, 'farm land' shall mean land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

"(i) Each small business investment company shall be subject to an annual audit and shall make such reports to the Corporation at such times and in such form as the Corporation may require. The Administration shall have access to any financial audit or certified financial report filed with the Corporation by small business investment companies having outstanding small business investment securities which are held by or guaranteed by the Administration.

"(j) The Corporation shall adopt appropriate measures to assure compliance by small business investment companies with the provisions of this section. Failure by a small business investment company to comply with the provisions of this section shall entitle the Corporation to terminate or suspend the agreements between the Corporation and a small business investment company or to take corrective action warranted under the circumstances which shall include, but is not limited to: suspension or termination of agreements between the Corporation and such company; assessment of penalties against such company or its officers or directors; or removal or suspension of officers or directors of such company. In appropriate cases, the Corporation is authorized, in its discretion, to refer violations of the provisions of this section to the Administration for investigation or to refer such violations to the United States attorney in the jurisdiction in which such violations may have occurred or in which the small business investment company, or its officers or directors, are located.

"(k) In order to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small-business concerns, the provisions of the Constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges or other charges which may be charged, taken, received, or reserved by lenders shall not apply to any business loan made by a small business investment company pursuant to provisions of this title. This subsection shall apply to business loans made by a small business investment company in any State on or after the effective date of part B of this title, unless such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of the subsection to apply to business loans made in such State. In any case in which a State takes an action described in this subsection, such State law or constitutional or other provision shall not apply after the date of such action was taken with respect to any business loan made by a small business investment company pursuant to a commitment to make such loan which was entered into on or after the effective date of part B of this title and prior to the date on which such action was taken.

"SPECIAL SMALL BUSINESS INVESTMENT COMPANIES

"SEC. 359. (a) The Corporation shall adopt reasonable criteria regarding the qualification of a special type of small business investment company (hereinafter referred to as 'special small business investment companies'), the investment policy of which is that its investments will be made solely in disadvantaged small-business concerns. Licensees in good standing operating under the provisions of section 301(d) of this Act which make capital contributions and acquire and maintain common stock of the Corporation pursuant to section 353(a) of this Act, contract with the Corporation pursuant to the provisions of section 358(a) of this Act, and authorize the release of records to the Corporation pursuant to section 322(d) of this Act shall be deemed to be qualified under this section.

"(b) In order to benefit special small business investment companies, there is hereby authorized and created a special-purpose trust (hereinafter referred to as the 'Trust') which shall operate in conjunction with the Corporation as follows:

"(1) The Trust shall operate in accordance with a trust agreement between the Trust and the Corporation to carry out the purposes of this title.

"(2) The Trust shall be administered by five trustees, three of whom shall be nominated by the special small business investment companies and appointed by the Board of Directors of the Corporation. At least three of the trustees shall, at all times, be persons from special small business investment companies. One of the trustees shall be appointed by the President, to serve at the pleasure of the President, and one of the trustees shall be ex-officio, the Chairman of the Board of Directors of the Corporation, or his designee.

"(3) The nomination of trustees by special small business investment companies shall be by vote of such companies, which shall be cumulative, by number of shares of voting common stock of the Corporation held by each such company. Each of the trustees nominated by the special small business investment companies shall be appointed as trustees by the Board of Directors of the Corporation unless such Board, for good cause shown, refuses to approve any such nominee, in which event a new nominee shall be nominated by the special small business investment companies. Nominees, upon appointment by the Board, shall serve for terms of three years, and no such trustee shall serve more than two consecutive terms.

"(4) The trustees appointed by the Corporation shall have custody and control of the trust estate to administer, sell, invest and reinvest the trust estate 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.

"(5) The Trust shall establish separate accounting for all preferred securities, debentures, loss reserves and other funds acquired and the application of funds for the purposes specified in this section. The trustees shall make an annual accounting of the Trust's operations to the Secretary of the Treasury.

"(c) Within thirty days after the Administration receives notice from the Corporation pursuant to section 352(h) of this Act, the Administration shall convey to the Corporation in trust all of the right, title, and interest to all preferred securities and debentures issued by small business investment companies operating under authority of section 301(d) of this Act, and held by the Administration. The Corporation shall grant and convey to the Trust such securities and debentures and other funds designated for the Trust in trust, to be administered in accordance with the provisions of this title.

"(d) The Trust shall apply all of the funds held in trust and income thereon, dividends on any preferred securities held in trust, and interest on any debentures held in trust, together with the proceeds from any retired preferred securities held in trust, and proceeds from any maturing debentures held in trust—

"(1) to cover any losses realized on preferred securities or debentures held in trust, preferred securities purchased by the Trust in accordance with the provisions of this section or debentures purchased or guaranteed by the Corporation in accordance with the provisions of this section;

"(2) to reduce the interest rate on debentures purchased or guaranteed by the Corporation in accordance with the provisions of subsection (e) of this section:

"(3) to purchase preferred securities in accordance with the provisions of subsection (e) of this section; and

"(4) to cover the operating costs of administering the Trust.

"(e) The trustees of the Trust are authorized to purchase preferred securities, and the Corporation is authorized to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by special small business investment companies. Such purchases or guarantees may be on such terms and conditions as the Trust or the Corporation deems appropriate, subject to the following:

"(1) The Trust may purchase shares of nonvoting stock (or other securities having similar characteristics) issued by special small business investment companies, provided—

"(A) dividends are preferred and such securities are subject to such rate of cumulative dividends, redemption or other conversion provisions, terms and conditions as may be determined by the Trust;

"(B) on liquidation or redemption, the Trust is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Trust) the Trust shall be paid any amounts as may be due pursuant to subparagraph (A) of this paragraph;

"(C) the purchase price shall be at a price determined by the Trust and, in any one sale, $50,000 or more; and

"(D) the amount of such securities purchased and outstanding at any one time shall not exceed 200 per centum of the pri-

vate capital of such company. The amount of such securities purchased by the Trust in excess of 100 per centum of such private capital from any company may not exceed an amount equal to the amount of its funds invested in or legally committed to be invested in venture capital as determined by the Trust. For the purpose of the subsection, the term 'venture capital' means stock of any class (including preferred stock) or limited partnership interests, or shares in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other ventures for profit or debt instruments which are subordinate by their terms to other borrowings of the issuer.

"(2) The Corporation may purchase or guarantee debentures issued by special small business investment companies which shall be subordinate to any other debentures, bonds, promissory notes or other debts and obligations of such companies unless the Corporation in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise, provided—

"(A) the effective rate of interest during the first five years of the term of any debenture purchased by the Corporation under authority of this section shall be at a rate determined by the Corporation to be the rate of return on comparable small business investment securities purchased by the Corporation reduced to such lower rate as determined and provided by the Trust, such reduction in rate not to exceed 3 per centum per annum; and

"(B) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this subsection or transferred to the Trust under subsection (c) of this section shall not exceed 400 per centum of a company's private capital less the amount of preferred securities outstanding.

"(3) Debentures purchased and outstanding pursuant to paragraph (2) of this subsection (e) may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(B) of this subsection (e).

"(f) The Trust and the Corporation are authorized to extend the benefits of this section to any special small business investment company which is owned, in whole or in part, by one or more small business investment companies, in accordance with rules promulgated by the Trust and the Corporation.

"(g) All dividends on preferred securities, interest on debentures, gains from sales of any securities and all other income of the Trust shall be exempted from all taxation now or hereafter imposed by the Congress or by any State or by any county, municipality, or local taxing authority.

"(h) Fifty years after the effective date of the Corporation for Small Business Investment Charter Act, all preferred securities purchased by the Trust from special small business investment companies shall be redeemed and, together with the remaining corpus and interest of the Trust, less any funds owed to the Corporation, shall be transferred by the Trust to the United States Treasury for covering into miscellaneous receipts. Thereafter, the Trust shall be terminated and special small business investment companies operating under the authority of this section shall operate under the authority of section 357 of this Act.

"AUDITS AND REPORTS

"SEC. 360. (a) The Administration shall have review authority over the Corporation to insure that the public purposes of part B of this title are carried out. The Administration's reviews shall cover the Corporation's criteria for the qualification of small business investment companies to conduct business with the Corporation and the Corporation's agreements, rules or regulations governing the operations of small business investment companies, but shall not extend to the Corporation's internal operations such as personnel, salary, and other usual corporate matters.

"(b) The Administration may examine the books and records of the Corporation and may require the Corporation to make such reports as the Administration deems desirable. The Administration, not later than January 31 of each year, shall report to the Congress on reviews made under this section.

"(c) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States. A report of each such audit shall be furnished to the Secretary of the Treasury. The audit shall be conducted at the place or places where the accounts are normally kept. The representatives of the Secretary shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

"(d) A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Small Business Committees of the Congress not later than six months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Corporation, together with such recommendations with respect thereto as the Secretary may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit. A copy of each report shall be furnished to the Administration and to the Corporation. In addition to such annual audits, the Corporation shall be subject to audit by the General Accounting Office, at the request of either of the Small Business Committees of the Congress, as long as the Corporation holds small business investment company securities guaranteed by the Administration and acquired by the Corporation pursuant to section 361 of this Act.

"(e) The Corporation shall, as soon as practicable after the end of each fiscal year, transmit to the President, the Small Business Committees of the Congress and the Administration a report of its operations and activities during each year.

"TRANSFER OF SMALL BUSINESS ADMINISTRATION GUARANTEED SECURITIES TO THE CORPORATION

"SEC. 361. (a) To carry out the purposes set forth in section 351 of this Act, and notwithstanding any law, rule, or regulation, the Secretary of the Treasury is authorized and directed to sell to the Corporation during fiscal year 1987, all of the right, title and interest to all small business investment company securities guaranteed by the Administration and held by the Federal Financing Bank (the 'Bank'), providing such securities are due in fiscal year 1988 or any subsequent year. The acquisition by the Corporation shall be with full recourse to the full faith and credit guarantee of the Administration. The Corporation shall fully pay in cash for such securities during fiscal year 1987 at a price equal to the outstanding principal balance of such securities, except that $100,000,000 of the purchase price shall be paid by the Corporation to the trustees for the Trust to carry out the trust functions specified in section 359 of this Act. Such securities shall not be sold by the Corporation prior to three years following their acquisition by the Corporation. Interest on such securities shall accrue to the benefit of the Bank up to the date of transfer of title of the securities from the Bank to the Corporation.

"(b) To the extent the Corporation is prepared to conduct business during fiscal year 1987, the Secretary of the Treasury is authorized to sell to the Corporation during fiscal year 1987, all of the right, title and interest to any small business investment company securities guaranteed by the Administration and held by the Bank which are due in fiscal year 1987. The acquisition by the Corporation shall be with full recourse to the full faith and credit guarantee of the Administration. The Corporation shall fully pay in cash for such securities during fiscal year 1987 at a price equal to the outstanding principal balance of such securities. Such securities shall not be sold by the Corporation prior to three years following their acquisition by the Corporation. Interest on such securities shall accure to the benefit of the Bank up to the date of transfer of title of the securities from the Bank to the Corporation.

"PARTICIPATING INCENTIVE REVOLVING FUND

"SEC. 362. (a) The Corporation shall establish a participating incentive revolving fund. Annually and within 30 days of the close of its fiscal year, the Corporation shall determine the difference between the interest income received by the Corporation on guaranteed securities purchased by the Corporation pursuant to section 361 of this Act and the sum of (1) the amount of issuance costs and interest payments made on obligations incurred by the Corporation for the purpose of acquiring such guaranteed securities, including any refinancing thereof; and (2) the operating costs of the Corporation to service such guaranteed securities. An amount equal to the difference so computed shall be deposited in the revolving fund within 10 days of the date the determination is made.

"(b) Annually the Administration shall determine the amount of net losses it has realized on account of claims under small business investment company securities guaranteed by the Administration and shall notify the Corporation of the amount so determined. From the revolving fund, including any interest earned thereon, the Corporation shall pay to the Administration an amount equal to such net losses. If the balance in the revolving fund is insufficient to pay the full amount of net losses, any amounts not so paid shall accrue as a charge against the fund and shall be paid at the

earliest possible date. Except as a charge against the revolving fund, any such accrued charges shall not be considered a liability of the Corporation.

"(c) Fifteen years after the effective date of part B of this title, the revolving fund shall terminate: *Provided*, That the Corporation may terminate the revolving fund at an earlier date if the Administration certifies to the Corporation that all net losses on guaranteed securities purchased by the Corporation under section 361 of this Act have been paid and that there will be no net losses in the future under subsection (b) above. Any balances remaining in the revolving fund at the time of termination shall be distributed as follows: seventy-five per centum to the capital surplus account of the Corporation and twenty-five per centum to the Trust created under section 359 of this Act.".

SEC. 9006. Section 4(c)(5) of the Small Business Act (15 U.S.C. 633(c)(5)) is amended—

(1) by striking clause (i) of subparagraph (B);

(2) by striking "(ii)" from subparagraph (B);

(3) by striking from subparagraph (C) "subsection (B)(ii)" and inserting "subparagraph (B)"; and

(4) by striking from subparagraph (C) "funds" and inserting "funds: *Provided*, That notwithstanding any other law, rule or regulation, the Administration shall not make any payments to the Department of the Treasury on account of debentures guaranteed under title III of the Small Business Investment Act of 1958 after the date such debentures are sold to the Corporation as provided in section 361 of the Small Business Investment Act of 1958".

SEC. 9007. Section 5(b)(2) of the Small Business Act, (15 U.S.C. 634(b)(2)) is amended by striking "collection;" and by inserting "collection: *Provided*, That nothing in this Act nor any other law shall authorize the Administration to sell, hypothecate, pledge or in any way encumber loans or debentures made or issued by such Administration except as authorized by section 361 of the Small Business Investment Act of 1958;".

SEC. 9008. (a) Section 321(f)(1) of the Small Business Investment Act of 1958 is amended by striking "development company; the interest rate paid by the development company" and inserting "licensee involved; the interest rate paid by the licensee involved"; and

(b) Section 18005(b)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) is amended by striking "sections 504 and 505" and inserting "section 321".

SEC. 9009. The sixth sentence of the seventh paragraph of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by inserting after "Student Loan Marketing Association" the following "or obligations or other instruments or securities of the Corporation for Small Business Investment,".

SEC. 9010. Except as otherwise provided in this Act, or as otherwise provided by the Corporation or by the laws hereafter enacted by the Congress expressly in limitation of provisions of this Act, the powers and functions of the Corporation and of the Board of Directors shall be exercisable, and the provisions of this Act shall be applicable and effective, without regard to any other law.

SEC. 9011. Notwithstanding any other law this Act shall be applicable to the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

TITLE X—HOUSE COMMITTEE ON WAYS AND MEANS

Subtitle A—OASDI Provisions
Subtitle B—Provisions Relating to Public Assistance and Unemployment Taxes
Subtitle C—Provisions Relating to Medicare
Subtitle D—Revenue Provisions

Subtitle A—OASDI Provisions

SEC. 10001. ELIMINATION OF 3-PERCENT TRIGGER FOR COST-OF-LIVING INCREASES.

(a) ELIMINATION OF TRIGGER.—Section 215(i)(1)(B) of the Social Security Act is amended by striking out "with respect to which the applicable increase percentage is 3 percent or more" and inserting in lieu thereof "with respect to which the applicable increase percentage is greater than zero".

(b) CONFORMING AMENDMENTS.—

(1) IN CURRENT LAW.—Section 215(i) of such Act is further amended—

(A)(i) by striking out clause (i) in paragraph (2)(C) and redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively, and

(ii) by striking out "under clause (ii)" in clause (ii) of such paragraph as so redesignated and inserting in lieu thereof "under clause (i)";

(B) by inserting "and by section 10001 of the Omnibus Budget Reconciliation Act of 1986" after "Social Security Amendments of 1983" in paragraph (4); and

(C) by striking out "because the wage increase percentage was less than 3 percent" in paragraph (5)(A)(i) and inserting in lieu thereof "because there was no wage increase percentage greater than zero".

(2) IN APPLICABLE FORMER LAW.—Section 215(i) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978, is amended—

(A) by striking out ", by not less than 3 per centum," in paragraph (1)(B); and

(B)(i) by striking out clause (i) of paragraph (2)(C) and redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively, and

(ii) by striking out "under clause (ii)" in clause (ii) of such paragraph as so redesignated and inserting in lieu thereof "under clause (i)".

(c) TECHNICAL AMENDMENT TO SMI PROGRAM.—Section 1839(f)(2)(A) of such Act is amended to read as follows:

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the monthly benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of the monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or".

(d) EFFECTIVE DATE.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978) in 1986 and subsequent years.

(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) shall apply with respect to months after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

SEC. 10002. DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENT EMPLOYERS.

(a) RETURNS AND PAYMENTS.—(1) Subchapter C of chapter 21 of the Internal Revenue Code of 1954 is amended by redesignating section 3126 as section 3127, and by inserting after section 3125 the following new section:

"SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

"If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.".

(2) The table of sections for subchapter C of chapter 21 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 3126. Return and payment by governmental employer.
"Sec. 3127. Short title.".

(b) TREATMENT OF SERVICE UNDER SECTION 218 AGREEMENTS AS EMPLOYMENT PERFORMED BY EMPLOYEES.—

(1) SERVICE TREATED AS EMPLOYMENT.—(A) Section 3121(b)(7) of such Code is amended—

(i) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a comma;

(ii) by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof ", or", and

(iii) by adding after subparagraph (D) the following new subparagraph:

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act;".

(B) Section 1402(b) of such Code is amended by striking out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" in the flush sentence immediately following paragraph (2).

(2) INDIVIDUAL PERFORMING SERVICES TREATED AS EMPLOYEE.—(A) Section 3121(d) of such Code is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or".

(B) Section 3306(i) of such Code is amended by striking out "subparagraphs (B) and (C) of paragraph (3)" and inserting in lieu thereof "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

(c) CONFORMING AMENDMENTS IN SOCIAL SECURITY ACT.—(1) Subsections (e), (h), (i), (j), (q), (r), (s), and (t) of section 218 of the Social Security Act are repealed; and subsec-

tions (f), (g), (k), (l), (m), (n), (o), (p), and (u) of such section are redesignated as subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

(2)(A) Section 205(c)(1)(D)(i) of such Act is amended by inserting "(as in effect prior to December 31, 1986)" after "section 218(e)".

(B) Section 205(c)(5)(F)(iii) of such Act is amended—

(i) by inserting "(as in effect prior to December 31, 1986)" after "section 218", and

(ii) by inserting "(as so in effect)" after "subsection (q) of such section".

(C) Section 211(d)(6) of such Act is amended—

(i) by striking out "subsection (f)" in subparagraph (A) and inserting in lieu thereof "subsection (e)", and

(ii) by striking out "subsection (f)(1)" in subparagraph (F) and inserting in lieu thereof "subsection (e)(1)".

(D) Section 218(d)(8)(D) of such Act is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (l)".

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "Except as provided in subsection (e)(2), any agreement" and inserting in lieu thereof "Any agreement".

(F) Section 224(a)(2)(B) of such Act is amended by striking out "section 218(k)" and inserting in lieu thereof "section 218(g)".

(d) EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

Subtitle B—Provisions Relating to Public Assistance and Unemployment Taxes

SEC. 10101. MANDATORY PROVISION OF AID WITH RESPECT TO DEPENDENT CHILDREN IN TWO-PARENT FAMILIES.

(a) REQUIREMENT THAT AID BE PROVIDED.—Section 402(a) of the Social Security Act is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (38);

(2) by striking out the period at the end of paragraph (39) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (39) the following new paragraph:

"(40) provide that payments of aid will be made under the plan with respect to dependent children of unemployed parents, in accordance with section 407.".

(b) CONFORMING AMENDMENTS.—(1) Section 407(b) of such Act is amended by striking out "(b) The provisions" and all that follows down through "(1) requires" and inserting in lieu thereof the following:

"(b) In providing for the payment of aid under the State's plan approved under section 402 in the case of families which include dependent children within the meaning of subsection (a) of this section, as required by section 402(a)(40), the State's plan—

"(1) shall require".

(2) Section 407(b)(2) of such Act is amended by striking out "provides—" and inserting in lieu thereof "shall provide—".

(c) QUARTERS OF WORK BASED ON EDUCATION OR TRAINING.—(1) Section 407(d)(1) of such Act is amended—

(A) by inserting "(A)" after "means a calendar quarter"; and

(B) by inserting before the semicolon at the end thereof the following: ", or (B) if the State plan so provides (but subject to the last sentence of this subsection), in which such individual (i) was in regular full-time attendance as a student at an elementary or secondary school, (ii) was in regular full-time attendance in a course of vocational or technical training designed to fit him or her for gainful employment, or (iii) participated in an education or training program established under the Job Training Partnership Act".

(2) Section 407(d) of such Act is further amended by adding at the end thereof (after and below paragraph (4)) the following new sentence:

"No individual shall be credited during his or her lifetime (for purposes of subsection (b)(1)(C)(i)) with more than 4 'quarters of work' based on attendance in a course or courses of vocational or technical training as described in paragraph (1)(B)(ii) of this subsection.".

(3) Section 407(b)(1)(C)(i) of such Act is amended by inserting after "6 or more quarters of work (as defined in subsection (d)(1))" the following: ", including 2 or more quarters of work as defined in subsection (d)(1)(A),".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective January 1, 1988.

SEC. 10102. TARGETING UNDER INCOME AND ELIGIBILITY VERIFICATION SYSTEM.

Section 1137(a)(4)(C) of the Social Security Act is amended by inserting after "payments" the following: ", and no State shall be required to use such information to verify the eligibility of all recipients".

SEC. 10103. ANNUAL CALCULATION OF FEDERAL PERCENTAGE FOR AFDC PURPOSES.

Section 9528(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as added by section 4621(a) of this Act) is amended (effective as provided in section 4621(b))—

(1) by striking out "payment to a State under section 1903" and inserting in lieu thereof "payments to States under sections 403 and 1903"; and

(2) by inserting "with respect to either such section" after "shall not apply to a State".

SEC. 10104. RATE OF FUTA TAX.

(a) IN GENERAL.—Paragraph (1) of section 3301 of the Federal Unemployment Tax Act is amended by striking out "1976" and inserting in lieu thereof "1989".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to remuneration paid after December 31, 1986.

Subtitle C—Medicare and Health Programs

TABLE OF CONTENTS

PART 1—PROVISIONS RELATING TO MEDICARE PART A ONLY

Sec. 10201. Setting part A deductible at $500 for 1987.
Sec. 10202. Applicable percentage increase in payments for inpatient hospital services.
Sec. 10203. Limitation on payments for capital-related costs for inpatient hospital services of DRG hospitals under medicare.
Sec. 10204. Coverage of hospitals in Puerto Rico under DRG prospective payment system.
Sec. 10205. Improving quality of care with respect to part A services.
Sec. 10206. Off-budget treatment of Federal Hospital Insurance Trust Fund in fiscal year 1987.
Sec. 10207. Technical amendments and miscellaneous provisions relating to part A.

PART 2—PROVISIONS RELATING TO PARTS A AND B

Sec. 10221. Elimination of periodic interim payment system (PIP) for DRG hospitals and prompt payment for medicare providers.
Sec. 10222. Health maintenance organizations and competitive medical plans.
Sec. 10223. Provisions relating to improvement of quality of care.
Sec. 10224. Technical amendments and miscellaneous provisions relating to parts A and B.

PART 3—PROVISIONS RELATING TO MEDICARE PART B

Sec. 10231. Extension of premium payment provision through 1989.
Sec. 10232. Payment for physicians' services, restrictions on reasonable charge limitations, and incentives for physician participation.
Sec. 10233. Payment rates for renal services and improvements in administration of end stage renal disease networks and program.
Sec. 10234. Technical amendments and miscellaneous provisions relating to part B.

PART 4—IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS

Sec. 10241. Improved review of quality by peer review organizations.

PART 5—ASSURING ACCESS TO HEALTH CARE

Sec. 10251. Incentives for the establishment of State health insurance pools.
Sec. 10252. COBRA technical amendments relating to continuation of employer-based health insurance coverage.
Sec. 10253. Continuation coverage for retirees in cases of bankruptcies.

PART 1—PROVISIONS RELATING TO MEDICARE PART A ONLY

SEC. 10201. SETTING PART A DEDUCTIBLE AT $500 FOR 1987.

For purposes of part A of title XVIII of the Social Security Act, and notwithstanding any provision of such part to the contrary, the inpatient hospital deductible (otherwise determined under section 1813(b) of such Act) for 1987 shall be $500. Such amount shall be applied—

(1) to inpatient hospital services furnished in 1987,

(2) in computing, under section 1813(b)(3) of such Act, the coinsurance amount for post-hospital expended care services furnished in 1987, and

(3) in computing, under section 1818(d) of such Act, the monthly premium (under part A of title XVIII of such Act) for months in 1987.

SEC. 10202. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

(a) IN GENERAL.—Subclause (II) of section 1886(b)(3)(B)(i) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended to read as follows:

"(II) for fiscal year 1987, 1.3 percent, and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and".

(b) CONFORMING AMENDMENTS.—(1) Section 1886(d)(3)(A) of such Act is amended by striking "and 1986" and inserting ", 1986, 1987, and 1988".

(2) Section 1886(e)(4) of such Act is amended—

(A) by striking "determine for each fiscal year (beginning with fiscal year 1987)" and inserting "recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year", and

(B) by adding at the end the following new sentence: "The percentage change for subsection (d) hospitals and subsection (d) Puerto Rico hospitals may be different from that for other hospitals and may vary among such other hospitals.".

(3) Section 1886(e)(5) of such Act is amended—

(A) by striking "June 1 before each fiscal year (beginning with fiscal year 1986)" and inserting "April 1 before fiscal year 1988 and the June 1 before each subsequent fiscal year", and

(B) by inserting "recommendation or" before "determination" each place it appears.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act, for discharges occurring on or after October 1, 1986.

(d) PROMULGATION OF NEW RATE.—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act but in no case later than October 1, 1986, for the republication of the determination described in section 1886(e)(5) of the Social Security Act, taking into account the amendments made by this section, without regard to the provisions of chapter 5 of title 5, United States Code.

SEC. 10203. LIMITATION ON PAYMENTS FOR CAPITAL-RELATED COSTS FOR INPATIENT HOSPITAL SERVICES OF DRG HOSPITALS UNDER MEDICARE.

(a) IN GENERAL.—Section 1886(g) of the Social Security Act (42 U.S.C. 1395ww(g)) is amended by adding at the end the following new paragraph:

"(3)(A) Notwithstanding section 1861(v)(1), in determining the amount of the hospital capital payments (as defined in subparagraph (D)), the Secretary shall provide for a reduction by such percentage (in this section referred to as the 'capital reduction percentage') in such payments as is necessary to provide that the aggregate amount of hospital capital payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1987, in fiscal year 1988, and in fiscal year 1989, does not exceed 110 percent, 120 percent, and 130 percent, respectively, of the aggregate amount of such payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1986, adjusted in accordance with subparagraph (C).

"(B) The Secretary shall determine the capital reduction percentage based upon the best information available before the beginning of the fiscal year involved and interim and final payments shall be made on the basis of such percentage. Such percentage shall not be subject to change after the date it is promulgated in final form.

"(C) In computing the hospital capital payments attributable to portions of cost reporting periods occurring in fiscal year 1986 in computing the limitation on hospital capital payments under subparagraph (A) attributable to portions of cost reporting periods occurring in—

"(i) fiscal year 1987, there shall be excluded 25 percent,

"(ii) fiscal year 1988, there shall be excluded 50 percent,

"(iii) fiscal year 1989, there shall be excluded 75 percent,

of the amount of the hospital capital payments (attributable to portions of cost reporting periods occurring in fiscal year 1986) that are attributable to a return on equity capital.

"(D) In this paragraph, the term 'hospital capital payments' means the payments that may be made under part A of this title with respect to the allowable capital-related costs (as defined by the Secretary) of inpatient hospital services for subsection (d) hospitals and subsection (d) Puerto Rico hospitals.".

(b) PUBLICATION OF CAPITAL REDUCTION PERCENTAGE.—Section 1886(e)(4) of such Act is amended by inserting before the period at the end the following: " and shall determine for each fiscal year the capital reduction percentage which should be effected under subsection (g)(3) for that fiscal year".

(c) NO ADMINISTRATIVE OR JUDICIAL REVIEW.—Section 1886(d)(7) of such Act is amended—

(1) by striking "and" at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting ", and", and

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

"(C) the determination of a capital reduction percentage under subsection (g)(3).".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to payments for capital-related costs attributable to portions of cost reporting periods occurring on or after October 1, 1986.

(2) TRANSITION.—The Secretary of Health and Human Services shall cause to have published in the Federal Register, by not later than 30 days after the date of the enactment of this Act or, if earlier, by October 1, 1986, the capital reduction percentage determined under section 1886(g)(3) for payments for capital-related costs attributable to portions of hospital cost reporting periods that occur during fiscal year 1987. In promulgating such percentage for such fiscal year, the provisions of chapter 5 of title 5, United States Code, and of chapter 35 of title 41 of such Code, shall not apply.

SEC. 10204. COVERAGE OF HOSPITALS IN PUERTO RICO UNDER A DRG PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

"(9)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1986, is equal to the sum of—

"(i) 75 percent of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

"(ii) 25 percent of the average of—

"(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in an urban area, and

"(II) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

As used in this section, the term 'subsection (d) Puerto Rico hospital' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

"(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1987 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

"(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A)) for the hospital for the cost reporting period beginning in fiscal year 1986 and increase such amount by the applicable percentage increase (as defined in subsection (b)(3)(B)) for fiscal year 1987.

"(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

"(I) excluding an estimate of indirect medical education costs,

"(II) adjusting for variations among hospitals by area in the average hospital wage level, and

"(III) adjusting for variations in case mix among hospitals.

"(iii) The Secretary shall compute an average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

"(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

"(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

"(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1987 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

"(i) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1988 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

"(ii) The Secretary shall reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

"(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

"(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsection:

"(i) Subparagraph (A) (relating to outlier payments), except that the total amount of additional payments made under this clause in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made under this paragraph for discharges in that year.

"(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

"(iii) Subparagraph (C)(iii) (relating to exceptions and adjustments).

"(iv) Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).

"(v) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).".

(b) CONFORMING AMENDMENTS.—(1) The first sentence of section 1886(d)(5)(C)(i) of such Act is amended by inserting "(other than under paragraph (9))" after "established under this subsection".

(2) The second and third sentences of section 1886(d)(5)(C)(ii) of such Act are each amended by inserting "(other than under paragraph (9))" after "payment amounts under this subsection".

(c) NO RESTANDARDIZATION OF NATIONAL LEVELS TO REFLECT INCLUSION OF PUERTO RICO.—The Secretary of Health and Human Services shall not restandardize or otherwise adjust the national DRG prospective payment rates otherwise determined under section 1886(d) of the Social Security Act to take into account changes in the payments provided to subsection (d) Puerto Rico hospitals under the amendment made by subsection (a).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 1986. The Secretary of Health and Human Services shall issue such regulations, by not later than October 1, 1986, as are necessary to implement such amendments in a timely manner, without regard to the provisions of chapter 5 of title 5, United States Code.

SEC. 10205. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES.

(a) REFINEMENT OF PROSPECTIVE PAYMENT SYSTEM.—

(1) DEVELOPMENT OF LEGISLATIVE PROPOSAL.—The Secretary of Health and Human Services shall develop and submit to Congress a specific legislative proposal to improve the classification and payment system under section 1886(d) of the Social Security Act (and, as appropriate, the system for payment of outliers under section 1886(d)(5)(A) of such Act) in order to assure that the amount of payment per discharge approximates the cost of medically necessary care provided in an efficient manner for individual patients or classes of patients with similar conditions.

(2) ACCOUNTING FOR SEVERITY OF ILLNESS.—In developing the proposal, the Secretary shall account for variations in severity of illness and case complexity which are not adequately accounted for by the current classification and payment system.

(3) DEADLINE.—The proposal shall be submitted to Congress by not later than 2 years after the date of the enactment of this Act.

(b) REQUIRING NOTICE OF HOSPITAL DISCHARGE RIGHTS.—

(1) REQUIREMENT FOR HOSPITALS TO PROVIDE STATEMENT.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)), as amended by section 10207(e)(6)(A) of this subtitle, is amended—

(A) by striking "and" at the end of the subparagraph (J),

(B) by striking the period at the end of subparagraph (K) and inserting ", and", and

(C) by inserting after subparagraph (K) the following new subparagraph:

"(L) in the case of hospitals, to provide to each individual who is entitled to benefits under part A (or to a legally responsible person or persons acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

"(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this title,

"(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

"(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

"(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify."

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(L) of the Social Security Act not later than six months after the date of the enactment of this Act. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.

(c) REQUIRING HOSPITALS TO PROVIDE DISCHARGE PLANNING PROCESS.—

(1) REQUIREMENT AS CONDITION OF PARTICIPATION.—Section 1861(e)(6) of the Social Security Act (42 U.S.C. 1395x(e)(6)) is amended—

(A) by inserting "(A)" after "(6)", and

(B) by inserting before the semicolon at the end the following: "and (B) has in place a discharge planning process that meets the requirements of subsection (ee)".

(2) DISCHARGE PLANNING PROCESS DEFINED.—Section 1861 of such Act is further amended by adding at the end the following new subsection:

"Discharge Planning Process

"(ee)(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this title and if it meets the guidelines and standards established by the Secretary under paragraph (2).

"(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

"(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

"(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

"(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

"(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

"(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

"(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

"(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel."

(3) EFFECT OF ACCREDITATION.—The second sentence of section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended—

(A) by inserting ", requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)," after "the same purpose)", and

(B) by inserting "clause (A) or (B) of" after "comply also with".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to hospitals as of one year after the date of the enactment of this Act.

(d) REVIEW OF STANDARDS FOR MEDICARE CONDITIONS OF PARTICIPATION FOR ASSURING QUALITY OF INPATIENT HOSPITAL SERVICES.—The Secretary of Health and Human Services shall arrange for a study of the adequacy of the standards used for hospitals, for purposes of meeting the conditions of participation under title XVIII of the Social Security Act, in assuring the quality of services furnished in hospitals. The Secretary shall report to Congress on the results of the study by not later than 2 years after the date of the enactment of this Act.

(e) STUDY OF PAYMENT FOR ADMINISTRATIVELY NECESSARY DAYS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine whether a payment should be made (in a budget-neutral manner under title XVIII of such Act to hospitals receiving payments under section 1886(d) of such Act) to a hospital for administratively necessary days, separate from the per-discharge and outlier payments made under such section.

(2) ADMINISTRATIVELY NECESSARY DAYS DEFINED.—In this subsection, an "administratively necessary day" is a day of continued inpatient hospital stay, for an individual entitled to benefits under part A of title XVIII of the Social Security Act, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

(3) CONSIDERATIONS IN CONDUCTING STUDY.—In conducting the study, the Secretary shall consider—

(A) the need for such a payment in order to minimize—

(i) the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care, such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and from the source of payment for such care, and

(ii) the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility, and

(B) the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) REPORT ON STUDY.—The Secretary shall report to Congress on the results of the study not later than January 1, 1988.

(f) CONTINUING OF FAVORABLE PRESUMPTION OF WAIVER OF LIABILITY FOR SKILLED NURSING FACILITIES, HOME HEALTH AGENCIES, AND HOSPICE PROGRAMS.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp) is amended by adding at the end the following new subsection:

"(f)(1)(A) A skilled nursing facility which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a) (1) or (9).

"(B) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a) (1) or (9).

"(C) A hospice program which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a) (1) or (9).

"(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2), including any of the following:

"(A) Notice by the fiscal intermediary of the fact that payment may not be made under this title with respect to the services.

"(B) In the case of a skilled nursing facility, the committee or group responsible for the conduct of utilization review for the facility has informed the facility that payment may not be made under this title with respect to the services.

"(C) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

"(3) The requirements of this paragraph are as follows:

"(A) The facility, agency, or program complies with requirements of the Secretary under this title respecting timely submittal of bills for payment and medical documentation.

"(B) The facility, agency, or program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this title.

"(4) The requirement of this paragraph is that, on the basis of bills submitted during the previous quarter, the rate of denial of bills by reason of section 1862(a) (1) or (9) for—

"(A) a skilled nursing facility does not exceed 5 percent, computed based on days of post-hospital extended care services billed,

"(B) a home health agency does not exceed 2.5 percent, computed based on visits for home health services billed, or

"(C) a hospice program does not exceed 2.5 percent, computed based on visits for hospice care billed.

"(5) The Secretary shall report annually to Congress—

"(A) information on the frequency and distribution (by type of provider) of denials referred to in paragraph (4), including—

"(i) the reasons for such denials,

"(ii) the extent to which payments were nonetheless made because of this section, and

"(iii) the rate of reversals of such denials, and

"(B) such other information as may be appropriate to evaluate the appropriateness of the percentage standards established under paragraph (4).

"(6) In this subsection, the term 'fiscal intermediary' means, with respect to a skilled nursing facility, home health agency, or hospice program an agency or organization with an agreement under section 1816 with respect to the facility, agency, or program.".

(2) REPEALING DUPLICATIVE PROVISIONS.—Section 9205 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and subsection (c) of section 9126 of such Act, are repealed.

(3) EFFECTIVE DATE.—(A) Except as provided in subparagraph (B), the amendments made by paragraphs (1) and (2) shall apply to services furnished on or after the date of the enactment of this Act, and before October 1, 1989.

(B) The amendments made by paragraph (1) shall apply to hospice care furnished (i) on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act and (ii) before October 1, 1989.

(g) EXTENSION OF WAIVER OF LIABILITY PROVISIONS TO CERTAIN COVERAGE DENIALS FOR HOME HEALTH SERVICES.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp), as amended by subsection (f), is further amended—

(A) in subsection (a)(1), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(B) in the first sentence of subsection (a), by inserting "and as though the coverage denial described in subsection (g) had not occurred" before the period at the end;

(C) in the third sentence of subsection (a), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(D) in subsection (c), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(E) in subsection (f)(1)(B)—

(i) by inserting "(i)" after "applicable requirements", and

(ii) by inserting before the period at the end the following: "or (ii) of paragraphs (3) and (5) shall be presumed to meet the requirement of subsection (a)(2) with respect to any coverage denial described in subsection (g)";

(F) in subsection (f)—

(i) in paragraph (5), by striking "paragraph (4)" each place it appears and inserting "paragraphs (4) and (5)",

(ii) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and

(iii) by inserting after paragraph (4) the following new paragraph:

"(5) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) does not exceed 2.5 percent, computed based on visits for home health services billed."; and

(G) by adding at the end the following new subsection:

"(g) The coverage denial described in this subsection is, with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1814(a)(2)(C) or section 1835(a)(2)(A) in that the individual—

"(1) is or was not confined to his home, or

"(2) does or did not need skilled nursing care on an intermittent basis or physical, speech, or occupational therapy."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to services furnished on or after the first day of the first month that begins more than 90 days after the date of the enactment of this Act; except that the amendments made by paragraphs (1)(E) and (1)(F)(iii) shall not apply to services furnished on or after October 1, 1989.

(h) DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

(A) evaluates—

(i) the functional capacity of an individual,

(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

(iii) the social and familial resources available to the individual to meet those requirements; and

(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

(2) ADVISORY PANEL.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(3) REPORT ON INSTRUMENT.—The Secretary shall report to Congress, not later than 1 year after the date of the enactment of this Act, on the instrument or instruments developed under this section. The report shall include an evaluation of the advantages and disadvantages of using the instrument or instruments as the basis for determining whether payment should be made for post-hospital extended care services and home health services provided to individuals entitled to benefits under part A of title XVIII of the Social Security Act.

(i) EXPEDITED REVIEW BY FISCAL INTERMEDIARIES.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp), as amended by subsections (f) and (g), is further amended by adding at the end the following new subsection:

"(h) The Secretary shall develop procedures to expedite the determination of whether initial claims submitted for post-hospital extended care services, home health services, and hospice care provided (or to be provided) to an individual may be reimbursed under this title, so as to minimize the time between (1) when the provider first provides the services to the individual, and (2) when the provider first receives notice of an initial determination on whether or not payment may be made under this title for some or all of the services provided the individual."

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall provide for the expedited procedures described in section 1879(h) of the Social Security Act not later than one year after the date of the enactment of this Act.

(j) INCLUDING IN ANNUAL REPORTS ON PROSPECTIVE PAYMENT SYSTEM INFORMATION ON QUALITY OF POST-HOSPITAL CARE.—

(1) IN GENERAL.—Section 603(a)(2) of the Social Security Amendments of 1983 is amended—

(A) by striking "1987" in subparagraph (A) and inserting "1989", and

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

"(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

"(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

"(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

"(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(B) shall apply to reports for years beginning with 1986.

(k) PRIOR AUTHORIZATION DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior authorization for post-hospital extended care services and home health services furnished under part A of title XVIII of the Social Security Act.

(2) SCOPE.—The program shall include at least four projects and shall be implemented by not later than July 1, 1987.

(3) CONSULTATION.—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(4) EVALUATION AND REPORT.—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than January 1, 1989. Such evaluation and report shall address—

(A) the administrative and program costs for prior authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior authorization;

(B) impact of prior authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior authorization versus the current system.

(5) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(6) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

SEC. 10206. OFF-BUDGET TREATMENT OF FEDERAL HOSPITAL INSURANCE TRUST FUND IN FISCAL YEAR 1987.

(a) EFFECTIVE IN FISCAL YEAR 1987.—Section 710 of the Social Security Act (as amended by section 261 of Public Law 99-177) is amended—

(1) by amending subsection (b) to read as follows:

"(b)(1) The receipts and disbursements of the Federal Hospital Insurance Trust Fund and the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

"(2) The disbursements of the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Fund shall be set forth separately in such budgets.", and

(2) in subsection (c), by striking "or the Federal Disability Insurance Trust Fund, or for payments from either" and inserting ", the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund, or for payments from any".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to fiscal years beginning after September 30, 1986, and ending before October 1, 1992.

SEC. 10207. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART A.

(a) ONE-YEAR EXTENSION OF PASS-THROUGH FOR COSTS OF CERTIFIED REGISTERED NURSE ANESTHETISTS.—Section 2312(c) of the Deficit Reduction Act of 1984 is amended by striking "October 1, 1987" and inserting "October 1, 1988".

(b) 4-YEAR DESIGNATION PERIOD FOR RURAL REFERRAL CENTERS.—If the Secretary of Health and Human Services classifies or has classified a hospital located in a rural area as a regional referral center under section

1886(d)(5)(C)(i) of the Social Security Act, the Secretary shall not terminate or change such classification before the end of the 4th cost reporting period for which the classification is in effect.

(c) TEMPORARY WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE, INC.—With respect to the Connecticut Hospice, Inc., for hospice care provided before October 1, 1988, the reference in section 1861(dd)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(A)(iii)) to "20 percent" is deemed a reference to "50 percent".

(d) MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this section and before January 1, 1988, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the Statewide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

(e) PART A COBRA TECHNICAL CORRECTIONS.—

(1) CLARIFICATION OF INDIRECT MEDICAL EDUCATION COSTS LANGUAGE.—(A) Paragraph (2)(C)(i) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by striking "(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)".

(B) Paragraph (3)(A) of such subsection is amended by adding at the end the following: "If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula.".

(C) Clause (ii) of paragraph (3)(C) of such subsection is amended to read as follows:

"(ii) REDUCING FOR SAVINGS FROM AMENDMENT TO INDIRECT TEACHING ADJUSTMENT FOR DISCHARGES AFTER SEPTEMBER 30, 1986.—The Secretary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between—

"(I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as 'r' is defined in paragraph (5)(B)(ii)), and

"(II) that sum using the factor specified in paragraph (5)(B)(ii)(II).".

(D)(i) Except as provided in clause (ii), the amendments made by this paragraph apply to discharges occurring on or after October 1, 1986.

(ii) The amendments made by this paragraph shall not be first applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (incorporating the amendments made by paragraph (2) of this subsection) are also being applied.

(2) CLARIFICATION OF DISPROPORTIONATE SHARE LANGUAGE.—(A) Paragraph (2)(C) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by section 9105(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA") is amended—

(i) by adding "and" at the end of clause (ii),

(ii) by striking ", and" at the end of clause (iii) and inserting a period, and

(iii) by striking clause (iv).

(B) Paragraph (3)(C) of such subsection is amended by adding at the end the following:

"(iii) REDUCING FOR DISPROPORTIONATE SHARE PAYMENTS.—The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disproportionate share payments) for subsection (d) hospitals.".

(C) Paragraph (5)(F)(vi)(I) of such subsection is amended—

(i) by striking "supplementary" and inserting "supplemental", and

(ii) by striking "fiscal year" and inserting "period".

(D) The amendments made by subparagraph (C) apply to discharges occurring on or after May 1, 1986, and the amendments made by subparagraphs (A) and (B) apply to discharges occurring on or after October 1, 1986.

(3) CLARIFICATION THAT ALL MEDICARE PARTICIPATING HOSPITALS ARE REQUIRED TO MEET EMERGENCY CARE REQUIREMENTS.—Section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)), as inserted by section 9121(b) of COBRA, is amended by striking "and has, under the agreement, obligated itself to comply with the requirements of this section".

(4) APPROPRIATE ANNUAL PERIODS FOR SKILLED NURSING FACILITY PROSPECTIVE PAYMENTS.—(A) Section 1888(d)(1) of the Social Security Act (42 U.S.C. 1395yy(d)(1)), as added by section 9126(a) of COBRA, is amended by striking "fiscal year" each place it appears and inserting "cost reporting period".

(B) Section 1888(d)(4) of such Act is amended—

(i) in the first sentence, by striking "each fiscal year" and inserting "cost reporting periods beginning in a fiscal year", and

(ii) in the second sentence, by striking "fiscal year" and all that follows up to the period and inserting "cost reporting period no later than 30 days before the beginning of that period".

(C) Section 9126(d)(1) of COBRA is amended by striking "fiscal years" and inserting "cost reporting periods".

(D) The amendments made by subparagraphs (A) and (B) apply to cost reporting periods beginning on or after October 1, 1986.

(5) TREATMENT OF CERTAIN STATE AND LOCAL CAMPAIGN WORKERS WITH RESPECT TO THE HOSPITAL INSURANCE TAX.—(A) Section 3121(u)(2)(B)(ii) of the Internal Revenue Code of 1954 is amended—

(i) by striking "or" at the end of subclause (III),

(ii) by striking the period at the end of subclause (IV) and inserting ", or", and

(iii) by adding at the end the following:

"(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100."

(B) Section 210(p)(2) of the Social Security Act (42 U.S.C. 410(p)(2)) is amended—

(i) by striking "or" at the end of subparagraph (C),

(ii) by striking the period at the end of subparagraph (D) and inserting ", or", and

(iii) by adding at the end the following:

"(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100.".

(C) The amendments made by this paragraph shall apply to services performed after March 31, 1986.

(6) MISCELLANEOUS PROVISIONS.—(A) Paragraph (1) of section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)) is amended—

(i) by striking the "and" inserted at the end of subparagraph (I) by section 9122(a)(2) of COBRA,

(ii) by striking the period at the end of subparagraph (J) and inserting ", and", and

(iii) by redesignating the subparagraph (I) inserted by section 9403(b) of COBRA as subparagraph (K) and transferring and inserting such subparagraph after subparagraph (J).

(B) The amendments made by subparagraph (A) are effective as if they had been included in the enactment of COBRA.

(C) Effective on the date of the enactment of Public Law 99-107, in applying section 5(a) of such Act, a cost reporting period beginning on September 28, 29, or 30 is deemed to begin on October 1 and any reference to September 30 is deemed a reference to September 27.

PART 2—PROVISIONS RELATING TO PARTS A AND B

SEC. 10221. ELIMINATION OF PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR DRG HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS.

(a) ELIMINATION OF PIP FOR PPS HOSPITALS.—

(1) IN GENERAL.—Section 1815(a) of the Social Security Act (42 U.S.C. 1395g(a)) is amended—

(1) by inserting "(1)" after "(a)", and

(2) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the Secretary shall provide payment under this part for inpatient hospital service furnished by a subsection (d) hospital (as defined in section 1886(d)(1)(B), and including a distinct psychiatric or rehabilitation unit of such a hospital) only on the basis of actual bills submitted by the hospital and not on a periodic interim payment basis.

"(B) Subparagraph (A) shall not apply, and the Secretary shall permit payment on a periodic interim payment basis—

"(i) to a subsection (d) hospital during the period it is—

"(I) being paid additional amounts under section 1886(d)(5)(F) (relating to disproportionate share payments), or

"(II) a sole community hospital (as defined in section 1886(d)(5)(C)(ii)); and

"(ii) to a hospital which is receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c), if payment on a periodic interim payment basis is an integral part of such reimbursement system.

"(C) In the case of a subsection (d) hospital which has significant cash flow problems resulting from operations of its interme-

diary or from unusual circumstances of the hospital's operation, the Secretary shall make available appropriate accelerated payments.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall be effective with respect to payments for discharges occurring on or after July 1, 1987.

(b) REQUIRING TIMELY PAYMENT OF PROPERLY SUBMITTED MEDICARE CLAIMS UNDER PART A.—

(1) IN GENERAL.—Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended—

(1) by inserting "(1)" after "(c)", and

(2) by adding at the end the following new paragraph:

"(2)(A) Each agreement under this section shall provide that, in cases of claims for which payment under this part is not made on a periodic interim payment basis under section 1815(a)—

"(i) if payment is not made on or before the 22nd calendar day after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) the agency or organization shall notify the entity submitting the claim, within 22 calendar days after the date the claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the agency or organization will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for intermediary agreements under this section).

"(B) In this paragraph, the term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to claims received on or after July 1, 1987.

(c) PROMPT PAYMENT FOR MEDICARE PHYSICIANS AND SUPPLIERS.—

(1) IN GENERAL.—Section 1842(c) of the Social Security Act (42 U.S.C. 1395u(c)) is amended—

(A) by inserting "(1)" after "(c)", and

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

"(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall that, in cases of claims for which payment under this part is not made on a periodic interim payment basis described in section 1815(a)—

"(i) if payment is not made on or before the 22nd calendar day (or the 11th calendar day, the case of a claim for services furnished by a participating physician or supplier) after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) the carrier shall notify the entity submitting the claim, within 22 calendar days (or within 11 calendar days, in the case of a claim for services furnished by a participating physician or supplier) after the date the claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the carrier will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for carrier contracts under this section).

"(B) In this paragraph, the term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to claims received on or after October 1, 1987.

SEC. 10222. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

(a) REPEAL OF "2 FOR 1" CONVERSION REQUIREMENT FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS.—Section 114(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end the following new subparagraph:

"(E) The preceding provisions of this paragraph shall not apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.".

(b) REQUIRING THE PROVISION OF AN EXPLANATION OF ENROLLEE RIGHTS.—

(1) IN GENERAL.—Subsection (c)(3) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by adding at the end the following new subparagraph:

"(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

"(i) the enrollee's rights to benefits from the organization,

"(ii) the restrictions on payments under this title for services furnished other than by or through the organization,

"(iii) out-of-area coverage provided by the organization,

"(iv) the organization's coverage of emergency services and urgently needed care, and

"(v) appeal rights of enrollees.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date.

(c) RESTRICTING WAIVER OF REQUIREMENT OF 50 PERCENT NON-MEDICARE ENROLLMENT.—

(1) RESTRICTION ON NEW WAIVERS.—Paragraph (2) of subsection (f) of such section is amended by striking "if" and all that follows through the end and inserting the following: "if more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX.".

(2) SANCTIONS FOR NONCOMPLIANCE.—Such subsection is further amended by adding at the end the following new paragraph:

"(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section with the organization after the date the Secretary notifies the organization of such noncompliance.".

(3) EFFECTIVE DATES.—

(A) NEW RESTRICTION.—The amendment made by paragraph (1) shall apply to modifications and waivers granted after the date of the enactment of this Act.

(B) SANCTIONS FOR NONCOMPLIANCE.—The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization described in subparagraph (D), the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization—

(i) has complied, or made significant progress toward compliance, with such schedule of compliance, the Secretary may extend such waiver, or

(ii) has not complied with such schedule, the Secretary may provide for the suspension of enrollment, under section 1876 of the Social Security Act, of individuals with the organization after the date the Secretary notifies the organization of such noncompliance.

(D) ORGANIZATION COVERED.—An eligible organization described in this subparagraph is an eligible organization that—

(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

and includes a successor to such an organization.

(d) REQUIRING PROMPT PAYMENT OF CLAIMS.—

(1) IN GENERAL.—Subsection (g) of such section is amended by adding at the end the following new paragraph:

"(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for covered services and supplies furnished to individuals enrolled under this section, if the services or supplies are not furnished under

a contract between the organization and the provider or supplier.

"(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individual enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to risk-sharing contracts under section 1876 of the Social Security Act with respect to services furnished on or after July 1, 1987.

(e) REQUIRING ACCESS TO FINANCIAL RECORDS AND DISCLOSURE OF INTERNAL LOANS.—

(1) IN GENERAL.—Subsection (i)(3)(C) of such section is amended—

(A) by striking "and" at the end,

(B) by inserting "(i)" after "(C)", and

(C) by adding at the end the following new clauses:

"(ii) shall require the organization to provide and supply information (described in section 1866(b)(2)(C)(ii)) in the manner such information is required to be provided or supplied under that section;

"(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contracts as of January 1, 1987.

(f) AUTHORITY TO IMPOSE CIVIL MONEY PENALTIES.—Subsection (i) of such section is amended by adding at the end the following new paragraph:

"(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $2,000 for each such failure.

"(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.".

(g) STUDY OF AAPCC AND ACR.—The Secretary of Health and Human Services shall provide, through contract with an appropriate organization, for a study of the methods by which—

(1) the adjusted average per capita cost ("AAPCC", as defined in section 1876(a)(4) of the Social Security Act) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and

(2) the adjusted community rate ("ACR", as defined in section 1876(e)(3) of such Act) can be refined.

The Secretary shall submit to Congress, by not later than January 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR can be refined.

(h) ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT A LOCAL SOCIAL SECURITY OFFICE.—The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.

SEC. 10223. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE.

(a) PROVIDER REPRESENTATION OF BENEFICIARIES ON APPEALS AND PERMITTING APPEAL OF CERTAIN TECHNICAL DENIALS.—

(1) PERMITTING PROVIDER REPRESENTATION OF BENEFICIARIES.—Section 1869(b)(1) of the Social Security Act (42 U.S.C. 1395ff(b)(1)) is amended by adding at the end the following: "Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Such a person cannot represent a beneficiary with respect to the issue described in section 1879(a)(2) unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal.".

(2) PERMITTING REVIEW OF TECHNICAL DENIALS.—Section 1869 of such Act is further amended—

(A) in subsection (a), by inserting ", the amount of benefits with respect to home health services under part B, and any other determination with respect to a claim for benefits under part A" after "part A,", and

(B) in subsection (b)(1)—

(i) by striking "or" at the end of subparagraph (B),

(ii) by inserting ", or" at the end of subparagraph (C), and

(iii) by inserting after subparagraph (C) the following new subparagraph:

"(D) any other denial (other than under part B of title XI) of a claim for benefits under part A or a claim for benefits with respect to home health services under part B,".

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

(b) PROHIBITION OF CERTAIN PHYSICIAN INCENTIVE PLANS.—

(1) MAKING CERTAIN PLANS SUBJECT TO CIVIL MONETARY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended—

(A) by striking "subsection (a)" each place it appears and inserting "subsection (a) or (b)",

(B) in subsection (a)(1), by striking "(h)(1)" and "(h)(2)" and inserting "(i)(1)" and "(i)(2)", respectively,

(C) in subsection (f), by striking "subsection (d)" and inserting "subsection (e)",

(D) by redesignating subsections (b) through (h) as subsections (c) through (i), respectively, and

(E) by inserting after subsection (a) the following new subsection:

"(b)(1) If a hospital or an eligible organization with a risk-sharing contract under section 1876 knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

"(A) are entitled to benefits under part A or part B of title XVIII,

"(B) in the case of an eligible organization, are enrolled with the organization, and

"(C) are under the direct care of the physician, the hospital or organization shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

"(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for individual described in such paragraph with respect to whom the payment is made."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to—

(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act, and

(B) payments by eligible organizations occurring on or after January 1, 1988.

(3) STUDY.—The Secretary of Health and Human Services shall report to Congress, not later than April 1, 1987, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians. The report shall—

(A) review the type of incentive arrangements in common use,

(B) evaluate their potential to pressure improperly physicians to reduce or limit services in a medically inappropriate manner, and

(C) make recommendations concerning providing for an exception, to the prohibition contained in section 1128A(b) of the Social Security Act, for incentive arrangements that may be used by such organizations and plans to encourage efficiency in the utilization of medical and other services but that do not have a substantial potential for adverse effect on quality.

(d) STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to serve as the basis for establishing a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act.

(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

(A) identify the appropriate considerations which should be used in defining "quality of care";

(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

(C) consider whether criteria and standards for defining and measuring quality of care should be developed and, if so, how this should be done;

(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

(G) review mechanisms available for coordinating and supervising at the national level quality review and assurance activities; and

(H) develop general criteria which may be used in establishing priorities in the alloca-

tion of funds and personnel in reviewing and assuring quality of care.

(3) REPORT.—The Secretary shall submit to Congress, not later than 2 years after the date of the enactment of this Act, a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to strengthening quality assurance and review activities for services furnished under the medicare program.

(4) ARRANGEMENTS FOR STUDY.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

SEC. 10224. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B.

(a) TREATMENT OF GROUP PURCHASING VENDOR AGREEMENTS.—

(1) IN GENERAL.—Section 1877(b)(3) of the Social Security Act (42 U.S.C. 1395nn(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting "; and", and

(C) by adding at the end the following:

"(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of providers of services if—

"(i) the person has a written contract, with each such vendor and each such provider of services, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage (not to exceed 3 percent) of the value of the purchases made by each such provider under the contract, and

"(ii) the person discloses to each such provider of services the amount received from each such vendor with respect to purchases made by or on behalf of the provider.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) apply to payments made before, on, or after the date of the enactment of this Act.

(b) EXTENSION AND CLARIFICATION OF COMPETITIVE CONTRACTING AUTHORITY.—Section 2326(a) of the Deficit Reduction Act of 1984 is amended—

(1) by striking "of the fiscal years 1985 and 1986" and inserting "fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989)", and

(2) by inserting "or fixed price" after "competitive bidding" each place it appears.

(c) COBRA TECHNICAL CORRECTIONS.—

(1) CORRECTION CONCERNING TRANSITION PERIOD FOR FOREIGN MEDICAL GRADUATES IN DETERMINING PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS.—The matter in section 1886(h)(4)(E)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(E)(ii)), added by 9202(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA"), preceding subclause (I) is amended by inserting "but before July 1, 1987," after "1986,".

(2) ANNOUNCEMENT, RATHER THAN PUBLICATION, OF HMO AND CMP PAYMENT RATES.—(A) The matter in section 1876(a)(1)(A) of the Social Security Act (42 U.S.C. 1395mm(a)(1)(A)) preceding clause (i), as amended by section 9211(d) of COBRA, is amended by striking "publish" and inserting "announce (in a manner intended to provide notice to interested parties)".

(B) The amendment made by subparagraph (A) shall apply to determinations of per capita payment rates for 1987 and subsequent years.

(3) PENALTIES FOR BILLING FOR ASSISTANTS AT SURGERY FOR CERTAIN CATARACT OPERATIONS.—(A) Section 1842(k) of the Social Security Act (42 U.S.C. 1395u(k)), added by section 9307(c) of COBRA, is amended by inserting "presents or causes to be presented a claim or" after "willfully" each place it appears.

(B) The amendment made by subparagraph (A) shall apply to claims presented after the date of the enactment of this Act.

(4) TEMPORARY USE OF CARRIER PRE-PAYMENT SCREENING AS A SUBSTITUTE FOR PRE-PROCEDURE REVIEW.—For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.

(5) EXTENSION OF CONTINUATION PERIOD OF ACCESS: MEDICARE DEMONSTRATION PROJECT.—Section 9221(a) of COBRA is amended by striking "September 30, 1986" and inserting "July 31, 1987".

(6) MISCELLANEOUS PROVISIONS.—(A) Section 9127(b) of COBRA is amended by inserting ", except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year" after "years".

(B) Section 9202(j) of COBRA is amended by inserting "or section 402 of the Social Security Amendments of 1967" after "section 1886(c) of the Social Security Act".

(C) Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)), as amended by section 9301(c) of COBRA, is amended—

(i) in paragraph (5), as redesignated by section 9301(c)(3)(D) of COBRA, by striking "such" each place it appears, and

(ii) in paragraph (6), as so redesignated, by striking "the the" and inserting "the".

(D) Section 9301(c)(5) of COBRA is amended by striking "1842(b)(7)" and inserting "1842(h)(7)".

(E) Section 1842(b)(8) of the Social Security Act, as added by section 9304(a) of COBRA, is amended—

(i) in subparagraph (A), by inserting "by carriers" after "to be used", and

(ii) in subparagraph (B), by inserting "by carriers" after "be considered".

(F) The amendments made by this paragraph are effective as if they had been included in the enactment of COBRA.

PART 3—PROVISIONS RELATING TO MEDICARE PART B

SEC. 10231. EXTENSION OF PREMIUM PAYMENT PROVISION THROUGH 1989.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (e), by striking "1989" and inserting "1990" each place it appears;

(2) in subsection (f)(1), by striking "or 1987" and inserting ", 1987, or 1988"; and

(3) in subsection (f)(2), by striking "or 1988" and inserting ", 1988, or 1989".

SEC. 10232. PAYMENT FOR PHYSICIANS' SERVICES, RESTRICTIONS ON REASONABLE CHARGE LIMITATIONS, AND INCENTIVES FOR PHYSICIAN PARTICIPATION.

(a) DETERMINATION OF MAXIMUM ALLOWABLE PREVAILING CHARGES FOR PHYSICIANS' SERVICES.—

(1) IN GENERAL.—Section 1842(b)(4)(A) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)) is amended by striking clause (iii) and inserting the following:

"(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating and nonparticipating physicians, respectively, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating and nonparticipating physicians, respectively, as having been justified by economic changes.

"(iv) Beginning with 1987, the percentage increase in the MEI (as defined in subparagraph (E)(ii)) shall be the same for nonparticipating physicians as for participating physicians.".

(2) CONFORMING AMENDMENT.—Section 1842(b)(4)(C) of such Act is amended—

(A) by striking "(i)" after "(C)", and

(B) by striking clause (ii).

(3) DEFINITIONS.—Section 1842(b)(4) of such Act is further amended by adding at the end the following new subparagraph:

"(E) In this section:

"(i) The term 'participating physician' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1)), and the term 'nonparticipating physician' refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.

"(ii) The term 'percentage increase in the MEI' means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of paragraph (3)) applicable to such services furnished as of the first day of that year.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(b) 1 PERCENT BONUS FOR PARTICIPATING PHYSICIANS.—Section 1842(b)(4)(A)(ii) of such Act is amended by adding at the end the following new subclause:

"(III) In applying the percentage increase in the MEI for physicians' services furnished by a participating physician during each year after 1986, the Secretary shall provide a bonus of 1 percentage point in the percentage increase otherwise determined. Such a bonus for each year shall apply to

71-059 O-87-29 (Pt. 18)

physicians' services furnished only during the year and not in the calculation of payments for any subsequent year.".

(c) LIMIT ON ACTUAL CHARGES FOR NONPARTICIPATING PHYSICIANS.—

(1) IN GENERAL.—Section 1842(j)(1) of such Act is amended—

(A) by inserting "(A)" after "(j)(1)", and

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

"(B) During any period, on or after January 1, 1987, during which a physician is a nonparticipating physician, the Secretary shall monitor each such physician's actual charges for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills for such services actual charges in excess of the charges permitted under subparagraph (C), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(C) For physicians' services furnished by a physician to individuals enrolled under this part—

"(i) during 1987, in the case of such services for which the physician—

"(I) has actual charges for the calendar quarter beginning on April 1, 1984, the limit is the physician's actual charges for such services furnished during such quarter increased by the sum of the percentage increase in the MEI (as defined in subsection (b)(4)(E)) for 1987 and 1 percentage point, or

"(II) has no actual charges for such calendar quarter, the limit is the 50th percentile of the customary charges (weighted by frequency of procedure) for the procedure performed by nonparticipating physicians in the locality during the 12-month period ending June 30, 1986, increased by the sum of the percentage increase in the MEI for 1987 and 1 percentage point; and

"(ii) during a subsequent year, the limit is the maximum actual charges permitted under this subparagraph for the previous year increased by the percentage increase in the MEI for that subsequent year.".

(2) PROVISION OF ACTUAL CHARGE INFORMATION BY CARRIER TO NONPARTICIPATING PHYSICIANS.—Section 1842(b)(3) of such Act is amended—

(A) by striking "and" at the end of subparagraph (E),

(B) by inserting "and" at the end of subparagraph (F), and

(C) by inserting after subparagraph (F) the following new subparagraph:

"(G) will provide such information to nonparticipating physicians as is available to enable the physicians to determine the maximum actual charges permitted under subsection (j)(1)(C);".

(3) CONFORMING AMENDMENT.—Section 1842(b)(4)(D) is amended by adding at the end the following new clause:

"(iv) In determining the customary charges for physicians' services furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such charges for services furnished during such previous year that exceeds the limit on actual charges imposed under subsection (j)(1)(C).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(d) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.

(e) RESTRICTIONS ON REASONABLE CHARGE LIMITATIONS.—

(1) IN GENERAL.—Section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) is amended by adding at the end the following: "In the case of items and services other than physicians' services, a carrier shall only provide, in the process of calculating the prevailing charge for specific items and services, for considering charges in specific instances in which the charges, in comparison with the charges for similar items and services, are grossly excessive or deficient. Nothing in this paragraph or this Act shall be construed as authorizing the Secretary, through regulations, guidelines, instructions, or otherwise, to require carriers to reduce payment amounts under this part for specific items and services for which the Secretary has made a specific determination that the payment amounts or charges are excessive.".

(2) SUBMISSION OF RECOMMENDATIONS TO CONGRESS.—The Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, shall submit to Congress, by not later than April 1, 1987, recommendations concerning payment reductions under part B of title XVIII of the Social Security Act for overpriced items and services. Such recommendations shall include the specific payment reductions recommended and measures to assure that such reductions in payment do not result in corresponding increases in out-of-pocket costs to medicare beneficiaries.

(f) RECRUITING.—

(1) CARRIER RESPONSIBILITY.—Section 1842(b)(3) of such Act, as amended by subsection (c)(2), is further amended—

(A) by striking "and" at the end of subparagraph (F),

(B) by inserting "and" at the end of subparagraph (G), and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if it makes determinations or payments with respect to physicians' services, will implement—

"(i) programs to recruit and retain physicians as participating physicians in the area served by the carrier, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

"(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;".

(2) MEASURING CARRIER PERFORMANCE.—The Secretary of Health and Human Services shall provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act.

(3) CARRIER BONUSES FOR GOOD PERFORMANCE.—Of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act, the Secretary of Health and Human Services shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians.

(4) EFFECTIVE DATES.—

(A) CARRIER RESPONSIBILITY.—The amendment made by paragraph (1) shall be effective for contracts under section 1842 of the Social Security Act as of October 1, 1987.

(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under paragraph (2) by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under paragraph (3) not later than April 1, 1988, to reflect performance of carriers during November 1987.

(g) DIRECTORIES OF PARTICIPATING PHYSICIANS.—

(1) REQUIRING DISTRIBUTION TO MEDICARE BENEFICIARIES.—Section 1842(h)(6) of the Social Security Act (42 U.S.C. 1395u(h)(6)) is amended—

(A) in the second sentence—

(i) by inserting after "that area" the following: "and to each individual enrolled under this part and residing in that area", and

(ii) by inserting before the period the following: "and that an appropriate number of copies of each such directory is sent to hospitals located in the area"; and

(B) by adding at the end the following: "Such copies shall be sent free of charge.".

(2) ORGANIZATION OF DIRECTORIES.—Section 1842(h)(4) of such Act is amended by adding at the end the following: "Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.".

(3) PERIOD FOR PHYSICIAN ENROLLMENT.—Section 1842(h)(1) of such Act is amended by striking "the beginning of any year beginning with 1984" and inserting "during the month of November before a year".

(4) EFFECTIVE DATES.—

(A) DISTRIBUTION AND ORGANIZATION.—The amendment made by—

(i) paragraph (1)(A)(i) shall first apply to directories for 1988,

(ii) paragraph (1)(A)(ii) shall first apply to directories for 1987, and

(iii) paragraph (1)(B) takes effect on the date of the enactment of this Act.

(B) ENROLLMENT PERIOD.—The amendment made by paragraph (3) shall apply to participation agreements entered into for 1988 and subsequent years.

(h) PROHIBITING UNASSIGNED BILLING OF SERVICES DETERMINED TO BE MEDICALLY UNNECESSARY BY A CARRIER.—

(1) IN GENERAL.—Section 1842 of the Social Security Act is further amended by adding at the end the following new subsection:

"(l)(1)(A) Subject to subparagraph (C), if—

"(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

"(ii) payment for such services is not accepted on an assignment-related basis,

"(iii) a carrier determines under this part or a peer review organization determines under part B of title XI that payment may

not be made by reason of section 1862(a)(1), and

"(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

"(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

"(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual if—

"(i) the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1862(a)(1), or

"(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

"(2) Each carrier with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of title XI shall send any notice of denial of payment for physicians' services based on section 1862(a)(1) and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

"(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act is amended by inserting "or (l)" after "(k)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after October 1, 1987.

(i) MAINTENANCE AND USE OF PARTICIPATING PHYSICIAN DIRECTORIES BY HOSPITALS.—

(1) REQUIREMENT OF PARTICIPATION.—Section 1866(a) of the Social Security Act, as amended by sections 10207(e)(6)(A) and 10205(b)(1) of this subtitle, is further amended—

(A) by striking "and" at the end of subparagraph (K),

(B) by striking the period at the end of subparagraph (L) and inserting ", and", and

(C) by inserting after subparagraph (L) the following new subparagraph:

"(M) in the case of hospitals—

"(i) to make available to its patients the directory or directories of participating physicians (published under section 1842(h)(4)) for the area served by the hospital, and

"(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to agreements under section 1866(a) of the Social Security Act as of October 1, 1987.

(j) SUBMISSION AND DISCLOSURE OF INFORMATION OF UNASSIGNED CLAIMS FOR PHYSICIANS SERVICES.—

(1) SUBMISSION OF CLAIMS.—Section 1842 of the Social Security Act, as amended by subsection (h)(1), is further amended by adding at the end the following new subsection:

"(m)(1) In the case of a nonparticipating physician who—

"(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

"(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, and the excess of the physician's actual charge over the approved charge.

"(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

"(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act, as amended by subsection (h)(2) of this section, is amended by striking "or (l)" and inserting ", (l), or (m)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to surgical procedures performed on or after October 1, 1987.

SEC. 10233. PAYMENT RATES FOR RENAL SERVICES AND IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) COMPOSITE RATES FOR DIALYSIS TREATMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may provide for an adjustment of the composite rates established under section 1881(b)(7) of the Social Security Act, but only if the base rate for routine dialysis treatment in a free-standing facility is not less than $117.50, and only if the base rate for routine dialysis treatment in a hospital-based facility is not less than $121.50.

(2) ASSURING PROMPT CONSIDERATION OF EXCEPTION REQUESTS.—Section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended by inserting after the third sentence the following new sentence: "Each application for such an exception for a sole facility located in an isolated, rural area shall be deemed to be approved as of the date of its filing unless the Secretary disapproves it by not later than 45 working days after the date the application is filed.".

(3) EFFECTIVE DATE.—(A) Paragraph (1) shall apply to dialysis treatment furnished on or after October 1, 1986.

(B) The amendment made by paragraph (2) shall apply to applications filed on or after October 1, 1986.

(b) PAYMENT FOR PHYSICIANS' SERVICES.—In establishing the payment rates, under section 1881(b)(3)(B) of the Social Security Act, for physicians' services furnished on or after August 1, 1986, to individuals determined to have end stage renal disease, the Secretary of Health and Human Services shall provide for an adjustment in the home/facility physician treatment capability ratio (used in establishing such payment rates) to 3.9 to 1 in order to reduce by $14.81 the current average monthly capitation rate for physicians' services to outpatient maintenance dialysis patients (based on a weighted average by State ESRD population).

(c) REPORT ON PAYMENT RATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for—

(A) a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and

(B) a report to Congress on the results of the study by not later than January 1, 1988.

(2) ARRANGEMENTS WITH INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in paragraph (1). If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(d) REORGANIZATION OF ESRD NETWORK AREAS AND ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (A) of subsection (c)(1) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended to read as follows:

"(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

"(I) establish at least 17 end stage renal disease network areas, and

"(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

"(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the

case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2).

"(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.".

(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than January 1, 1987.

(3) SPECIAL TREATMENT OF EXISTING NETWORK ORGANIZATIONS.—In first designating network administrative organizations for areas so established, the Secretary shall designate the network organization (or a voluntary combination of such organizations) in operation on the date of the enactment of this Act as the network administrative organization, unless the Secretary determines that such organizations do not meet minimal standards and criteria established under section 1881(c)(1)(A)(ii) of the Social Security Act (as amended by paragraph (1)).

(e) PATIENT REPRESENTATION ON COUNCILS AND MEDICAL REVIEW BOARDS.—Subparagraph (B) of subsection (c)(1) of section 1881 of the Social Security Act is amended to read as follows:

"(B) At least one patient representative shall serve as a member of each network council and each medical review board.".

(f) RESPONSIBILITIES OF NETWORK ORGANIZATIONS.—Subsection (c)(2) of section 1881 of such Act is amended—

(1) in subparagraph (A), by inserting before the semicolon the following: "and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs";

(2) in subparagraph (B), by inserting before the first semicolon the following: "and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs";

(3) in subparagraph (D), by inserting before the semicolon the following: "and reporting to the Secretary on facilities and providers that are not providing appropriate medical care";

(4) in subparagraph (E), by inserting "and encouraging participation in vocational rehabilitation programs" after "self-care settings and transplantation"; and

(5) by redesignating subparagraphs (D) and (E) as subparagraphs (G) and (H), respectively, and inserting after subparagraph (C) the following new subparagraphs:

"(D) implementing a procedure for evaluating and resolving patient grievances;

"(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

"(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);".

(g) FACILITY COOPERATION WITH NETWORKS.—The first sentence of subsection (c)(3) of section 1881 of such Act is amended by inserting "or to follow the recommendations of the medical review board" after "consistently failed to cooperate with network plans and goals".

(h) INTENT OF CONGRESS RESPECTING MAXIMUM USE OF VOCATIONAL REHABILITATION SERVICES.—The first sentence of subsection (c)(6) of section 1881 of such Act is amended by inserting before the period the following: "and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment".

(i) NATIONAL END STAGE RENAL DISEASE REGISTRY.—

(1) ESTABLISHMENT OF REGISTRY.—Subsection (c) of section 1881 of such Act is further amended by adding at the end the following new paragraph:

"(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

"(A) the preparation of the annual report to the Congress required under subsection (g);

"(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

"(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

"(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

"(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.".

(2) REPORT.—The Secretary of Health and Human Services shall submit to the Congress, no later than January 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) and shall establish such registry by not later than January 1, 1988.

(j) FUNDING OF ESRD NETWORK ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b)(7) of section 1881 of the Social Security Act is amended by adding at the end the following new sentence: "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to treatment furnished on or after January 1, 1987.

(k) PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES.—

(1) ESTABLISHMENT OF PROTOCOLS.—Paragraph (7) of subsection (f) of section 1881 of the Social Security Act is amended to read as follows:

"(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

"(B) The Secretary shall study and review the appropriateness of establishing protocols on standards and conditions for the reuse (where appropriate) of other dialysis supplies (such as blood lines, transducer filters, and dialyzer caps). If the Secretary determines that the establishment of such a protocol with respect to any such dialysis supplies is appropriate, the Secretary may establish such a protocol.

"(C) The Secretary shall incorporate protocols established under this paragraph into the requirements for facilities prescribed under subsection (b)(1)(A) and failure to follow such a protocol subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol.".

(2) DEADLINE AND REPORT.—The Secretary of Health and Human Services—

(A) shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than January 1, 1988, and

(B) shall report to the Congress, not later than January 1, 1988, on the study and review conducted under section 1881(f)(7)(B) of such Act.

(l) EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by subsections (e), (f), and (g) shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1).

SEC. 10234. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) ADDITIONAL MEMBERS FOR PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) 2 ADDITIONAL MEMBERS.—Section 1845(a)(2) of the Social Security Act (42 U.S.C. 1395w-1(a)(2)) is amended by striking "11 individuals" and inserting "13 individuals".

(2) APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by paragraph (1), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

(b) EFFECTIVE DATE OF VOLUNTARY DISENROLLMENT FROM MEDICARE.—

(1) IN GENERAL.—The second and sixth sentences of section 1838(b) of the Social Security Act (42 U.S.C. 1395p(b)) are each amended by striking "following the calendar quarter".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to notices filed on or after October 1, 1986.

(c) STUDY ON PROSPECTIVE PAYMENT OF RADIOLOGY, ANESTHESIA, AND PATHOLOGY SERVICES TO HOSPITAL INPATIENTS.—The Secre-

tary of Health and Human Services shall study and report to the Committee on Ways and Means of the House of Representatives, by April 1, 1987, concerning the design and implementation of a prospective payment system for payment, under part B of title XVIII of the Social Security Act, for radiology, anesthesia, and pathology services furnished to hospital inpatients. Such report shall include data, from a representative sample, showing, for discharges classified within each diagnosis-related group, the distribution of total reasonable charges and costs for each inpatient discharge for such services.

PART 4—IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS

SEC. 10241. IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS.

(a) PRO REVIEW OF HOSPITAL DENIAL NOTICES.—

(1) IN GENERAL.—Section 1154 of the Social Security Act (42 U.S.C. 1320c-3) is amended by adding at the end the following new subsection:

"(d)(1) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

"(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1879) of the determination.

"(2) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

"(B) the attending physician has not agreed with the hospital's determination,

the hospital may request the appropriate peer review organization to review under subsection (a) the validity of the hospital's determination.

"(3)(A) If a patient (or a patient's representative)—

"(i) has received a notice under paragraph (1), and

"(ii) requests the appropriate peer review organization to review the determination,

then, the organization shall conduct a review under subsection (a) of the validity of the hospital's determination and shall provide notice (by telephone and in writing) to the patient or representative and the hospital and attending physician involved of the results of the review. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or whether or not the patient will be liable for payment for such continued care.

"(B) If a patient (or a patient's representative) requests a review under subparagraph (A) while the patient is still an inpatient in the hospital and not later than noon of the first working day after the date the patient receives the notice under paragraph (1), then—

"(i) the hospital shall provide to the appropriate peer review organization the records required to review the determination by the close of business of such first working day, and

"(ii) the peer review organization must provide the notice under subparagraph (A) by not later than one full working day after the date the organization has received the request and such records.

"(4) If—

"(A) a request is made under paragraph (3)(A) not later than noon of the first working day after the date the patient (or patient's representative) receives the notice under paragraph (1), and

"(B) the conditions described in section 1879(a)(2) with respect to the patient or representative are met,

the hospital may not charge the patient for inpatient hospital services furnished before noon of the day after the date the patient or representative receives notice of the peer review organization's decision.

"(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative)."

(2) EFFECTIVE DATE.—(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act.

(B) Section 1154(d)(4) of the Social Security Act (as added by the amendment made by paragraph (1)) shall take effect on the date of the enactment of this Act.

(b) PRO REVIEW OF INPATIENT HOSPITAL SERVICES AND EARLY READMISSION CASES.—

(1) TIMELY PROVISION OF HOSPITAL INFORMATION.—Section 1153 of such Act (42 U.S.C. 1320c-2) is amended by adding at the end the following new subsection:

"(g) The Secretary shall provide that peer review organizations receive each month, on a timely basis, either directly from hospitals or through fiscal intermediaries data necessary to initiate the review process under section 1154(a) on a timely basis."

(2) REQUIRING REVIEW OF EARLY READMISSION CASES.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by section 9401(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraph:

"(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services meet professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an 'early readmission case' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge."

(3) EFFECTIVE DATES.—(A) The Secretary of Health and Human Services shall implement the amendment made by paragraph (1) not later than 6 months after the date of the enactment of this Act.

(B) The amendment made by paragraph (2) shall apply to contracts entered into or renewed on or after January 1, 1987.

(c) REQUIRING PRO REVIEW OF QUALITY OF CARE.—

(1) ALLOCATION OF FUNDS FOR QUALITY CARE REVIEW.—Section 1154(a)(4) of such Act (42 U.S.C. 1320c-3(a)(4)) is amended by adding at the end the following: "Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities relating to quality of services is made among the different cases and settings (including inpatient hospital care, post-acute-care settings, ambulatory settings, health maintenance organizations, and competitive medical plans). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.".

(2) REQUIRING REVIEW OF HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Such section is further amended—

(A) by inserting "(A)" after "(4)",

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

"(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a contract under section 1876 for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings.", and

(C) by adding at the end of such subparagraph the following: "Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.".

(3) IDENTIFICATION OF METHODS FOR IDENTIFYING CASES OF SUBSTANDARD CARE.—Section 1154 of such Act (42 U.S.C. 1320c-3), as amended by subsection (a)(1), is amended by adding at the end the following new subsection:

"(e) The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4)) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care."

(4) EFFECTIVE DATES.—(A) The amendments made by paragraphs (1) and (2)(B) shall apply to contracts as of January 1, 1987.

(B) The amendment made by paragraph (2)(C) shall apply to review activities conducted by organizations on or after January 1, 1988.

(C) The amendment made by the paragraph (3) becomes effective on the date of the enactment of this Act.

(d) REQUIRING CONSUMER REPRESENTATIVE ON PEER REVIEW BOARDS.—

(1) IN GENERAL.—Section 1152 of such Act (42 U.S.C. 1320c-1) is amended—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting "; and", and

(C) by adding at the end the following new paragraph:

"(3) has at least one individual who is a representative of consumers on its board of directors."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts entered into or renewed on or after January 1, 1987.

(e) IMPROVING PEER REVIEW RESPONSIVENESS TO BENEFICIARY COMPLAINTS.—

(1) APPROPRIATE REVIEW OF COMPLAINTS REQUIRED.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by subsection (b)(2), is further amended by adding at the end the following new paragraph:

"(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under title XVIII) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such title (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's conclusions respecting the complaint and final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act.

(f) SHARING OF INFORMATION BY PEER REVIEW ORGANIZATIONS.—

(1) IN GENERAL.—Section 1160(b)(1) of such Act (42 U.S.C. 1320c-9(b)(1)) is amended—

(A) by striking "and" at the end of subparagraph (B),

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

"(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1865 in accrediting providers for purposes of meeting the conditions described in title XVIII, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1865; and"; and

(C) by inserting after subparagraph (C) the following new subparagraph:

"(D) to assist State ombudsmen and State protection and advocacy officials who the Secretary identifies as having responsibility for assuring the quality of care furnished by providers or practitioners, which data and information shall be provided by the peer review organization to any such ombudsman or official upon request relating to a specific provider or practitioner, but only to the extent that such data and information are related to the quality of care furnished by a provider or practitioner and only if the peer review organization determines that the data and information may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services of a quality which meets professionally recognized standards of health care, and that the data and information are needed by the ombudsman or official in carrying out official duties;".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act.

(g) FUNDING OF ADDITIONAL PRO ACTIVITIES.—

(1) THROUGH AGREEMENTS WITH HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—Section 1866(a) of such Act (42 U.S.C. 1395cc(a)) is amended—

(A) in paragraph (1)(F)—

(i) by redesignating clauses (i), (ii), and (iii), as subclauses (I), (II), and (III), respectively,

(ii) by inserting "(i)" after "(F)", and

(iii) by adding at the end the following new clause:

"(ii) in the case of hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (4)(A);"; and

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

"(4)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1154(a)(4)(A) and under section 1154(a)(14) with respect to services, furnished by the hospital, facility, or agency involved, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such an agreement to the hospital, facility, or agency shall be considered a cost incurred by such hospital, facility, or agency in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, facility, or agency in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of title XI.".

(2) THROUGH AGREEMENTS WITH HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)), as amended by section 10222(f) of this subtitle, is amended by adding at the end the following new paragraph:

"(7)(A) Each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the eligible organization is located) under which the peer review organization will perform functions under section 1154(a)(4)(B) and section 1154(a)(14) (other than those performed under contracts described in section 1866(a)(1)(F)) with respect to services, furnished by the eligible organization, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of title XI.".

(3) EFFECTIVE DATE.—

(A) HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—The amendments made by paragraph (1) shall apply to provider agreements as of October 1, 1987.

(B) HMOs AND CMPS.—The amendment made by paragraph (2) shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act, as of January 1, 1987.

PART 5—ASSURING ACCESS TO HEALTH CARE

SEC. 10251. INCENTIVES FOR THE ESTABLISHMENT OF STATE HEALTH INSURANCE POOLS.

(a) GENERAL RULE.—Chapter 41 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subchapter:

"Subchapter B—Large Employers Not Members of Qualified State Health Insurance Pools

"Sec. 4912. Tax on wages of large employers not members of qualified State health insurance pools.

"SEC. 4912. TAX ON WAGES OF LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS.

"(a) TAX IMPOSED.—In the case of a large employer which—

"(1) employs any individual to perform services in a State that has established a qualified health insurance pool, and

"(2) is not a participating member of that pool in a taxable year at any time at which such services are performed,

there is hereby imposed a tax equal to 5 percent of the wages paid by the employer during the taxable year for services performed in the State by its employees.

"(b) LARGE EMPLOYER.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'large employer' means an employer who, on each of some 20 days during the taxable year or the preceding taxable year, each day being in a different calendar week, employed for some portion of the day (whether or not at the same moment of time) 20 or more individuals.

"(2) EXCEPTION FOR GOVERNMENTAL UNITS.—The term 'large employer' shall not include the United States, any State or political

subdivision thereof, or any possession of the United States or any agency or instrumentality of any of the foregoing (including the United States Postal Service and Postal Rate Commission); except that such term shall include any nonappropriated fund instrumentality of the United States.

"(c) QUALIFIED HEALTH INSURANCE POOL.—For purposes of this section, the term 'qualified health insurance pool' means any organization which—

"(1) is a nonprofit corporation established pursuant to and regulated by State law;

"(2) permits any large employer doing business in the State to be a participating members;

"(3) makes available (without regard to health conditions) to all residents of the State, who are not eligible for benefits under part A of title XVIII of the Social Security Act, levels of health insurance typical of the levels of coverage provided through large employer groups, except that—

"(A) any such level of insurance must limit the amount of the annual out-of-pocket expenses for covered services under individual coverage to $1,500 and under family coverage to $3,000,

"(B) any such level of insurance may not establish a lifetime benefit limit for any individual of less than $500,000,

"(C) subject to subparagraph (A), such insurance may provide for a choice of deductibles (in addition to the deductibles typical of levels of coverage provided through large employer groups), but not to exceed $1,000 for each covered individual,

"(D) such insurance may deny coverage for covered services for preexisting conditions for a period not to exceed 6 months, and

"(E) such insurance must include as covered services the purchase and repair of medically necessary durable medical equipment;

"(4) charges a pool premium rate expected to be self-supporting based upon a reasonable actuarial determination of anticipated experience and expected expenses, such pool premium rate in no event to exceed 150 percent of average premium rates for individual standard risks in the State for comparable coverage; and

"(5) assesses losses of the pool equitably among all participating members.

Nothing in this subsection shall be construed as preventing a State or other entity from providing for payment of part or all of the premium of an enrollee and from varying the amount of such payment based on the enrollee's income or other basis.

"(d) OTHER DEFINITIONS.—

"(1) USE OF FUTA DEFINITIONS.—For purposes of this section, the terms 'wages', 'employee', and 'employer' have the meanings given such terms in subsections (a), (c), and (d), respectively, of section 3401.

"(2) STATE.—The term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico.

"(e) CROSS REFERENCE.—

"(1) For provision denying deduction for tax imposed by this section, see section 275(a)(6).

"(2) For provisions making deficiency procedures applicable to tax imposed by this section, see section 6211 et seq."

(b) CLERICAL AMENDMENTS.—

(1) Chapter 41 of such Code is amended by striking the chapter heading and inserting the following:

"CHAPTER 41—PUBLIC CHARITIES; LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS

"Subchapter A. Public charities.

"Subchapter B. Large employers not members of qualified State health insurance pools.

"Subchapter A—Public Charities".

(2) The table of chapters for subtitle D of such Code is amended by striking the item relating to chapter 41 and inserting the following:

"Chapter 41. Public charities; large employers not members of qualified State health insurance pools."

(3) Subparagraph (B) of section 6104(c)(1) of such Code is amended by striking "or chapter 41 or 42" and inserting ", subchapter A of chapter 41 or chapter 42".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 1988.

(d) ESTABLISHMENT OF QUALIFIED STATE HEALTH INSURANCE POOLS.—Congress intends that each State should establish a qualified health insurance pool (described in section 4912(c) of the Internal Revenue Code of 1954) by not later than January 1, 1988, or, if later, the end of the first regular State legislative session that begins after the date of the enactment of this Act.

SEC. 10253. COBRA TECHNICAL AMENDMENTS RELATING TO CONTINUATION OF EMPLOYER-BASED HEALTH INSURANCE COVERAGE.

(a) MODIFICATION OF COVERAGE.—Paragraph (2)(A) of section 162(k) of the Internal Revenue Code of 1954 (relating to type of benefit coverage) is amended by adding at the end the following: "If coverage is modified under the plan for similarly situated beneficiaries, such coverage shall also be modified in the same manner for all qualified beneficiaries covered under the plan.".

(b) MAXIMUM PERIOD OF CONTINUATION COVERAGE.—Paragraph (2)(B)(i) of such section (relating to maximum period of continuation coverage) is amended—

(1) by striking out the period at the end and inserting a semicolon, and

(2) by adding at the end the following: "except that in the case of a qualified beneficiary with respect to whom more than one qualifying event occurs, the date may be extended under this clause but in no case may the coverage period with respect to such events (other than the period applicable to a qualifying event described in paragraph (3)(F)) exceed a 36-month period for such qualified beneficiary.".

(c) GRACE PERIOD FOR PAYMENT OF PREMIUMS.—Paragraph (2)(B)(iii) of such section (relating to failure to pay premium) is amended by adding at the end the following: "Payment shall be considered to be timely if made within 30 days of the date due or within such longer period as applies to or under the plan."

(d) ELECTION BY BENEFICIARIES.—Paragraph (5) of such section (relating to elections) is amended by adding at the end the following new subparagraph:

"(C) RIGHT TO INDIVIDUAL ELECTION.—Notwithstanding subparagraph (B), each qualified beneficiary is entitled to make a separate election with respect to continuation coverage for that beneficiary and, if there is a choice of type of coverage under the plan, to make a separate selection among such types of coverage.".

(e) NOTICE REQUIREMENT.—Paragraph (6)(C) of such section (relating to notice requirements) is amended by inserting "within 60 days of the date of the qualifying event" after "paragraph (3)".

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 10253. CONTINUATION COVERAGE FOR RETIREES IN CASES OF BANKRUPTCIES.

(a) LOSS OF COVERAGE OF RETIREE THROUGH BANKRUPTCY AS QUALIFYING EVENT.—Paragraph (3) of section 162(k) of the Internal Revenue Code of 1954 (relating to qualifying event with respect to continuation coverage requirements under group health plans) is amended by adding at the end the following:

"(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in paragraph (7)(B)(iii) within one year before or after the date of commencement of the proceeding."

(b) PERIOD OF CONTINUATION COVERAGE.—

(1) LIFE OF COVERED EMPLOYEE OR WIDOW AND ADDITIONAL 36 MONTHS FOR SURVIVING SPOUSE AND DEPENDENTS.—Clause (i) of section 162(k)(2)(B) of such Code (relating to maximum period) is amended—

(A) by striking "and" at the end of subclause (I),

(B) in subclause (II), by inserting "or (II)" after "(I)",

(C) by redesignating subclause (II) as subclause (III), and

(D) by inserting after subclause (I) the following new subclause:

"(II) a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in paragraph (7)(B)(iii)(III)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee, and".

(2) COVERAGE NOT LOST UPON ENTITLEMENT TO MEDICARE BENEFITS.—Subclause (II) of section 162(k)(2)(B)(iv) of such Code (relating to reemployment or medicare eligibility) is amended by inserting "in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iii)," before "entitled".

(c) DEFINITION OF QUALIFIED BENEFICIARY MODIFIED IN REORGANIZATION CASES.—Section 162(k)(7)(B) of such Code (relating to special rule for termination and reduced employment in definition of qualified beneficiary) is amended by adding at the end the following new clause:

"(iii) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in paragraph (3)(F), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

"(I) as the spouse of the covered employee,

"(II) as the dependent child of the employee, or

"(III) as the surviving spouse of the covered employee.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect as if included in section 10001 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1) and section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985, the amendments made by this section and by section 10001 of such Act shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1954, and

(B) a qualifying event described in section 162(k)(3)(A) of such Code relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1954 applies to covered employees who retired before, on, or after the date of the enactment of this Act.

Subtitle D—Revenue Provisions

SEC. 10301. EXTENSION OF EXCISE TAX ON COMMUNICATIONS SERVICES.

(a) IN GENERAL.—The table contained in paragraph (2) of section 4251(b) of the Internal Revenue Code of 1954 (relating to imposition of tax on communications services) is amended to read as follows:

"With respect to amounts paid pursuant to bills first rendered:	The applicable percentage is:
During 1987, 1988, or 1989	3
During 1990 or thereafter	0."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts paid for communications services pursuant to bills first rendered after December 31, 1986.

SEC. 10302. STUDY OF COMMUNICATION SERVICES NOT SUBJECT TO FEDERAL EXCISE TAX.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of communication services which are exempt from the tax imposed by section 4251 of the Internal Revenue Code of 1954 by reason of being a private communication service (as defined in section 4252(d) of such Code) or by reason of a specific exemption from such tax under section 4253 of such Code. Such study shall include an estimate of the reduction in tax revenues by reason of each such exemption and shall describe the types of persons which benefit from each such exemption.

(b) REPORT.—The report of the study under subsection (a) shall be submitted, not later than December 31, 1987, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

The CHAIRMAN. Amendments printed in section 1 of House Report 99-871 are considered as having been adopted. No other amendments are in order except the amendments printed in section 2 of House Report 99-871, which shall be considered only in the order listed and if offered by the Member indicated in said report. The amendments shall not be subject to amendment or to a demand for a division of the question but each amendment shall be debatable as specified in House Report 99-871.

The text of the amendments to H.R. 5300, printed in section 1 of House Report 99-871 are considered as having been adopted, is as follows:

I. The following are the amendments considered to have been adopted in the House and in the Committee of the Whole under House Resolution 558.

Page 6, strike out line 23 and all that follows thereafter through page 18, line 15.

Page 159, strike out line 15 and all that follows thereafter through page 160, line 8 and redesignate succeeding subtitles accordingly.

Page 301, strike out line 1 and all that follows thereafter through page 313, line 19, and redesignate succeeding subtitles accordingly.

Page 541, after line 10, insert the following:

"(3) EXCEPTION FOR CERTAIN CHURCHES AND ASSOCIATED ORGANIZATIONS.—The term 'large employer' shall not include, with respect to a State health insurance pool in a State, any—

"(A) church,

"(B) convention or association of churches, or

"(C) organization which is controlled by or associated (as described in section 414(e)(3)(D)) with a church or convention or association of churches,

if the church, convention, association, or organization states (in accordance with such procedures as the Secretary determines to be appropriate) that it is opposed for religious reasons to participation in the State health insurance pool of that State.

Page 542, line 14, strike "and".

Page 542, line 17, strike the semicolon and insert ", and".

Page 542, after line 17, insert the following:

"(F) such insurance may deny coverage for some or all services or other costs relating to abortion;

Page 156, after line 6, insert the following new subtitle:

Subtitle H—Rail Related Issues

PART 1—GENERAL PROVISIONS

SEC. 4701. SHORT TITLE; TABLE OF CONTENTS OF SUBTITLE.

(a) SHORT TITLE.—This subtitle may be cited as the "Conrail Privatization Act".

(b) TABLE OF CONTENTS OF SUBTITLE.—

PART 1—GENERAL PROVISIONS

Sec. 4701. Short title; table of contents of subtitle.
Sec. 4702. Findings.
Sec. 4703. Purposes.
Sec. 4704. Definitions.

PART 2—CONRAIL

SUBPART A—SALE OF CONRAIL

Sec. 4711. Preparation for public offering.
Sec. 4712. Public offering.
Sec. 4713. Fees.

SUBPART B—OTHER MATTERS RELATING TO THE SALE

Sec. 4721. Rail service guarantees.
Sec. 4722. Ownership limitations.
Sec. 4723. Board of Directors.
Sec. 4724. Provisions for employees.
Sec. 4725. Essential rail service loan guarantees.
Sec. 4726. Certain enforcement relief.

SUBPART C—MISCELLANEOUS TECHNICAL AND CONFORMING AMENDMENTS AND REPEALS

Sec. 4731. Abolition of United States Railway Association.
Sec. 4732. Applicability of Regional Rail Reorganization Act of 1973 to Conrail after sale.
Sec. 4733. Miscellaneous amendments and repeals.
Sec. 4734. Liability of directors.
Sec. 4735. Charter amendment.
Sec. 4736. Status of Conrail after sale.
Sec. 4737. Effect on contracts.
Sec. 4738. Resolution of certain issues.

PART 3—PROMOTION OF RAIL COMPETITION

Sec. 4751. Rail service continuation.
Sec. 4752. Agriculture contract disclosure.
Sec. 4753. Boxcar provision.

SEC. 4702. FINDINGS.

The Congress finds that—

(1) the bankruptcy of the Penn Central and other railroads in the Northeast and Midwest resulted in a transportation emergency which required the intervention of the Federal Government;

(2) the United States Government created the Consolidated Rail Corporation, which provides essential rail service to the Northeast and Midwest;

(3) the future of rail service in the Northeast and Midwest is essential and must be protected through rail service guarantees, consistent with the transfer of the Corporation to the private sector;

(4) the Northeast Rail Service Act of 1981 has achieved its purpose in allowing the Corporation to become financially self-sustaining;

(5) the Federal Government has invested over $7,000,000,000 in providing rail service to the Northeast and Midwest;

(6) the Government, as a result of its ownership and investment of taxpayer dollars in the Corporation, controls substantial assets, including cash of approximately $1,000,000,000;

(7) the Corporation's viability and sound performance allow it to be sold to the American public for a substantial sum through a public offering;

(8) a public offering of the Corporation's stock will preserve competitive rail service in the region, provide the greatest return to the Government, and protect employment;

(9) the Corporation's employees contributed significantly to the turnaround in the Corporation's financial performance and they should share in the Corporation's success through a settlement of their claims for reimbursement for wages below industry standard, and a share in the common equity of the Corporation through the employee stock ownership plan;

(10) the requirements of section 401(e) of the Regional Rail Reorganization Act of 1973 are met by this subtitle;

(11) the Secretary of Transportation has discharged the responsibilities of the Department of Transportation under the Northeast Rail Service Act of 1981 with respect to the sale of the Corporation as a single entity;

(12) the Staggers Rail Act of 1980 has been successful in reducing unneeded Government regulation of the railroad industry, improving rail service for shippers, and improving the previously inadequate earnings of the railroad industry; and

(13) the implementation of the Staggers Rail Act of 1980 and the Interstate Commerce Act by the Interstate Commerce

Commission has caused problems for some shippers and for employees.

SEC. 4703. PURPOSES.

The purposes of this subtitle are—

(1) to transfer the interest of the United States in the common stock of the Corporation to the private sector through the broadest practicable distribution of shares, in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of its rail service in the Northeast and Midwest, provides for the protection of the public interest in a sound rail transportation system, and secures the maximum proceeds to the United States; and

(2) to correct problems in the implementation of the Staggers Rail Act of 1980.

SEC. 4704. DEFINITIONS.

For the purposes of this subtitle—

(1) the term "capital expenditures" means amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, as determined in accordance with generally accepted accounting principles, and in interpreting generally accepted accounting principles, no amount spent on normal repair, maintenance, and upkeep of such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

(2) the term "Commission" means the Interstate Commerce Commission;

(3) the term "Corporation" means the Consolidated Rail Corporation;

(4) the term "cumulative net income" means, for any period, the net income of the Corporation and its consolidated subsidiaries (after provision for income taxes) as determined in accordance with generally accepted accounting principles, before provision for expenses related to—

(A) amounts paid by the Corporation under section 4724(e), and comparable payments made to present and former employees of the Corporation not covered by such section; and

(B) the aggregate value of the shares distributed under section 4724(f);

(5) the term "person" means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

(6) the term "preferred stock" means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale on or after the sale date;

(7) the term "public offering" means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 4712;

(8) the term "sale date" means the date on which the initial public offering is closed;

(9) the term "subsidiary" means any corporation more than 50 percent of whose outstanding voting securities are directly or indirectly owned by the Corporation;

(10) the term "United States share" means a share of common stock of the Corporation held by the United States Government on the date of the enactment of this Act; and

(11) the term "warrant" means an instrument entitling its owner to purchase, at a prescribed price or prices for a prescribed period, common stock of the Corporation.

PART 2—CONRAIL

Subpart A—Sale of Conrail

SEC. 4711. PREPARATION FOR PUBLIC OFFERING.

(a) PUBLIC OFFERING MANAGERS.—(1) Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chief Executive Officer of the Corporation, shall retain the services of investment bankers to serve jointly and be compensated equally as co-lead managers of the public offering (hereafter in this subpart referred to as the "co-lead managers") and to establish a syndicate to underwrite the public offering.

(2) In selecting the investment bankers to serve as co-lead managers of the public offering under paragraph (1), recognition and consideration shall be given to contributions made by particular investment banking firms before the date of the enactment of this Act in demonstrating and promoting the long-term financial viability of the Corporation and the feasibility of a public stock offering.

(b) PAYMENT TO THE UNITED STATES.—Not later than 30 days after the date of the enactment of this Act, the Corporation shall transfer to the Secretary of the Treasury $300,000,000.

(c) REGISTRATION STATEMENT.—The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

(d) LIMIT ON AUTHORITY TO PURCHASE STOCK.—Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

"(5) The authority of the Association to purchase debentures or series A preferred stock of the Corporation shall terminate upon the date of the enactment of the Conrail Privatization Act.".

SEC. 4712. PUBLIC OFFERING.

(a) STRUCTURE OF PUBLIC OFFERING.—(1) After the registration statement referred to in section 4711(c) is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

(2) The Secretary of Transportation, after such consultation, may elect to offer less than all of the United States shares for sale at the time of the initial sale.

(3) Under no circumstances shall the Secretary of Transportation offer any of the United States shares for sale unless, before the sale date, the Secretary determines, after such consultation, that the estimated sum of the gross proceeds from the sale of all the United States shares and the value of any warrants issued under subsection (f) is at least $1,700,000,000.

(b) SUBSEQUENT SALES.—If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) CONSENT OF THE CORPORATION NOT REQUIRED.—Any public offering under this section may be made without the consent of the Corporation.

(d) AUTHORITY TO REQUIRE STOCK SPLITS.—(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a), before the filing of the registration statement referred to in section 4711(c), require the Corporation to declare a stock split or reverse stock split.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(e) CANCELLATION OF OTHER SECURITIES HELD BY THE UNITED STATES.—(1) In consideration for amounts transferred to the United States under section 4711(b), and for any warrants issued under subsection (f) of this section, the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a), deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

(2) For purposes of regulation by the Commission and State public utility regulation, and for purposes of reporting to the Securities and Exchange Commission, the actions authorized by this subsection, the public offering, and the value of the consideration received therefor shall not change the value of the Corporation's assets net of depreciation and shall not be used to alter the calculation of the Corporation's stock or asset values, rate base, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) ISSUANCE OF WARRANTS.—(1) Before the registration statement referred to in section 4711(c) is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall determine whether to require the Corporation to issue warrants to the United States in conjunction with the public offering, if it will increase the amount to be realized by the United States.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(g) MINORITY INVESTMENT BANKING FIRMS.—The Secretary of Transportation shall ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in any public offering under this part.

(h) GENERAL ACCOUNTING OFFICE AUTHORITY TO CONDUCT AUDITS.—The General Accounting Office may make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the Corporation and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the General Accounting Office to make such audits. The General Accounting Office shall report the results of all such audits to the Congress.

SEC. 4713. FEES.

The Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall agree to pay to investment bankers and other persons participating in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

Subpart B—Other Matters Relating to the Sale

SEC. 4721. RAIL SERVICE GUARANTEES.

(a) FIVE-YEAR RESTRICTIONS ON THE CORPORATION.—During a period of 5 years beginning on the date of the enactment of this Act, the following restrictions shall apply to the Corporation:

(1) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) $500,000,000, in capital expenditures. With respect to any fiscal year, the Corporation's Board of Directors may reduce the required capital expenditures for such year to an amount which the Board determines is justified by prudent business and engineering practices, except that the Corporation's capital expenditures shall not be less than $350,000,000 for its first fiscal year beginning after the sale date, a total of $700,000,000 for its first two fiscal years beginning after the sale date, a total of $1,050,000,000 for its first three fiscal years beginning after the sale date, a total of $1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of $1,750,000,000 for its first five fiscal years beginning after the sale date.

(2)(A) Except as otherwise provided under subparagraph (B), no common stock dividend or preferred stock dividend may be declared or paid by the Corporation.

(B)(i) Concurrent with the declaration of any common stock dividend or preferred stock dividend, the Corporation's Board of Directors shall find and certify that, after payment of such dividend the Corporation will be in compliance with the requirements of paragraph (1) for the fiscal year in which such dividend payment is made.

(ii) Concurrent with the declaration of any common stock dividend, the Corporation's Board of Directors shall find and certify that, after payment of such dividend, the cumulative amount of all common stock dividends paid after the sale date will not exceed 50 percent of—

(I) the cumulative net income of the Corporation for the period beginning after the end of the last fiscal quarter of the Corporation ending before the sale date, less

(II) the cumulative amount of any preferred stock dividends declared and paid after the sale date.

(C) For purposes of this paragraph—

(i) the term "common stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the common stock of the Corporation (other than dividends payable solely in shares of the common stock of the Corporation);

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the common stock of the Corporation; and

(ii) the term "preferred stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the preferred stock of the Corporation;

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the preferred stock of the Corporation.

(3) The Corporation shall continue its affirmative action program and its minority vendor program, substantially as such programs were being conducted by the Corporation as of February 8, 1985, subject to any provisions of applicable law.

(4) The locomotive shop and car repair shop in Blair County, Pennsylvania, and the repair shop in Collinwood, Ohio, shall be retained.

(b) THREE-YEAR RESTRICTIONS ON THE CORPORATION.—During a period of 3 years beginning on the date of the enactment of this Act, the following restrictions shall apply to the Corporation:

(1) The Corporation shall not permit to occur any transaction or series of transactions (other than in the ordinary course of business of the Corporation and its subsidiaries) whereby all or any substantial part of the railroad assets and business of the Corporation and its subsidiaries taken as a whole are sold, leased, transferred, or otherwise disposed of to any corporation or entity other than to a wholly owned subsidiary of the Corporation.

(2) The Corporation shall have on hand at the end of each fiscal year cash or cash equivalents of at least $250,000,000.

(3) The Corporation shall offer any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission, pursuant to regulations that had been issued under section 308 of the Regional Rail Reorganization Act of 1973.

SEC. 4722. OWNERSHIP LIMITATIONS.

(a) GENERAL.—(1)(A) During a period of 5 years beginning on the date of the enactment of this Act no person, directly or indirectly, may acquire or hold securities representing more than 7.5 percent of the total votes of all outstanding voting securities of the Corporation.

(B) This paragraph shall not apply—

(i) to the employee stock ownership plan (or successor plans) of the Corporation,

(ii) to the Secretary of Transportation,

(iii) to a railroad as described under subsection (b)(1),

(iv) to underwriting syndicates holding shares for resale, or

(v) in the case of shares beneficially held by others, to commercial banks, broker-dealers, clearing corporations, or other nominees.

(2) During a period of 5 years beginning on the date of the enactment of this Act, not more than 20 percent of the stock of the Corporation may be held by or for the benefit of persons not citizens of the United States or entities owned or controlled by persons not citizens of the United States.

(b) RAILROADS.—(1)(A) During a period of 5 years beginning on the date of the enactment of this Act, no railroad may purchase or hold, directly or indirectly, more than 7.5 percent of any class of stock of the Corporation unless such railroad files for approval and authorization of the Commission under section 11343 of title 49, United States Code, except as provided in paragraph (2). If such an application is filed, the Commission shall give substantial weight to any views of the Secretary of Transportation regarding such application which may be submitted to the Commission.

(B) During a period of 5 years beginning on the date of the enactment of this Act, any railroad which purchases or holds no more than 7.5 percent of any class of stock of the Corporation shall vote such stock in the same proportion as all other common stock of the Corporation is voted. During such 5-year period, any railroad which purchases or holds more than 7.5 percent of such stock shall, unless such acquisition has been approved by the Commission as described in subparagraph (A), vote such stock as directed by the Commission, or, in the absence of any such direction, in the same proportion as all other common stock of the Corporation is voted. As used in this paragraph, the term "railroad" means a class I railroad as determined by the Commission under the definition in effect on the date of the enactment of this Act, and includes any entity controlling, controlled by, or under common control with any railroad (other than the Corporation or its subsidiaries).

(2)(A) Norfolk Southern Corporation, CSX Corporation, and their successors and assigns, shall not purchase or own, directly or indirectly, more than 7.5 percent of the common stock of the Corporation.

(B) The Commission shall not consider any application filed under section 11343 or 11344 of title 49, United States Code, from—

(i) the Corporation; or

(ii) Norfolk Southern Corporation, CSX Corporation, the successors and assigns of such corporations, and any person controlling, controlled by, or under common control with such corporations, successors, and assigns,

for authority to enter into any merger or consolidation, or any other transaction prohibited under subparagraph (A), between the Corporation and any entity described in clause (ii).

(C) Subparagraphs (A) and (B) shall cease to be effective upon—

(i) the guarantee of any loan to the Corporation under section 4725; or

(ii) the expiration of 3 years after the date of the enactment of this Act.

When subparagraphs (A) and (B) cease to be effective, entities described in subparagraph (B)(ii) shall be considered railroads for purposes of paragraph (1).

SEC. 4723. BOARD OF DIRECTORS.

Except as may be prescribed by the Secretary of Transportation in section 4725, the Board of Directors of the Corporation shall be comprised as follows:

(1) Except as provided in paragraph (3), with respect to the period ending June 30,

1987, the board shall remain as it exists on the date of the enactment of this Act, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.

(2)(A) Except as provided in paragraph (3), with respect to the period beginning July 1, 1987, the board shall consist of—

(i) 3 directors appointed by the Secretary of Transportation;

(ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and

(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court established under section 209 of the Regional Rail Reorganization Act of 1973, in consultation with the Secretary of Transportation and the Chairman of the Board of Directors of the Corporation, and recognizing the need for and importance of—

(I) continuity in the direction of the Corporation's business and affairs;

(II) preserving the value of the investment of the United States in the Corporation; and

(III) preserving essential rail service provided by the Corporation.

(B) The Secretary of Transportation and the special court may appoint directors under subparagraph (A) from among existing directors of the Corporation.

(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of 12.5 percent of the interest of the United States in the Corporation that has been sold through public offering.

(B) With respect to the period ending June 30, 1987—

(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i)(I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

(iii) subsequent directors elected under this paragraph shall replace members alternately from the groups described in clause (i)(I) and (II).

(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court under paragraph (2)(A)(iii), in the order designated by the special court in a list to be issued at the time of such original appointments.

(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation, shall be replaced by directors elected by the public shareholders of the Corporation.

(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway Association, or the special court referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

(4)(A) No director appointed or elected under this section shall be an employee of the United States, except as provided in section 4725 or as elected by the public shareholders of the Corporation.

(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.

SEC. 4724. PROVISIONS FOR EMPLOYEES.

(a) TRANSITIONAL EMPLOYEE PROTECTION.—Section 701(d)(2) of the Regional Rail Reorganization Act of 1973 is amended to read as follows:

"(2) Notwithstanding any other provision of law—

"(A) upon exhaustion of appropriated funds available for payment of benefits or expenses of administration of the Railroad Retirement Board (hereafter in this section referred to as the 'Board') under this section, or on the expiration of 60 days after the date of enactment of the Conrail Privatization Act, whichever first occurs, the United States shall have no further liability under this section, but the Corporation shall—

"(i) as agent for the Board, pay benefits under this section, without reimbursement, in such amounts and to such eligible employees as the Board shall designate, subject to the limitations prescribed in the benefit schedules issued under subsection (a); and

"(ii) on a periodic basis determined by the Board, advance to the Board its necessary expenses of administration, including expenses reasonably required for close-out of the program of labor protection under this section and for technical transition to the program of labor protection required by the Conrail Privatization Act, which advances shall be made without reimbursement.

"(B) The Corporation shall promptly honor the Board's requests for advances under this paragraph as due and payable liquidated debts, subject to later adjustment after audit by the Inspector General of the Board. The Board is authorized to receive and apply Corporation funds advanced under this paragraph for administration of this section and to refund to the Corporation any excess administrative funds advanced by the Corporation.

"(C) The Corporation shall be deemed subrogated to the right of the Board to recover any benefit paid by the Corporation as agent for the Board that was improvidently paid under this paragraph, and the Board shall cooperate with the Corporation in its effort to recover any such payment; but the Corporation shall have no claim against the Board for such payment, and the Board shall not be made a real party in interest to any lawsuit or to any proceeding with respect to recovery of such payment.

"(D) Benefits provided by the Corporation, as agent for the Board, shall, for purposes of this title, be deemed to have been made available under section 713 of this title.".

(b) DISPUTE RESOLUTION.—Section 701 of the Regional Rail Reorganization Act of 1973 is further amended by adding at the end thereof a new subsection as follows:

"(e) Any dispute or controversy regarding eligibility for benefits under this section shall be determined under such procedures as the Board may by regulation prescribe. Subject to administrative reconsideration by the Board under its own procedures, findings of fact and conclusions of law of the Board in determination of any claim for such benefits shall, in the absence of fraud or an action exceeding the Board's jurisdiction, be binding and conclusive for all purposes and shall not be subject to review in any manner. For purposes of administration of this section, the administrative powers and penalties set forth in sections 9 and 12 of the Railroad Unemployment Insurance Act shall apply as if incorporated herein.".

(c) REPEAL OF SECTION 701.—Section 701 of the Regional Rail Reorganization Act of 1973 is repealed effective on the sale date. Notwithstanding this repeal—

(1) any dispute or controversy regarding benefits under section 701 shall be determined under the terms of the law in effect prior to such repeal; and

(2) the Railroad Retirement Board shall take such actions as may be necessary to complete administration and closeout of the section 701 program.

(d) CONTINUING RESPONSIBILITIES.—(1) On and after the sale date, the Corporation shall provide the protection for its employees described in "Part III, Article III, Employee Protection", of the "Definitive Agreement of September 17, 1985, By and Between Conrail and the Undersigned Representatives of Conrail's Agreement Employees" and Appendix 3 thereto, together with any amendments thereto, or under any other terms and conditions as shall be agreed between the Corporation and the representatives of its employees.

(2) The Corporation shall pay, as designated by the Railroad Retirement Board, any remaining benefits under section 701 of the Regional Rail Reorganization Act of 1973 that accrued, but were not disbursed, prior to the sale date.

(3) The Railroad Retirement Board shall transfer to the Corporation such information regarding administration of the labor protection program under such section 701 as may be reasonably necessary for the Corporation to discharge its responsibilities under this subsection, including the individual claim records of employees of the Corporation.

(4) The United States shall have no liability for benefits under this subsection.

(e) COMPENSATION FOR WAGES BELOW INDUSTRY STANDARD.—The Corporation shall pay $200,000,000 to present and former employees subject to collective bargaining agreements, in accordance with the terms and conditions in the Definitive Agreement referred to in subsection (d)(1), or as otherwise agreed between the parties.

(f) ESOP TRANSACTIONS.—(1) As soon as practicable after the date of the enactment of this Act, the employee stock ownership plan of the Corporation (hereafter in this subsection referred to as the "ESOP") shall be amended to provide that—

(A) the shares of the ConRail Equity Corporation preferred stock held by the ESOP shall be surrendered by the ESOP in exchange for an equal number of shares of the

common stock of the Corporation, and such common stock of the Corporation shall be allocated by the ESOP to the same persons in the same amounts as the shares of ConRail Equity Corporation preferred stock had been allocated; and

(B) the remaining shares of the ConRail Equity Corporation preferred stock held by the Corporation shall be cancelled, and an equal number of shares of the common stock of the Corporation shall be contributed by the Corporation to the ESOP, which shares shall be allocated by the ESOP to the ESOP participants in accordance with the formula set forth in section 2 of Article II of Part III of the Definitive Agreement referred to in subsection (d)(1), and in accordance with a comparable formula for present and former employees of the Corporation not covered by such section of the Definitive Agreement, except that no contribution by the Corporation to the ESOP shall be made which would affect the status of the ESOP, or of any of the employee benefit plans maintained by the Corporation or any affiliate of the Corporation, as an employee stock ownership plan under the Internal Revenue Code of 1954.

(2)(A)(i) As soon as practicable after the expiration of 90 days after the sale date, the ESOP shall distribute all of the stock in the accounts of its participants and beneficiaries, except as provided in clause (ii).

(ii) Fractional shares shall not be distributed under clause (i). Shares equal to the aggregate amount of fractional shares shall be surrendered by the ESOP and redeemed by the Corporation for cash at the average closing price for the common stock of the Corporation on a national securities exchange for the 10 business days immediately preceding the date of distribution under clause (i), or, if the common stock of the Corporation is not listed on a national securities exchange, at the average closing price for such stock for such 10 business days as appearing in any regularly published reporting or quotation service, and the proceeds of such redemption shall be distributed by the ESOP to the same participants and beneficiaries and the same amounts as the fractional shares had been allocated.

(B) After completing the distribution under subparagraph (A), the ESOP shall terminate.

(3) The Corporation shall distribute any shares of its common stock which, because of the exception under paragraph (1)(B), could not be contributed to the ESOP to those persons to whom the ESOP would have allocated such shares pursuant to paragraph (1)(B) had such shares been contributed to the ESOP.

(4) For purposes of Rule 144 promulgated under the Securities Act of 1933, each share of the common stock of the Corporation distributed under this subsection shall be deemed to have been beneficially owned by the recipient, as of the date of such distribution, for a period of three years.

SEC. 4725. ESSENTIAL RAIL SERVICE LOAN GUARANTEES.

At any time before the expiration of the ten year period beginning on the date of the enactment of this Act, the Secretary of Transportation may, if the Corporation requests and the Secretary of Transportation determines that it is in the public interest and is necessary for the Corporation to continue to provide essential rail service, arrange to guarantee a loan or loans of up to a total of $500,000,000, under such terms and conditions as the Secretary of Transportation shall prescribe, which may include representation on the Board of Directors of the Corporation by the Secretary of Transportation and the Secretary of the Treasury, or their designees.

SEC. 4726. CERTAIN ENFORCEMENT RELIEF.

(a) ENFORCEMENT ACTIONS.—The Secretary of Transportation, with respect to any provision of section 4721 or 4722, and any person who suffers direct economic injury as a result of an alleged violation by the Corporation, with respect to the provisions of section 4721(a)(1) and (2), and (b)(2), and section 4722, may bring an action to require compliance with such provision.

(b) SPECIAL COURT.—Any action brought under this part shall be brought before the special court established under section 209 of the Regional Rail Reorganization Act of 1973. Such special court may limit the enforcement of a restriction under section 4721, if the effect of such restriction would be to substantially impair the continued viability of the Corporation.

Subpart C—Miscellaneous Technical and Conforming Amendments and Repeals

SEC. 4731. ABOLITION OF UNITED STATES RAILWAY ASSOCIATION.

(a) ABOLITION.—Effective January 1, 1987, the United States Railway Association is abolished.

(b) TRANSFER OF SECURITIES AND RESPONSIBILITIES.—(1) Any securities of the Corporation held by the United States Railway Association shall, upon the date of the enactment of this Act, be transferred to the Secretary of Transportation.

(2) If, on the date the United States Railway Association is abolished under subsection (a), such association shall not have completed the termination of its affairs and the liquidation of its assets, the duty of completing such winding up of its affairs and liquidation shall be transferred to the Secretary of Transportation, who for such purposes shall succeed to all the powers, duties, rights, and obligations of such association.

(c) FINANCING AGREEMENT.—(1) On January 1, 1987, the Amended and Restated Financing Agreement, dated May 10, 1979, between the United States Railway Association and the Corporation, together with any and all rights and obligations of or on behalf of any person with respect to such agreement, shall terminate and be of no further force or effect, except for those provisions specifying terms and conditions for payments made to the United States with respect to debentures, preferred stock, and contingent interest notes.

(2) Effective as of the sale date, those provisions of the Financing Agreement referred to in paragraph (1) shall terminate.

SEC. 4732. APPLICABILITY OF REGIONAL RAIL REORGANIZATION ACT OF 1973 TO CONRAIL AFTER SALE.

Section 301 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 741) is amended by adding at the end thereof the following new subsection:

"(k) GOVERNING PROVISIONS AFTER SALE.—The provisions of this Act shall not apply to the Corporation and to activities and other actions and responsibilities of the Corporation and its directors and employees after the sale date, other than with regard to—

"(1) section 102;

"(2) section 201(d);

"(3) section 203, but only with respect to information relating to proceedings before the special court established under section 209(b);

"(4) section 209, other than subsection (f) thereof;

"(5) section 216(f)(8), but only as such authority applies to activities related to the ESOP and related trust before the sale date;

"(6) section 216(f)(9), but only as such indemnification applies to activities relating to the ESOP and related trust before the sale date;

"(7) section 216(f)(10) with respect to all securities of the Corporation issued or transferred before the sale date and all securities of ConRail Equity Corporation and all interests in the ESOP;

"(8) section 217(c) and (e);

"(9) subsection (b) of this section, but only with respect to matters covered by the last sentence of such subsection;

"(10) subsection (i) of this section, but only as such authority applies to service as a director of the Corporation before the sale of the interest of the United States in the common stock of the Corporation;

"(11) section 302, but only to the extent of (A) the creation and maintenance of the power and authority of the Corporation to operate rail service and to rehabilitate, improve, and modernize rail properties, and (B) the creation and maintenance of the powers of the Corporation as a railroad in any State in which it operates as of the sale date;

"(12) section 303(b)(1) and (2), but only to the extent of establishing the legal effect of the conveyance of property ordered and of the deeds and other instruments executed, acknowledged, delivered, or recorded in connection therewith and the quality of title acquired in such property;

"(13) section 303(b)(3)(B) with respect to the effect of an assignment, conveyance, or assumption as set forth in the last sentence of such subparagraph (B);

"(14) section 303(b)(5);

"(15) section 303(b)(6), but only with respect to establishing and maintaining the rights of the Corporation with respect to, limiting its obligations with respect to, and establishing the status of, the employee pension and welfare benefit plans transferred to the Corporation thereunder and with respect to the exclusivity of the jurisdiction of the special court and the limitation of jurisdiction of other courts;

"(16) section 303(e);

"(17) section 304, but only with respect to the finality of abandonments completed before the sale date pursuant to the authority thereof;

"(18) section 305, but only as to the effect, and continuing administration, of supplemental transactions consummated before the sale date;

"(19) section 308, but only (A) as to the finality of abandonments completed before the sale date and (B) as to abandonments of lines where a notice or notices of insufficient revenues with respect to such lines have been filed before November 1, 1985;

"(20) section 601(a)(2), but only with respect to activities before the sale date;

"(21) section 601(b)(2) and (b)(3), but only with respect to issuance of and transactions in any security of the Corporation before the sale date;

"(22) section 702(e);

"(23) section 703;

"(24) section 704;

"(25) sections 706(a), 707, and 708(a), but only insofar as they establish part of the prevailing status quo for the Corporation's employees' rates of pay, rules, and working conditions, such provisions to continue to apply unless changed pursuant to section 6 of the Railway Labor Act;

"(26) section 709;

"(27) section 710(b)(1);

"(28) section 711; and

"(29) section 714, but only with regard to disputes or controversies specified in such section that arose before the sale date.".

SEC. 4733. MISCELLANEOUS AMENDMENTS AND REPEALS.

(a) REGIONAL RAIL REORGANIZATION ACT OF 1973 REPEALS.—The following provisions of the Regional Rail Reorganization Act of 1973 (together with any items relating to such provisions contained in the table of contents of such Act) are repealed:

(1) Title IV (45 U.S.C. 761 through 769c).

(2) Section 713 (45 U.S.C. 797l).

(b) REGIONAL RAIL REORGANIZATION ACT OF 1973 AMENDMENTS.—(1) Section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702) is amended by inserting after paragraph (17) a new paragraph as follows:

"(17A) 'sale date' means the date on which the initial public offering of the securities of the Corporation is closed under the Conrail Privatization Act;".

(2) Section 217(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 727(c)) is amended by striking ", until the property" and all that follows, and inserting in lieu thereof "the statutory payment date of which, determined without regard to any extensions of time for filing, occurs on or before January 1 of the year in which the sale date occurs, but in no event before January 1, 1987.".

(3) Section 217(e) of such Act (45 U.S.C. 727(e)) is amended by striking "and shall collect".

(c) AMENDMENTS AND REPEALS OF OTHER RAIL LAWS.—(1)(A) Section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105) is amended—

(i) by inserting "or part 2 of the Conrail Privatization Act" after "subtitle" each place it appears; and

(ii) in the second sentence of subsection (c), by inserting ", as the case may be," after the insertion made by clause (i) of this subparagraph.

(B)(i) The following provisions of the Northeast Rail Service Act of 1981 are repealed:

(I) Section 1154 (45 U.S.C. 1107).

(II) Section 1161 (45 U.S.C. 1110).

(III) Section 1166 (45 U.S.C. 1114).

(IV) Subsection (c) of section 1167 (45 U.S.C. 1115).

(ii) The items relating to such sections 1154, 1161, and 1166 in the table of contents of such Act are repealed.

(2) Section 501(8) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(8)) is amended by striking out "(A)" and by striking out all that follows "improved asset utilization;".

(3) Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended—

(A) in subsection (a)(1), by striking out all after "railroad" through "1981)"; and

(B) in subsection (b)(2)(C), by striking out all after "costs" the second time it appears through "subsidy".

(4) Subsection (b)(1) of section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is repealed.

(5) Section 511(e) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(e)) is amended—

(A) by striking out "(1)" in the first paragraph;

(B) by striking all that follows "time" in the first paragraph and inserting in lieu thereof a period; and

(C) by striking out paragraph (2).

(6) Section 402 of the Rail Safety and Service Improvement Act of 1982 (45 U.S.C. 825a) is repealed.

(7) Section 10362(b)(7)(A) of title 49, United States Code, is amended by striking out "by the Consolidated Rail Corporation or".

(d) PLAN FOR CONTINUATION OF RAIL SERVICE.—In the event the Corporation files for bankruptcy, the Secretary of Transportation shall develop and submit to the appropriate court a reorganization plan for the Corporation which maximizes rail service and transportation competition. Such court shall give substantial weight to the Secretary's plan.

SEC. 4734. LIABILITY OF DIRECTORS.

(a) IN GENERAL.—No person referred to in section 216(f)(8)(C)(i), (ii), or (iii) of the Regional Rail Reorganization Act of 1973 shall be liable, for money damages or otherwise, to any party by reason of the fact that such person is or was a director, if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty which such person in good faith reasonably believed to be required by law or vested in such person in his capacity as a director of the Corporation, in connection with any action taken under this part.

(b) EXCEPTION.—This section shall not apply to claims arising out of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims are in connection with a public offering under section 4712 of this Act.

SEC. 4735. CHARTER AMENDMENT.

Within 60 days after the date of the enactment of this Act, the Corporation shall amend its Articles of Incorporation to contain the following provision, which provision shall not be subject to amendment or repeal:

"It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area.".

SEC. 4736. STATUS OF CONRAIL AFTER SALE.

The Corporation shall be a rail carrier as defined in section 10102(19) of title 49, United States Code, notwithstanding this part.

SEC. 4737. EFFECT ON CONTRACTS.

Nothing in this part shall affect any obligation of the Corporation to carry out its transportation contracts and equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

SEC. 4738. RESOLUTION OF CERTAIN ISSUES.

(a) EMPLOYEE ISSUES.—Section 4724 completely and finally—

(1) extinguishes all employee rights, and any obligation of the United States, under section 401(e) of the Regional Rail Reorganization Act of 1973 as in effect immediately before the date of the enactment of this Act;

(2) resolves any and all claims against the Corporation or any other entity arising under the Definitive Agreement referred to in section 4724(d)(1);

(3) resolves all claims to pay entitlements arising out of the pay increase deferrals by present and former employees of the Corporation under the Agreement of May 5, 1981, between Conrail and Certain Labor Organizations for Labor Contributions to Self-Sufficiency for Conrail;

(4) resolves all issues raised by notices served by representatives of such employees under section 6 of the Railway Labor Act proposing repayment of or compensation for such deferrals; and

(5) resolves all claims against the Railway Labor Executives' Association or the Corporation by any adviser, consultant, or other person who has provided services to such association in connection with any matter referred to in this part.

(b) CORPORATION ACTIONS.—The Corporation shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement, because of any provision of this part or any action the Corporation is required to take under this part.

(c) RIGHT TO SUE WITHDRAWN.—The United States hereby withdraws any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person with respect to any claims for damages or other monetary compensation arising out of this part.

PART 3—PROMOTION OF RAIL COMPETITION

SEC. 4751. RAIL SERVICE CONTINUATION.

(a) EMPLOYEE PROTECTION.—Section 10901 of title 49, United States Code, is amended by adding at the end the following new subsections:

"(f) In granting authority to acquire or operate a railroad line under this section, the Commission shall provide for the protection of the interests of affected railroad employees, other than employees provided long-term employment with the acquiring entity, no less protective to such employees than would be required under section 11347 of this title. In no event shall an affected employee receive more than $25,000 for such purposes. The carrier operating such railroad line before the granting of such authority shall be responsible for making payments required under this subsection.

"(g)(1) In approving any acquisition under this section, the Commission shall require implementing agreements between the selling carrier and the affected employees and between the acquiring entity and such affected employees.

"(2)(A) The implementing agreement required under paragraph (1) between the selling carrier and the affected employees shall be as required by the conditions imposed under section 11347 of this title.

"(B) The implementing agreement required under paragraph (1) between the acquiring entity and the affected employees shall only apply with respect to the selection of forces.

"(3) If the parties referred to in paragraph (1) are unable to complete an implementing agreement, the terms of an implementing agreement shall be determined through binding arbitration.".

(b) PROTECTION IN CASE OF ABANDONMENTS OR SALES.—Section 10905 of such title is amended by adding at the end a new subsection as follows:

"(g)(1) In issuing any certification of abandonment or discontinuance under this section, the Commission shall include provisions at least as beneficial for the interests of employees as are required under section 10903(b)(2) of this title.

"(2) If the Commission approves a transaction under subsection (e), the Commission shall include provisions at least as beneficial for the interests of employees as are required under section 10901 of this title.".

(c) COLLECTIVE BARGAINING NOT AFFECTED.—No order under section 11344 of title 49, United States Code, shall affect the rights

of any carrier or its employees under the Railway Labor Act or applicable collective bargaining agreements, except insofar as is necessary to allow, by agreement, or by arbitration if required, the carrier to carry out the transaction approved by the Commission in such order through adjustment of work forces, such as selection and assignment of forces.

SEC. 4752. AGRICULTURE CONTRACT DISCLOSURE.

Section 10713(b) of title 49, United States Code, is amended by inserting "(1)" after "(b)"; and by adding at the end a new paragraph as follows:

"(2)(A) The essential terms of any contract for the transportation of agricultural commodities to be made available to the general public in tariff format under this subsection shall include, but shall not be limited to (i) the identity of the shipper party to the contract; (ii) the specific origins, transit points and other shipper facilities subject to the contract, and destinations served under such contract; (iii) the duration of the contract, including provisions for optional extension; (iv) the actual volume requirements, if any; (v) whether any transportation service has begun under a contract before the date such contract is filed with or approved by the Commission, and (vi) the date on which the contract became applicable to the transportation services provided under the contract. The Commission shall interpret this subsection to provide for liberal discovery to shippers seeking remedies under subsection (d)(2)(B) of this section.

"(B) Any amendment, supplement, or change to any term or provision of any contract described in subparagraph (A), including extensions of such contract, changes of origin, transit points, affected shipper facilities, destination points, or negotiated economic terms, shall be deemed to be a separate and new contract for the purposes of this subsection. Such amendments, supplements, or changes shall be filed separately with the Commission as provided in paragraph (1).

"(C) Within 60 days after the date of the enactment of the Conrail Privatization Act, the Commission shall issue regulations which require that essential terms of contracts described in subparagraph (A) shall be made available to the general public in tariff format as provided in this paragraph.

"(D) The railroad contract rate advisory service established pursuant to subsection (m) of this section shall assess the impact on competition among agricultural shippers of variations between contract rates for various shipments and the published single car rates, and shall submit a report to the Congress not later than 120 days after the date of the enactment of the Conrail Privatization Act.".

SEC. 4753. BOXCAR PROVISION.

The authority of the Commission to promulgate that portion of the rule adopted by the Commission in Ex Parte No. 346 (Sub. No. 19) served September 12, 1986, consisting of small railroad protections, is hereby confirmed.

Page 419, strike out line 12 and all that follows through page 552, line 2, and insert in lieu thereof the following:

TITLE X—HOUSE COMMITTEE ON WAYS AND MEANS

Subtitle A—OASDI Provisions
Subtitle B—Provisions Relating to Public Assistance and Unemployment Taxes
Subtitle C—Provisions Relating to Medicare and Health Programs
Subtitle D—Revenue Provisions

Subtitle A—OASDI Provisions

SEC. 10001. ELIMINATION OF 3-PERCENT TRIGGER FOR COST-OF-LIVING INCREASES.

(a) ELIMINATION OF TRIGGER.—Section 215(i)(1)(B) of the Social Security Act is amended by striking out "with respect to which the applicable increase percentage is 3 percent or more" and inserting in lieu thereof "with respect to which the applicable increase percentage is greater than zero".

(b) CONFORMING AMENDMENTS.—

(1) IN CURRENT LAW.—Section 215(i) of such Act is further amended—

(A)(i) by striking out clause (i) in paragraph (2)(C) and redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively, and

(ii) by striking out "under clause (ii)" in clause (ii) of such paragraph as so redesignated and inserting in lieu thereof "under clause (i)";

(B) by inserting "and by section 10001 of the Omnibus Budget Reconciliation Act of 1986" after "Social Security Amendments of 1983" in paragraph (4); and

(C) by striking out "because the wage increase percentage was less than 3 percent" in paragraph (5)(A)(i) and inserting in lieu thereof "because there was no wage increase percentage greater than zero".

(2) IN APPLICABLE FORMER LAW.—Section 215(i) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978, is amended—

(A) by striking out ", by not less than 3 per centum," in paragraph (1)(B); and

(B) by striking out "(C)(i) Whenever" and all that follows down through "(ii) Whenever" in paragraph (2)(C) and inserting in lieu thereof "(C) Whenever".

(c) TECHNICAL AMENDMENT TO SMI PROGRAM.—Section 1839(f)(2)(A) of such Act is amended to read as follows:

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the monthly benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of the monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or".

(d) EFFECTIVE DATE.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978) in 1986 and subsequent years.

(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) shall apply with respect to months after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

SEC. 10002. DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENT EMPLOYERS.

(a) RETURNS AND PAYMENTS.—(1) Subchapter C of chapter 21 of the Internal Revenue Code of 1954 is amended by redesignating section 3126 as section 3127, and by inserting after section 3125 the following new section:

"SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

"If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.".

(2) The table of sections for subchapter C of chapter 21 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 3126. Return and payment by governmental employer.
"Sec. 3127. Short title.".

(b) TREATMENT OF SERVICE UNDER SECTION 218 AGREEMENTS AS EMPLOYMENT PERFORMED BY EMPLOYEES.—

(1) SERVICE TREATED AS EMPLOYMENT.—(A) Section 3121(b)(7) of such Code is amended—

(i) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a comma;

(ii) by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof ", or ", and

(iii) by adding after subparagraph (D) the following new subparagraph:

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act;".

(B) Section 1402(b) of such Code is amended by striking out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" in the flush sentence immediately following paragraph (2).

(2) INDIVIDUAL PERFORMING SERVICES TREATED AS EMPLOYEE.—(A) Section 3121(d) of such Code is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or".

(B) Section 3306(i) of such Code is amended by striking out "subparagraphs (B) and (C) of paragraph (3)" and inserting in lieu thereof "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

(c) CONFORMING AMENDMENTS IN SOCIAL SECURITY ACT.—(1) Subsections (e), (h), (i), (j), (q), (r), (s), and (t) of section 218 of the Social Security Act are repealed; and subsections (f), (g), (k), (l), (m), (n), (o), (p), and (u) of such section are redesignated as subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

(2)(A) Section 205(c)(1)(D)(i) of such Act is amended by inserting "(as in effect prior to December 31, 1986)" after "section 218(e)".

(B) Section 205(c)(5)(F)(iii) of such Act is amended—

(i) by inserting "(as in effect prior to December 31, 1986)" after "section 218", and

(ii) by inserting "(as so in effect)" after "subsection (q) of such section".

(C) Section 218(d)(6) of such Act is amended—

(i) by striking out "subsection (f)" in subparagraph (A) and inserting in lieu thereof "subsection (e)", and

(ii) by striking out "subsection (f)(1)" in subparagraph (F) and inserting in lieu thereof "subsection (e)(1)".

(D) Section 218(d)(8)(D) of such Act is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (l)".

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "Except as provided in subsection (e)(2), any agreement" and inserting in lieu thereof "Any agreement".

(F) Section 224(a)(2)(B) of such Act is amended by striking out "section 218(k)" and inserting in lieu thereof "section 218(g)".

(d) EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-month period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

Subtitle B—Provisions Relating to Public Assistance and Unemployment Taxes

SEC. 10101. MANDATORY PROVISION OF AID WITH RESPECT TO DEPENDENT CHILDREN IN TWO-PARENT FAMILIES.

(a) REQUIREMENT THAT AID BE PROVIDED.—Section 402(a) of the Social Security Act is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (38);

(2) by striking out the period at the end of paragraph (39) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (39) the following new paragraph:

"(40) provide that payments of aid will be made under the plan with respect to dependent children of unemployed parents, in accordance with section 407.".

(b) CONFORMING AMENDMENTS.—(1) Section 407(b) of such Act is amended by striking out "(b) The provisions" and all that follows down through "(1) requires" and inserting in lieu thereof the following:

"(b) In providing for the payment of aid under the State's plan approved under section 402 in the case of families which include dependent children within the meaning of subsection (a) of this section, as required by section 402(a)(40), the State's plan—

"(1) shall require".

(2) Section 407(b)(2) of such Act is amended by striking out "provides—" and inserting in lieu thereof "shall provide—".

(c) QUARTERS OF WORK BASED ON EDUCATION OR TRAINING.—(1) Section 407(d)(1) of such Act is amended—

(A) by inserting "(A)" after "means a calendar quarter"; and

(B) by inserting before the semicolon at the end thereof the following: ", or (B) if the State plan so provides (but subject to the last sentence of this subsection), in which such individual (i) was in regular full-time attendance as a student at an elementary or secondary school, (ii) was in regular full-time attendance in a course of vocational or technical training designed to fit him or her for gainful employment, or (iii) participated in an education or training program established under the Job Training Partnership Act".

(2) Section 407(d) of such Act is further amended by adding at the end thereof (after and below paragraph (4)) the following new sentence: "No individual shall be credited during his or her lifetime (for purposes of subsection (b)(1)(C)(i)) with more than 4 'quarters of work' based on attendance in a course or courses of vocational or technical training as described in paragraph (1)(B)(ii) of this subsection.".

(3) Section 407(b)(1)(C)(i) of such Act is amended by inserting after "6 or more quarters of work (as defined in subsection (d)(1))" the following: ", including 2 or more quarters of work as defined in subsection (d)(1)(A),".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective January 1, 1988.

SEC. 10102. TARGETING UNDER INCOME AND ELIGIBILITY VERIFICATION SYSTEM.

Section 1137(a)(4)(C) of the Social Security Act is amended by inserting after "payments" the following: ", and no State shall be required to use such information to verify the eligibility of all recipients".

SEC. 10103. ANNUAL CALCULATION OF FEDERAL PERCENTAGE FOR AFDC PURPOSES.

Section 9528(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as added by section 4621(a) of this Act) is amended (effective as provided in section 4621(b))—

(1) by striking out "payment to a State under section 1903" and inserting in lieu thereof "payments to States under sections 403 and 1903"; and

(2) by inserting "with respect to either such section" after "shall not apply to a State".

SEC. 10104. RATE OF FUTA TAX.

(a) IN GENERAL.—Paragraph (1) of section 3301 of the Federal Unemployment Tax Act is amended by striking out "1976" and inserting in lieu thereof "1989".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to remuneration paid after December 31, 1986.

Subtitle C—Provisions Relating to Medicare and Health Programs

TABLE OF CONTENTS

PART 1—PROVISIONS RELATING TO MEDICARE PART A ONLY

Sec. 10201. Setting part A deductible at $500 for 1987.

Sec. 10202. Applicable percentage increase in payments for inpatient hospital services.

Sec. 10203. Limitation on payments for capital-related costs for inpatient hospital services of DRG hospitals under medicare.

Sec. 10204. Coverage of hospitals in Puerto Rico under DRG prospective payment system.

Sec. 10205. Improving quality of care with respect to part A services.

Sec. 10206. Off-budget treatment of Federal Hospital Insurance Trust Fund in fiscal year 1987.

Sec. 10207. Technical amendments and miscellaneous provisions relating to part A.

PART 2—PROVISIONS RELATING TO PARTS A AND B

Sec. 10221. Elimination of periodic interim payment system (PIP) for DRG hospitals and prompt payment for medicare providers.

Sec. 10222. Health maintenance organizations and competitive medical plans.

Sec. 10223. Provisions relating to improvement of quality of care.

Sec. 10224. Technical amendments and miscellaneous provisions relating to parts A and B.

PART 3—PROVISIONS RELATING TO MEDICARE PART B

Sec. 10231. Extension of premium payment provision through 1989.

Sec. 10232. Payment for physicians' services, restrictions on reasonable charge limitations, and incentives for physician participation.

Sec. 10233. Payment rates for renal services and improvements in administration of end stage renal disease networks and program.

Sec. 10234. Technical amendments and miscellaneous provisions relating to part B.

PART 4—IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS

Sec. 10241. Improved review of quality by peer review organizations.

PART 5—ASSURING ACCESS TO HEALTH CARE

Sec. 10251. Incentives for the establishment of State health insurance pools.

Sec. 10252. COBRA technical amendments relating to continuation of employer-based health insurance coverage.

Sec. 10253. Continuation coverage for retirees in cases of bankruptcies.

PART 1—PROVISIONS RELATING TO MEDICARE PART A ONLY

SEC. 10201. SETTING PART A DEDUCTIBLE AT $500 FOR 1987.

For purposes of part A of title XVIII of the Social Security Act, and notwithstanding any provision of such part to the contrary, the inpatient hospital deductible (otherwise determined under section 1813(b) of such Act) for 1987 shall be $500. Such amount shall be applied—

(1) to inpatient hospital services furnished in 1987,

(2) in computing, under section 1813(b)(3) of such Act, the coinsurance amount for post-hospital expended care services furnished in 1987, and

(3) in computing, under section 1818(d) of such Act, the monthly premium (under part A of title XVIII of such Act) for months in 1987.

SEC. 10202. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

(a) IN GENERAL.—Subclause (II) of section 1886(b)(3)(B)(i) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended to read as follows:

"(II) for fiscal year 1987, 1.0 percent, and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and".

(b) CONFORMING AMENDMENTS.—(1) Section 1886(d)(3)(A) of such Act is amended by striking "and 1986" and inserting ", 1986, 1987, and 1988".

(2) Section 1886(e)(4) of such Act is amended—

(A) by striking "determine for each fiscal year (beginning with fiscal year 1987)" and inserting "recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year", and

(B) by adding at the end the following new sentence: "The percentage change for subsection (d) hospitals and subsection (d) Puerto Rico hospitals may be different from that for other hospitals and may vary among such other hospitals.".

(3) Section 1886(e)(5) of such Act is amended—

(A) by striking "June 1 before each fiscal year (beginning with fiscal year 1986)" and inserting "April 1 before fiscal year 1988 and the June 1 before each subsequent fiscal year", and

(B) by inserting "recommendation or" before "determination" each place it appears.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act, for discharges occurring on or after October 1, 1986.

(d) PROMULGATION OF NEW RATE.—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act but in no case later than October 1, 1986, for the republication of the determination described in section 1886(e)(5) of the Social Security Act, taking into account the amendments made by this section, without regard to the provisions of chapter 5 of title 5, United States Code.

SEC. 10203. LIMITATION ON PAYMENTS FOR CAPITAL-RELATED COSTS FOR INPATIENT HOSPITAL SERVICES OF DRG HOSPITALS UNDER MEDICARE.

(a) IN GENERAL.—Section 1886(g) of the Social Security Act (42 U.S.C. 1395ww(g)) is amended by adding at the end the following new paragraph:

"(3)(A) Notwithstanding section 1861(v)(1), in determining the amount of the hospital capital payments (as defined in subparagraph (D)), the Secretary shall provide for a reduction by such percentage (in this section referred to as the 'capital reduction percentage') in such payments as is necessary to provide that the aggregate amount of hospital capital payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1987, in fiscal year 1988, and in fiscal year 1989, does not exceed 110 percent, 120 percent, and 130 percent, respectively, of the aggregate amount of such payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1986, adjusted in accordance with subparagraph (C).

"(B) The Secretary shall determine the capital reduction percentage based upon the best information available before the beginning of the fiscal year involved and interim and final payments shall be made on the basis of such percentage. Such percentage shall not be subject to change after the date it is promulgated in final form.

"(C) In computing the hospital capital payments attributable to portions of cost reporting periods occurring in fiscal year 1986 in the computing the limitation on hospital capital payments under subparagraph (A) attributable to portions of cost reporting periods occurring in—

"(i) fiscal year 1987, there shall be excluded 25 percent,

"(ii) fiscal year 1988, there shall be excluded 50 percent,

"(iii) fiscal year 1989, there shall be excluded 75 percent,

of the amount of the hospital capital payments (attributable to portions of cost reporting periods occuring in fiscal year 1986) that are attributable to a return on equity capital.

"(D) In this paragraph, the term 'hospital capital payments' means the payments that may be made under part A of this title with respect to the allowable capital-related costs (as defined by the Secretary) of inpatient hospital services for subsection (d) hospitals and subsection (d) Puerto Rico hospitals.".

(b) PUBLICATION OF CAPITAL REDUCTION PERCENTAGE.—Section 1886(e)(4) of such Act is amended by inserting before the period at the end the following: "and shall determine for each fiscal year the capital reduction percentage which should be effected under subsection (g)(3) for that fiscal year".

(c) NO ADMINISTRATIVE OR JUDICIAL REVIEW.—Section 1886(d)(7) of such Act is amended—

(1) by striking "and" at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting ", and", and

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

"(C) the determination of a capital reduction percentage under subsection (g)(3).".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to payments for capital-related costs attributable to portions of cost reporting periods occurring on or after October 1, 1986.

(2) TRANSITION.—The Secretary of Health and Human Services shall cause to have published in the Federal Register, by not later than 30 days after the date of the enactment of this Act or, if earlier, by October 1, 1986, the capital reduction percentage determined under section 1886(g)(3) for payments for capital-related costs attributable to portions of hospital cost reporting periods that occur during fiscal year 1987. In promulgating such percentage for such fiscal year, the provisions of chapter 5 of title 5, United States Code, and of chapter 35 of title 41 of such Code, shall not apply.

SEC. 10204. COVERAGE OF HOSPITALS IN PUERTO RICO UNDER A DRG PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

"(9)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1986, is equal to the sum of—

"(i) 75 percent of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

"(ii) 25 percent of the average of—

"(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in an urban area, and

"(II) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

As used in this section, the term 'subsection (d) Puerto Rico hospital' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

"(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1987 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

"(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A)) for the hospital for the cost reporting period beginning in fiscal year 1986 and increase such amount by the applicable percentage increase (as defined in subsection (b)(3)(B)) for fiscal year 1987.

"(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

"(I) excluding an estimate of indirect medical education costs,

"(II) adjusting for variations among hospitals by area in the average hospital wage level, and

"(III) adjusting for variations in case mix among hospitals.

"(iii) The Secretary shall compute an average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

"(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

"(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective

payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

"(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1987 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

"(i) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1988 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

"(ii) The Secretary shall reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

"(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

"(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsection:

"(i) Subparagraph (A) (relating to outlier payments), except that the total amount of additional payments made under this clause in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made under this paragraph for discharges in that year.

"(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

"(iii) Subparagraph (C)(iii) (relating to exceptions and adjustments).

"(iv) Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).

"(v) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).".

(b) CONFORMING AMENDMENTS.—(1) The first sentence of section 1886(d)(5)(C)(i) of such Act is amended by inserting "(other than under paragraph (9))" after "established under this subsection".

(2) The second and third sentences of section 1886(d)(5)(C)(ii) of such Act are each amended by inserting "(other than under paragraph (9))" after "payment amounts under this subsection".

(c) NO RESTANDARDIZATION OF NATIONAL LEVELS TO REFLECT INCLUSION OF PUERTO RICO.—The Secretary of Health and Human Services shall not restandardize or otherwise adjust the national DRG prospective payment rates otherwise determined under section 1886(d) of the Social Security Act to take into account changes in the payments provided to subsection (d) Puerto Rico hospitals under the amendment made by subsection (a).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 1986. The Secretary of Health and Human Services shall issue such regulations, by not later than October 1, 1986, as are necessary to implement such amendments in a timely manner, without regard to the provisions of chapter 5 of title 5, United States Code.

SEC. 10205. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES.

(a) REFINEMENT OF PROSPECTIVE PAYMENT SYSTEM.—

(1) DEVELOPMENT OF LEGISLATIVE PROPOSAL.—The Secretary of Health and Human Services shall develop and submit to Congress a specific legislative proposal to improve the classification and payment system under section 1886(d) of the Social Security Act (and, as appropriate, the system for payment of outliers under section 1886(d)(5)(A) of such Act) in order to assure that the amount of payment per discharge approximates the cost of medically necessary care provided in an efficient manner for individual patients or classes of patients with similar conditions.

(2) ACCOUNTING FOR SEVERITY OF ILLNESS.—In developing the proposal, the Secretary shall account for variations in severity of illness and case complexity which are not adequately accounted for by the current classification and payment system.

(3) DEADLINE.—The proposal shall be submitted to Congress by not later than 2 years after the date of the enactment of this Act.

(b) REQUIRING NOTICE OF HOSPITAL DISCHARGE RIGHTS.—

(1) REQUIREMENT FOR HOSPITALS TO PROVIDE STATEMENT.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)), as amended by section 10207(e)(6)(A) of this subtitle, is amended—

(A) by striking "and" at the end of subparagraph (J),

(B) by striking the period at the end of subparagraph (K) and inserting ", and", and

(C) by inserting after subparagraph (K) the following new subparagraph:

"(L) in the case of hospitals, to provide to each individual who is entitled to benefits under part A (or to a legally responsible person or persons acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

"(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this title,

"(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

"(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

"(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify."

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(L) of the Social Security Act not later than six months after the date of the enactment of this Act. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.

(c) REQUIRING HOSPITALS TO PROVIDE DISCHARGE PLANNING PROCESS.—

(1) REQUIREMENT AS CONDITION OF PARTICIPATION.—Section 1861(e)(6) of the Social Security Act (42 U.S.C. 1395x(e)(6)) is amended—

(A) by inserting "(A)" after "(6)", and

(B) by inserting before the semicolon at the end the following: "and (B) has in place a discharge planning process that meets the requirements of subsection (ee)".

(2) DISCHARGE PLANNING PROCESS DEFINED.—Section 1861 of such Act is further amended by adding at the end the following new subsection:

"Discharge planning process

"(ee)(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this title and if it meets the guidelines and standards established by the Secretary under paragraph (2).

"(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

"(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

"(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

"(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hos-

pital care will be made before discharge and to avoid unnecessary delays in discharge.

"(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

"(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

"(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

"(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel."

(3) EFFECT OF ACCREDITATION.—The second sentence of section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended—

(A) by inserting ", requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)," after "the same purpose)", and

(B) by inserting "clause (A) or (B) of" after "comply also with".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to hospitals as of one year after the date of the enactment of this Act.

(d) REVIEW OF STANDARDS FOR MEDICARE CONDITIONS OF PARTICIPATION FOR ASSURING QUALITY OF INPATIENT HOSPITAL SERVICES.—The Secretary of Health and Human Services shall arrange for a study of the adequacy of the standards used for hospitals, for purposes of meeting the conditions of participation under title XVIII of the Social Security Act, in assuring the quality of services furnished in hospitals. The Secretary shall report to Congress on the results of the study by not later than 2 years after the date of the enactment of this Act.

(e) STUDY OF PAYMENT FOR ADMINISTRATIVELY NECESSARY DAYS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine whether a payment should be made (in a budget-neutral manner under title XVIII of such Act to hospitals receiving payments under section 1886(d) of such Act) to a hospital for administratively necessary days, separate from the per-discharge and outlier payments made under such section.

(2) ADMINISTRATIVELY NECESSARY DAYS DEFINED.—In this subsection, an "administratively necessary day" is a day of continued inpatient hospital stay, for an individual entitled to benefits under part A of title XVIII of the Social Security Act, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

(3) CONSIDERATIONS IN CONDUCTING STUDY.—In conducting the study, the Secretary shall consider—

(A) the need for such a payment in order to minimize—

(i) the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care, such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and from the source of payment for such care, and

(ii) the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility, and

(B) the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) REPORT ON STUDY.—The Secretary shall report to Congress on the results of the study not later than January 1, 1988.

(f) CONTINUING OF FAVORABLE PRESUMPTION OF WAIVER OF LIABILITY FOR SKILLED NURSING FACILITIES, HOME HEALTH AGENCIES, AND HOSPICE PROGRAMS.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp) is amended by adding at the end the following new subsection:

"(f)(1)(A) A skilled nursing facility which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a)(1) or (9).

"(B) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a)(1) or (9).

"(C) A hospice program which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a)(1) or (9).

"(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2), including any of the following:

"(A) Notice by the fiscal intermediary of the fact that payment may not be made under this title with respect to the services.

"(B) In the case of a skilled nursing facility, the committee or group responsible for the conduct of utilization review for the facility has informed the facility that payment may not be made under this title with respect to the services.

"(C) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

"(3) The requirements of this paragraph are as follows:

"(A) The facility, agency, or program complies with requirements of the Secretary under this title respecting timely submittal of bills for payment and medical documentation.

"(B) The facility, agency, or program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this title.

"(4) The requirement of this paragraph is that, on the basis of bills submitted during the previous quarter, the rate of denial of bills by reason of section 1862(a)(1) or (9) for—

"(A) a skilled nursing facility does not exceed 5 percent, computed based on days of post-hospital extended care services billed,

"(B) a home health agency does not exceed 2.5 percent, computed based on visits for home health services billed, or

"(C) a hospice program does not exceed 2.5 percent, computed based on visits for hospice care billed.

"(5) The Secretary shall report annually to Congress—

"(A) information on the frequency and distribution (by type of provider) of denials referred to in paragraph (4), including—

"(i) the reasons for such denials,

"(ii) the extent to which payments were nonetheless made because of this section, and

"(iii) the rate of reversals of such denials, and

"(B) such other information as may be appropriate to evaluate the appropriateness of the percentage standards established under paragraph (4).

"(6) In this subsection, the term 'fiscal intermediary' means, with respect to a skilled nursing facility, home health agency, or hospice program an agency or organization with an agreement under section 1816 with respect to the facility, agency, or program.".

(2) REPEALING DUPLICATIVE PROVISIONS.—Section 9205 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and subsection (c) of section 9126 of such Act, are repealed.

(3) EFFECTIVE DATE.—(A) Except as provided in subparagraph (B), the amendments made by paragraphs (1) and (2) shall apply to services furnished on or after the date of the enactment of this Act, and before October 1, 1989.

(B) The amendments made by paragraph (1) shall apply to hospice care furnished (i) on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act and (ii) before October 1, 1989.

(g) EXTENSION OF WAIVER OF LIABILITY PROVISIONS TO CERTAIN COVERAGE DENIALS FOR HOME HEALTH SERVICES.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp), as amended by subsection (f), is further amended—

(A) in subsection (a)(1), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(B) in the first sentence of subsection (a), by inserting "and as though the coverage denial described in subsection (g) had not occurred" before the period at the end;

(C) in the third sentence of subsection (a), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(D) in subsection (c), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(E) in subsection (f)(1)(B)—

(i) by inserting "(i)" after "applicable requirements", and

(ii) by inserting before the period at the end the following: "or (ii) of paragraphs (3) and (5) shall be presumed to meet the requirement of subsection (a)(2) with respect to any coverage denial described in subsection (g)";

(F) in subsection (f)—

(i) in paragraph (5), by striking "paragraph (4)" each place it appears and inserting "paragraphs (4) and (5)",

(ii) by redesignating paragraphs (5) and (6) as paragraph (6) and (7), respectively, and

(iii) by inserting after paragraph (4) the following new paragraph:

"(5) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) does not exceed 2.5 percent, computed based on visits for home health services billed."; and

(G) by adding at the end the following new subsection:

"(g) The coverage denial described in this subsection is, with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1814(a)(2)(C) or section 1835(a)(2)(A) in that the individual—

"(1) is or was not confined to his home, or

"(2) does or did not need skilled nursing care on an intermittent basis or physical, speech, or occupational therapy."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to services furnished on or after the first day of the first month that begins more than 90 days after the date of the enactment of this Act; except that the amendments made by paragraphs (1)(E) and (1)(F)(iii) shall not apply to services furnished on or after October 1, 1989.

(h) DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

(A) evaluates—

(i) the functional capacity of an individual,

(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

(iii) the social and familial resources available to the individual to meet those requirements; and

(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

(2) ADVISORY PANEL.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(3) REPORT ON INSTRUMENT.—The Secretary shall report to Congress, not later than 1 year after the date of the enactment of this Act, on the instrument or instruments developed under this section. The report shall include an evaluation of the advantages and disadvantages of using the instrument or instruments as the basis for determining whether payment should be made for post-hospital extended care services and home health services provided to individuals entitled to benefits under part A of title XVIII of the Social Security Act.

(i) EXPEDITED REVIEW BY FISCAL INTERMEDIARIES.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp), as amended by subsections (f) and (g), is further amended by adding at the end the following new subsection:

"(h) The Secretary shall develop procedures to expedite the determination of whether initial claims submitted for post-hospital extended care services, home health services, and hospice care provided (or to be provided) to an individual may be reimbursed under this title, so as to minimize the time between (1) when the provider first provides the services to the individual, and (2) when the provider first receives notice of an initial determination on whether or not payment may be made under this title for some or all of the services provided the individual."

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall provide for the expedited procedures described in section 1879(h) of the Social Security Act not later than one year after the date of the enactment of this Act.

(j) INCLUDING IN ANNUAL REPORTS ON PROSPECTIVE PAYMENT SYSTEM INFORMATION ON QUALITY OF POST-HOSPITAL CARE.—

(1) IN GENERAL.—Section 603(a)(2) of the Social Security Amendments of 1983 is amended—

(A) by striking "1987" in subparagraph (A) and inserting "1989", and

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

"(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

"(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

"(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

"(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(B) shall apply to reports for years beginning with 1986.

(k) PRIOR AUTHORIZATION DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior authorization for post-hospital extended care services and home health services furnished under part A of title XVIII of the Social Security Act.

(2) SCOPE.—The program shall include at least four projects and shall be implemented by not later than July 1, 1987.

(3) CONSULTATION.—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(4) EVALUATION AND REPORT.—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than January 1, 1989. Such evaluation and report shall address—

(A) the administrative and program costs for prior authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior authorization;

(B) impact of prior authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior authorization versus the current system.

(5) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(6) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

SEC. 10206. OFF-BUDGET TREATMENT OF FEDERAL HOSPITAL INSURANCE TRUST FUND IN FISCAL YEAR 1987.

(a) EFFECTIVE IN FISCAL YEAR 1987.—Section 710 of the Social Security Act (as amended by section 261 of Public Law 99-177) is amended—

(1) by amending subsection (b) to read as follows:

"(b)(1) The receipts and disbursements of the Federal Hospital Insurance Trust Fund and the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

"(2) The disbursements of the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Fund shall be set forth separately in such budgets.", and

(2) in subsection (c), by striking "or the Federal Disability Insurance Trust Fund, or for payments from either" and inserting ", the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund, or for payments from any".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to fiscal years beginning after September 30, 1986, and ending before October 1, 1992.

SEC. 10207. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART A.

(a) ONE-YEAR EXTENSION OF PASS-THROUGH FOR COSTS OF CERTIFIED REGISTERED NURSE ANESTHETISTS.—Section 2312(c) of the Deficit Reduction Act of 1984 is amended by striking "October 1, 1987" and inserting "October 1, 1988".

(b) 4-YEAR DESIGNATION PERIOD FOR RURAL REFERRAL CENTERS.—If the Secretary of Health and Human Services classifies or has classified a hospital located in a rural area as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act, the Secretary shall not terminate or change such classification before the end of the 4th cost reporting period for which the classification is in effect.

(c) TEMPORARY WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE, INC.—With respect to the Connecticut Hos-

pice, Inc., for hospice care provided before October 1, 1988, the reference in section 1861(dd)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(A)(iii)) to "20 percent" is deemed a reference to "50 percent".

(d) MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this section and before January 1, 1988, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the State-wide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

(e) PART A COBRA TECHNICAL CORRECTIONS.—

(1) CLARIFICATION OF INDIRECT MEDICAL EDUCATION COSTS LANGUAGE.—(A) Paragraph (2)(C)(i) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by striking "(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)".

(B) Paragraph (3)(A) of such subsection is amended by adding at the end the following: "If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula.".

(C) Clause (ii) of paragraph (3)(C) of such subsection is amended to read as follows:

"(ii) REDUCING FOR SAVINGS FROM AMENDMENT TO INDIRECT TEACHING ADJUSTMENT FOR DISCHARGES AFTER SEPTEMBER 30, 1986.—The Secretary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between—

"(I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as 'r' is defined in paragraph (5)(B)(ii)), and

"(II) that sum using the factor specified in paragraph (5)(B)(ii)(II).".

(D)(i) Except as provided in clause (ii), the amendments made by this paragraph apply to discharges occurring on or after October 1, 1986.

(ii) The amendments made by this paragraph shall not be first applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (incorporating the amendments made by paragraph (2) of this subsection) are also being applied.

(2) CLARIFICATION OF DISPROPORTIONATE SHARE LANGUAGE.—(A) Paragraph (2)(C) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by section 9105(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA") is amended—

(i) by adding "and" at the end of clause (ii),

(ii) by striking ", and" at the end of clause (iii) and inserting a period, and

(iii) by striking clause (iv).

(B) Paragraph (3)(C) of such subsection is amended by adding at the end the following:

"(iii) REDUCING FOR DISPROPORTIONATE SHARE PAYMENTS.—The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disproportionate share payments) for subsection (d) hospitals.".

(C) Paragraph (5)(F)(vi)(I) of such subsection is amended—

(i) by striking "supplementary" and inserting "supplemental", and

(ii) by striking "fiscal year" and inserting "period".

(D) The amendments made by subparagraph (C) apply to discharges occurring on or after May 1, 1986, and the amendments made by subparagraphs (A) and (B) apply to discharges occurring on or after October 1, 1986.

(3) CLARIFICATION THAT ALL MEDICARE PARTICIPATING HOSPITALS ARE REQUIRED TO MEET EMERGENCY CARE REQUIREMENTS.—Section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)), as inserted by section 9121(b) of COBRA, is amended by striking "and has, under the agreement, obligated itself to comply with the requirements of this section".

(4) APPROPRIATE ANNUAL PERIODS FOR SKILLED NURSING FACILITY PROSPECTIVE PAYMENTS.—(A) Section 1888(d)(1) of the Social Security Act (42 U.S.C. 1395yy(d)(1)), as added by section 9126(a) of COBRA, is amended by striking "fiscal year" each place it appears and inserting "cost reporting period".

(B) Section 1888(d)(4) of such Act is amended—

(i) in the first sentence, by striking "each fiscal year" and inserting "cost reporting periods beginning in a fiscal year", and

(ii) in the second sentence, by striking "fiscal year" and all that follows up to the period and inserting "cost reporting period no later than 30 days before the beginning of that period".

(C) Section 9126(d)(1) of COBRA is amended by striking "fiscal years" and inserting "cost reporting periods".

(D) The amendments made by subparagraphs (A) and (B) apply to cost reporting periods beginning on or after October 1, 1986.

(5) TREATMENT OF CERTAIN STATE AND LOCAL CAMPAIGN WORKERS WITH RESPECT TO THE HOSPITAL INSURANCE TAX.—(A) Section 3121(u)(2)(B)(ii) of the Internal Revenue Code of 1954 is amended—

(i) by striking "or" at the end of subclause (III),

(ii) by striking the period at the end of subclause (IV) and inserting ", or", and

(iii) by adding at the end the following:

"(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100."

(B) Section 210(p)(2) of the Social Security Act (42 U.S.C. 410(p)(2)) is amended—

(i) by striking "or" at the end of subparagraph (C),

(ii) by striking the period at the end of subparagraph (D) and inserting ", or", and

(iii) by adding at the end the following:

"(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100.".

(C) The amendments made by this paragraph shall apply to services performed after March 31, 1986.

(6) MISCELLANEOUS PROVISIONS.—(A) Paragraph (1) of section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)) is amended—

(i) by striking the "and" inserted at the end of subparagraph (I) by section 9122(a)(2) of COBRA,

(ii) by striking the period at the end of subparagraph (J) and inserting ", and", and

(iii) by redesignating the subparagraph (I) inserted by section 9403(b) of COBRA as subparagraph (K) and transferring and inserting such subparagraph after subparagraph (J).

(B) The amendments made by subparagraph (A) are effective as if they had been included in the enactment of COBRA.

(C) Effective on the date of the enactment of Public Law 99-107, in applying section 5(a) of such Act, a cost reporting period beginning on September 28, 29, or 30 is deemed to begin on October 1 and any reference to September 30 is deemed a reference to September 27.

PART 2—PROVISIONS RELATING TO PARTS A AND B

SEC. 10221. ELIMINATION OF PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR DRG HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS.

(a) ELIMINATION OF PIP FOR PPS HOSPITALS.—

(1) IN GENERAL.—Section 1815(a) of the Social Security Act (42 U.S.C. 1395g(a)) is amended—

(A) by inserting "(1)" after "(a)", and

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

"(2)(A) Except as provided in subparagraph (B), the Secretary shall provide payment under this part for inpatient hospital service furnished by a subsection (d) hospital (as defined in section 1886(d)(1)(B), and including a distinct psychiatric or rehabilitation unit of such a hospital) only on the basis of actual bills submitted by the hospital and not on a periodic interim payment basis.

"(B) Subparagraph (A) shall not apply, and the Secretary shall permit payment on a periodic interim payment basis—

"(i) to a subsection (d) hospital during the period it is—

"(I) being paid additional amounts under section 1886(d)(5)(F) (relating to disproportionate share payments), or

"(II) a sole community hospital (as defined in section 1886(d)(5)(C)(ii)); and

"(ii) to a hospital which is receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c), if payment on a periodic interim payment basis is an integral part of such reimbursement system.

"(C) In the case of a subsection (d) hospital which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary shall make available appropriate accelerated payments.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall be effective with respect to payments for discharges occurring on or after August 1, 1987.

(b) REQUIRING TIMELY PAYMENT OF PROPERLY SUBMITTED MEDICARE CLAIMS UNDER PART A.—

(1) IN GENERAL.—Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended—

(A) by inserting "(1)" after "(c)", and

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

"(2)(A) Each agreement under this section shall provide that, in cases of claims for which payment under this part is not made on a periodic interim payment basis under section 1815(a)—

"(i) if payment is not made on or before the 22nd calendar day after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) the agency or organization shall notify the entity submitting the claim, within 22 calendar days after the date the claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the agency or organization will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for intermediary agreements under this section).

"(B) In this paragraph, the term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to claims received on or after October 1, 1987.

(c) PROMPT PAYMENT FOR MEDICARE PHYSICIANS AND SUPPLIERS.—

(1) IN GENERAL.—Section 1842(c) of the Social Security Act (42 U.S.C. 1395u(c)) is amended—

(A) by inserting "(1)" after "(c)", and

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

"(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall that, in cases of claims for which payment under this part is not made on a periodic interim payment basis described in section 1815(a)—

"(i) if payment is not made on or before the 22nd calendar day (or the 11th calendar day, the case of a claim for services furnished by a participating physician or supplier) after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) the carrier shall notify the entity submitting the claim, within 22 calendar days (or within 11 calendar days, in the case of a claim for services furnished by a participating physician or supplier) after the date the claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the carrier will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for carrier contracts under this section).

"(B) In this paragraph, the term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to claims received on or after October 1, 1987.

SEC. 10222. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

(a) REPEAL OF "2 FOR 1" CONVERSION REQUIREMENT FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS.—Section 114(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end the following new subparagraph:

"(E) The preceding provisions of this paragraph shall not apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.".

(b) REQUIRING THE PROVISION OF AN EXPLANATION OF ENROLLEE RIGHTS.—

(1) IN GENERAL.—Subsection (c)(3) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by adding at the end the following new subparagraph:

"(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

"(i) the enrollee's rights to benefits from the organization,

"(ii) the restrictions on payments under this title for services furnished other than by or through the organization,

"(iii) out-of-area coverage provided by the organization,

"(iv) the organization's coverage of emergency services and urgently needed care, and

"(v) appeal rights of enrollees.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date.

(c) RESTRICTING WAIVER OF REQUIREMENT OF 50 PERCENT NON-MEDICARE ENROLLMENT.—

(1) RESTRICTION ON NEW WAIVERS.—Paragraph (2) of subsection (f) of such section is amended by striking "if" and all that follows through the end and inserting the following: "if more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX.".

(2) SANCTIONS FOR NONCOMPLIANCE.—Such subsection is further amended by adding at the end the following new paragraph:

"(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section with the organization after the date the Secretary notifies the organization of such noncompliance.".

(3) EFFECTIVE DATES.—

(A) NEW RESTRICTION.—The amendment made by paragraph (1) shall apply to modifications and waivers granted after the date of the enactment of this Act.

(B) SANCTIONS FOR NONCOMPLIANCE.—The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization described in subparagraph (D), the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization—

(i) has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver, or

(ii) has not complied with such schedule, the Secretary may provide for the suspension of enrollment, under section 1876 of the Social Security Act, of individuals with the organization after the date the Secretary notifies the organization of such noncompliance.

(D) ORGANIZATION COVERED.—An eligible organization described in this subparagraph is an eligible organization that—

(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

and includes a successor to such an organization.

(d) REQUIRING PROMPT PAYMENT OF CLAIMS.—

(1) IN GENERAL.—Subsection (g) of such section is amended by adding at the end the following new paragraph:

"(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for covered services and supplies furnished to individuals enrolled under this section, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

"(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the

amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to risk-sharing contracts under section 1876 of the Social Security Act with respect to services furnished on or after July 1, 1987.

(e) REQUIRING ACCESS TO FINANCIAL RECORDS AND DISCLOSURE OF INTERNAL LOANS.—

(1) IN GENERAL.—Subsection (i)(3)(C) of such section is amended—

(A) by striking "and" at the end,

(B) by inserting "(i)" after "(C)", and

(C) by adding at the end the following new clauses:

"(ii) shall require the organization to provide and supply information (described in section 1866(b)(2)(C)(ii)) in the manner such information is required to be provided or supplied under that section;

"(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contracts as of January 1, 1987.

(f) AUTHORITY TO IMPOSE CIVIL MONEY PENALTIES.—Subsection (i) of such section is amended by adding at the end the following new paragraph:

"(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $2,000 for each such failure.

"(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.".

(g) STUDY OF AAPCC AND ACR.—The Secretary of Health and Human Services shall provide, through contract with an appropriate organization, for a study of the methods by which—

(1) the adjusted average per capita cost ("AAPCC", as defined in section 1876(a)(4) of the Social Security Act) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and

(2) the adjusted community rate ("ACR", as defined in section 1876(e)(3) of such Act) can be refined.

The Secretary shall submit to Congress, by not later than January 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR can be refined.

(h) ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT A LOCAL SOCIAL SECURITY OFFICE.—The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.

SEC. 10223. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE.

(a) PROVIDER REPRESENTATION OF BENEFICIARIES ON APPEALS AND PERMITTING APPEAL OF CERTAIN TECHNICAL DENIALS.—

(1) PERMITTING PROVIDER REPRESENTATION OF BENEFICIARIES.—Section 1869(b)(1) of the Social Security Act (42 U.S.C. 1395ff(b)(1)) is amended by adding at the end the following: "Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Such a person cannot represent a beneficiary with respect to the issue described in section 1879(a)(2) unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal.".

(2) PERMITTING REVIEW OF TECHNICAL DENIALS.—Section 1869 of such Act is further amended—

(A) in subsection (a), by inserting ", the amount of benefits with respect to home health services under part B, and any other determination with respect to a claim for benefits under part A" after "part A,", and

(B) in subsection (b)(1)—

(i) by striking "or" at the end of subparagraph (B),

(ii) by inserting ", or" at the end of subparagraph (C), and

(iii) by inserting after subparagraph (C) the following new subparagraph:

"(D) any other denial (other than under part B of title XI) of a claim for benefits under part A or a claim for benefits with respect to home health services under part B,".

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

(b) PROHIBITION OF CERTAIN PHYSICIAN INCENTIVE PLANS.—

(1) MAKING CERTAIN PLANS SUBJECT TO CIVIL MONETARY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended—

(A) by striking "subsection (a)" each place it appears and inserting "subsection (a) or (b)",

(B) in subsection (a)(1), by striking "(h)(1)" and "(h)(2)" and inserting "(i)(1)" and "(i)(2)", respectively,

(C) in subsection (f), by striking "subsection (d)" and inserting "subsection (e)",

(D) by redesignating subsections (b) through (h) as subsections (c) through (i), respectively, and

(E) by inserting after subsection (a) the following new subsection:

"(b)(1) If a hospital or an eligible organization with a risk-sharing contract under section 1876 knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

"(A) are entitled to benefits under part A or part B of title XVIII,

"(B) in the case of an eligible organization, are enrolled with the organization, and

"(C) are under the direct care of the physician,

the hospital or organization shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

"(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for individual described in such paragraph with respect to whom the payment is made."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to—

(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act, and

(B) payments by eligible organizations occurring on or after January 1, 1988.

(3) STUDY.—The Secretary of Health and Human Services shall report to Congress, not later than April 1, 1987, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians. The report shall—

(A) review the type of incentive arrangements in common use,

(B) evaluate their potential to pressure improperly physicians to reduce or limit services in a medically inappropriate manner, and

(C) make recommendations concerning providing for an exception, to the prohibition contained in section 1128A(b) of the Social Security Act, for incentive arrangements that may be used by such organizations and plans to encourage efficiency in the utilization of medical and other services but that do not have a substantial potential for adverse effect on quality.

(d) STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to serve as the basis for establishing a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act.

(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

(A) identify the appropriate considerations which should be used in defining "quality of care";

(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

(C) consider whether criteria and standards for defining and measuring quality of care should be developed and, if so, how this should be done;

(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

(G) review mechanisms available for coordinating and supervising at the national level quality review and assurance activities; and

(H) develop general criteria which may be used in establishing priorities in the allocation of funds and personnel in reviewing and assuring quality of care.

(3) REPORT.—The Secretary shall submit to Congress, not later than 2 years after the date of the enactment of this Act, a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to

strengthening quality assurance and review activities for services furnished under the medicare program.

(4) ARRANGEMENTS FOR STUDY.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

SEC. 10224. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B.

(a) TREATMENT OF GROUP PURCHASING VENDOR AGREEMENTS.—

(1) IN GENERAL.—Section 1877(b)(3) of the Social Security Act (42 U.S.C. 1395nn(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting "; and", and

(C) by adding at the end the following:

"(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of providers of services if—

"(i) the person has a written contract, with each such vendor and each such provider of services, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage (not to exceed 3 percent) of the value of the purchases made by each such provider under the contract, and

"(ii) the person discloses to each such provider of services the amount received from each such vendor with respect to purchases made by or on behalf of the provider.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) apply to payments made before, on, or after the date of the enactment of this Act.

(b) EXTENSION AND CLARIFICATION OF COMPETITIVE CONTRACTING AUTHORITY.—Section 2326(a) of the Deficit Reduction Act of 1984 is amended—

(1) by striking "of the fiscal years 1985 and 1986" and inserting "fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989)", and

(2) by inserting "or fixed price" after "competitive bidding" each place it appears.

(c) COBRA TECHNICAL CORRECTIONS.—

(1) CORRECTION CONCERNING TRANSITION PERIOD FOR FOREIGN MEDICAL GRADUATES IN DETERMINING PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS.—The matter in section 1886(h)(4)(E)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(E)(ii)), added by 9202(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA"), preceding subclause (I) is amended by inserting "but before July 1, 1987," after "1986,".

(2) ANNOUNCEMENT, RATHER THAN PUBLICATION, OF HMO AND CMP PAYMENT RATES.—(A) The matter in section 1876(a)(1)(A) of the Social Security Act (42 U.S.C. 1395mm(a)(1)(A)) preceding clause (i), as amended by section 9211(d) of COBRA, is amended by striking "publish" and inserting "announce (in a manner intended to provide notice to interested parties)".

(B) The amendment made by subparagraph (A) shall apply to determinations of per capita payment rates for 1987 and subsequent years.

(3) PENALTIES FOR BILLING FOR ASSISTANTS AT SURGERY FOR CERTAIN CATARACT OPERATIONS.—(A) Section 1842(k) of the Social Security Act (42 U.S.C. 1395u(k)), added by section 9307(c) of COBRA, is amended by inserting "presents or causes to be presented a claim or" after "willfully" each place it appears.

(B) The amendment made by subparagraph (A) shall apply to claims presented after the date of the enactment of this Act.

(4) TEMPORARY USE OF CARRIER PRE-PAYMENT SCREENING AS A SUBSTITUTE FOR PRE-PROCEDURE REVIEW.—For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.

(5) EXTENSION OF CONTINUATION PERIOD OF ACCESS: MEDICARE DEMONSTRATION PROJECT.—Section 9221(a) of COBRA is amended by striking "September 30, 1986" and inserting "July 31, 1987".

(6) MISCELLANEOUS PROVISIONS.—(A) Section 9127(b) of COBRA is amended by inserting ", except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year" after "years".

(B) Section 9202(j) of COBRA is amended by inserting "or section 402 of the Social Security Amendments of 1967" after "section 1886(c) of the Social Security Act".

(C) Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)), as amended by section 9301(c) of COBRA, is amended—

(i) in paragraph (5), as redesignated by section 9301(c)(3)(D) of COBRA, by striking "such" each place it appears, and

(ii) in paragraph (6), as so redesignated, by striking "the the" and inserting "the".

(D) Section 9301(c)(5) of COBRA is amended by striking "1842(b)(7)" and inserting "1842(h)(7)".

(E) Section 1842(b)(8) of the Social Security Act, as added by section 9304(a) of COBRA, is amended—

(i) in subparagraph (A), by inserting "by carriers" after "to be used", and

(ii) in subparagraph (B), by inserting "by carriers" after "be considered".

(F) The amendments made by this paragraph are effective as if they had been included in the enactment of COBRA.

(d) LIMITATION ON AUTHORITY TO ISSUE FINAL REGULATIONS AND INSTRUCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as may be permitted under paragraph (2) with respect to a regulation described in that paragraph, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act and before September 15, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000.

(2) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE SEPTEMBER 1, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (4)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before September 1, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act. Any regulation published in violation of the previous sentence before the date of the enactment of this Act is void and of no effect.

(3) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (5)).

(4) EXCEPTION.—Paragraph (2) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by section 10203 (relating to limitation on payments for capital-related costs for inpatient hospital services of DRG hospitals under medicare).

(5) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term "capital-related costs" means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act, from the term "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.

PART 3—PROVISIONS RELATING TO MEDICARE PART B

SEC. 10231. EXTENSION OF PREMIUM PAYMENT PROVISION THROUGH 1989.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (e), by striking "1989" and inserting "1990" each place it appears;

(2) in subsection (f)(1), by striking "or 1987" and inserting ", 1987, or 1988"; and

(3) in subsection (f)(2), by striking "or 1988" and inserting ", 1988, or 1989".

SEC. 10232. PAYMENT FOR PHYSICIANS' SERVICES, RESTRICTIONS ON REASONABLE CHARGE LIMITATIONS, AND INCENTIVES FOR PHYSICIAN PARTICIPATION.

(a) DETERMINATION OF MAXIMUM ALLOWABLE PREVAILING CHARGES FOR PHYSICIANS' SERVICES.—

(1) IN GENERAL.—Section 1842(b)(4)(A) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)) is amended by striking clause (iii) and inserting the following:

"(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating and non-

participating physicians, respectively, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating and nonparticipating physicians, respectively, as having been justified by economic changes.

"(iv) Beginning with 1987, the percentage increase in the MEI (as defined in subparagraph (E)(ii)) shall be the same for nonparticipating physicians as for participating physicians.".

(2) CONFORMING AMENDMENT.—Section 1842(b)(4)(C) of such Act is amended—

(A) by striking "(i)" after "(C)", and

(B) by striking clause (ii).

(3) DEFINITIONS.—Section 1842(b)(4) of such Act is further amended by adding at the end the following new subparagraph:

"(E) In this section:

"(i) The term 'participating physician' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1)), and the term 'nonparticipating physician' refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.

"(ii) The term 'percentage increase in the MEI' means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of paragraph (3)) applicable to such services furnished as of the first day of that year.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(b) 1 PERCENT BONUS FOR PARTICIPATING PHYSICIANS.—Section 1842(b)(4)(A)(ii) of such Act is amended by adding at the end the following new subclause:

"(III) In applying the percentage increase in the MEI for physicians' services furnished by a participating physician during each year after 1986, the Secretary shall provide a bonus of 1 percentage point in the percentage increase otherwise determined. Such a bonus for each year shall apply to physicians' services furnished only during the year and not in the calculation of payments for any subsequent year.".

(c) LIMIT ON ACTUAL CHARGES FOR NONPARTICIPATING PHYSICIANS.—

(1) IN GENERAL.—Section 1842(j)(1) of such Act is amended—

(A) by inserting "(A)" after "(j)(1)", and

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

"(B) During any period, on or after January 1, 1987, during which a physician is a nonparticipating physician, the Secretary shall monitor each such physician's actual charges for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills for such services actual charges in excess of the charges permitted under subparagraph (C), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(C) For physicians' services furnished by a physician to individuals enrolled under this part—

"(i) during 1987, in the case of such services for which the physician—

"(I) has actual charges for the calendar quarter beginning on April 1, 1984, the limit is the physician's actual charges for such services furnished during such quarter increased by the sum of the percentage increase in the MEI (as defined in subsection (b)(4)(E)) for 1987 and 1 percentage point, or

"(II) has no actual charges for such calendar quarter, the limit is the 50th percentile of the customary charges (weighted by frequency of procedure) for the procedure performed by nonparticipating physicians in the locality during the 12-month period ending June 30, 1986, increased by the sum of the percentage increase in the MEI for 1987 and 1 percentage point; and

"(ii) during a subsequent year, the limit is the maximum actual charges permitted under this subparagraph for the previous year increased by the percentage increase in the MEI for that subsequent year.".

(2) PROVISION OF ACTUAL CHARGE INFORMATION BY CARRIER TO NONPARTICIPATING PHYSICIANS.—Section 1842(b)(3) of such Act is amended—

(A) by striking "and" at the end of subparagraph (E),

(B) by inserting "and" at the end of subparagraph (F), and

(C) by inserting after subparagraph (F) the following new subparagraph:

"(G) will provide such information to nonparticipating physicians as is available to enable the physicians to determine the maximum actual charges permitted under subsection (j)(1)(C);".

(3) CONFORMING AMENDMENT.—Section 1842(b)(4)(D) is amended by adding at the end the following new clause:

"(iv) In determining the customary charges for physicians' services furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such charges for services furnished during such previous year that exceeds the limit on actual charges imposed under subsection (j)(1)(C).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(d) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.

(e) RESTRICTIONS ON REASONABLE CHARGE LIMITATIONS.—

(1) IN GENERAL.—Section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) is amended by adding at the end the following: "In the case of items and services other than physicians' services, a carrier shall only provide, in the process of calculating the prevailing charge for specific items and services, for not considering charges in specific instances in which the charges, in comparison with the charges for similar items and services, are grossly excessive or deficient. Nothing in this paragraph or this Act shall be construed as authorizing the Secretary, through regulations, guidelines, instructions, or otherwise, to require carriers to reduce payment amounts under this part for specific items and services for which the Secretary has made a specific determination that the payment amounts or charges are excessive.".

(2) SUBMISSION OF RECOMMENDATIONS TO CONGRESS.—The Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, shall submit to Congress, by not later than April 1, 1987, recommendations concerning payment reductions under part B of title XVIII of the Social Security Act for overpriced items and services. Such recommendations shall include the specific payment reductions recommended and measures to assure that such reductions in payment do not result in corresponding increases in out-of-pocket costs to medicare beneficiaries.

(f) RECRUITING.—

(1) CARRIER RESPONSIBILITY.—Section 1842(b)(3) of such Act, as amended by subsection (c)(2), is further amended—

(A) by striking "and" at the end of subparagraph (F),

(B) by inserting "and" at the end of subparagraph (G), and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if it makes determinations or payments with respect to physicians' services, will implement—

"(i) programs to recruit and retain physicians as participating physicians in the area served by the carrier, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

"(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;".

(2) MEASURING CARRIER PERFORMANCE.—The Secretary of Health and Human Services shall provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act.

(3) CARRIER BONUSES FOR GOOD PERFORMANCE.—Of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act, the Secretary of Health and Human Services shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians.

(4) EFFECTIVE DATES.—

(A) CARRIER RESPONSIBILITY.—The amendment made by paragraph (1) shall be effective for contracts under section 1842 of the Social Security Act as of October 1, 1987.

(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under paragraph (2) by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under paragraph (3) not later than April 1, 1988, to reflect performance of carriers during November 1987.

(g) DIRECTORIES OF PARTICIPATING PHYSICIANS.—

(1) REQUIRING DISTRIBUTION TO MEDICARE BENEFICIARIES.—Section 1842(h)(6) of the Social Security Act (42 U.S.C. 1395u(h)(6)) is amended—

(A) in the second sentence—

(i) by inserting after "that area" the following: "and to each individual enrolled

under this part and residing in that area", and

(ii) by inserting before the period the following: "and that an appropriate number of copies of each such directory is sent to hospitals located in the area"; and

(B) by adding at the end the following: "Such copies shall be sent free of charge.".

(2) ORGANIZATION OF DIRECTORIES.—Section 1842(h)(4) of such Act is amended by adding at the end the following: "Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.".

(3) PERIOD FOR PHYSICIAN ENROLLMENT.—Section 1842(h)(1) of such Act is amended by striking "the beginning of any year beginning with 1984" and inserting "during the month of November before a year".

(4) EFFECTIVE DATES.—

(A) DISTRIBUTION AND ORGANIZATION.—The amendment made by—

(i) paragraph (1)(A)(i) shall first apply to directories for 1988,

(ii) paragraph (1)(A)(ii) shall first apply to directories for 1987, and

(iii) paragraph (1)(B) takes effect on the date of the enactment of this Act.

(B) ENROLLMENT PERIOD.—The amendment made by paragraph (3) shall apply to participation agreements entered into for 1988 and subsequent years.

(h) PROHIBITING UNASSIGNED BILLING OF SERVICES DETERMINED TO BE MEDICALLY UNNECESSARY BY A CARRIER.—

(1) IN GENERAL.—Section 1842 of the Social Security Act is further amended by adding at the end the following new subsection:

"(l)(1)(A) Subject to subparagraph (C), if—

"(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

"(ii) payment for such services is not accepted on an assignment-related basis,

"(iii) a carrier determines under this part or a peer review organization determines under part B of title XI that payment may not be made by reason of section 1862(a)(1), and

"(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

"(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

"(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual if—

"(i) the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1862(a)(1), or

"(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

"(2) Each carrier with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of title XI shall send any notice of denial of payment for physicians' services based on section 1862(a)(1) and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

"(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act is amended by inserting "or (l)" after "(k)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after October 1, 1987.

(i) MAINTENANCE AND USE OF PARTICIPATING PHYSICIAN DIRECTORIES BY HOSPITALS.—

(1) REQUIREMENT OF PARTICIPATION.—Section 1866(a) of the Social Security Act, as amended by sections 10207(e)(6)(A) and 10205(b)(1) of this subtitle, is further amended—

(A) by striking "and" at the end of subparagraph (K),

(B) by striking the period at the end of subparagraph (L) and inserting ", and", and

(C) by inserting after subparagraph (L) the following new subparagraph:

"(M) in the case of hospitals—

"(i) to make available to its patients the directory or directories of participating physicians (published under section 1842(h)(4)) for the area served by the hospital, and

"(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to agreements under section 1866(a) of the Social Security Act as of October 1, 1987.

(j) DISCLOSURE OF INFORMATION OF UNASSIGNED CLAIMS FOR CERTAIN PHYSICIANS' SERVICES.—

(1) IN GENERAL.—Section 1842 of the Social Security Act, as amended by subsection (h)(1), is further amended by adding at the end the following new subsection:

"(m)(1) In the case of a nonparticipating physician who—

"(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

"(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, and the excess of the physician's actual charge over the approved charge.

"(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

"(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act, as amended by subsection (h)(2) of this section, is amended by striking "or (l)" and inserting ", (l), or (m)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to surgical procedures performed on or after October 1, 1987.

SEC. 10233. PAYMENT RATES FOR RENAL SERVICES AND IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) COMPOSITE RATES FOR DIALYSIS TREATMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may provide for an adjustment of the composite rates established under section 1881(b)(7) of the Social Security Act, but only if the base rate for routine dialysis treatment in a free-standing facility is not less than $117.50, and only if the base rate for routine dialysis treatment in a hospital-based facility is not less than $121.50.

(2) ASSURING PROMPT CONSIDERATION OF EXCEPTION REQUESTS.—Section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended by inserting after the third sentence the following new sentence: "Each application for such an exception for a sole facility located in an isolated, rural area shall be deemed to be approved as of the date of its filing unless the Secretary disapproves it by not later than 45 working days after the date the application is filed.".

(3) EFFECTIVE DATE.—(A) Paragraph (1) shall apply to dialysis treatment furnished on or after October 1, 1986.

(B) The amendment made by paragraph (2) shall apply to applications filed on or after October 1, 1986.

(b) PAYMENT FOR PHYSICIANS' SERVICES.—In establishing the payment rates, under section 1881(b)(3)(B) of the Social Security Act, for physicians' services furnished on or after August 1, 1986, to individuals determined to have end stage renal disease, the Secretary of Health and Human Services shall provide for an adjustment in the home/facility physician treatment capability ratio (used in establishing such payment rates) to 3.9 to 1 in order to reduce by $14.81 the current average monthly capitation rate for physicians' services to outpatient maintenance dialysis patients (based on a weighted average by State ESRD population).

(c) REPORT ON PAYMENT RATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for—

(A) a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and

(B) a report to Congress on the results of the study by not later than January 1, 1988.

(2) ARRANGEMENTS WITH INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in paragraph (1). If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable ap-

plication to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(d) REORGANIZATION OF ESRD NETWORK AREAS AND ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (A) of subsection (c)(1) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended to read as follows:

"(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

"(I) establish at least 17 end stage renal disease network areas, and

"(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

"(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2).

"(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.".

(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than January 1, 1987.

(3) SPECIAL TREATMENT OF EXISTING NETWORK ORGANIZATIONS.—In first designating network administrative organizations for areas so established, the Secretary shall designate the network organization (or a voluntary combination of such organizations) in operation on the date of the enactment of this Act as the network administrative organization, unless the Secretary determines that such organizations do not meet minimal standards and criteria established under section 1881(c)(1)(A)(ii) of the Social Security Act (as amended by paragraph (1)).

(e) PATIENT REPRESENTATION ON COUNCILS AND MEDICAL REVIEW BOARDS.—Subparagraph (B) of subsection (c)(1) of section 1881 of the Social Security Act is amended to read as follows:

"(B) At least one patient representative shall serve as a member of each network council and each medical review board.".

(f) RESPONSIBILITIES OF NETWORK ORGANIZATIONS.—Subsection (c)(2) of section 1881 of such Act is amended—

(1) in subparagraph (A), by inserting before the semicolon the following: "and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs";

(2) in subparagraph (B), by inserting before the first semicolon the following: "and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs";

(3) in subparagraph (D), by inserting before the semicolon the following: "and reporting to the Secretary on facilities and providers that are not providing appropriate medical care";

(4) in subparagraph (E), by inserting "and encouraging participation in vocational rehabilitation programs" after "self-care settings and transplantation"; and

(5) by redesignating subparagraphs (D) and (E) as subparagraphs (G) and (H), respectively, and inserting after subparagraph (C) the following new subparagraphs:

"(D) implementing a procedure for evaluating and resolving patient grievances;

"(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

"(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);".

(g) FACILITY COOPERATION WITH NETWORKS.—The first sentence of subsection (c)(3) of section 1881 of such Act is amended by inserting "or to follow the recommendations of the medical review board" after "consistently failed to cooperate with network plans and goals".

(h) INTENT OF CONGRESS RESPECTING MAXIMUM USE OF VOCATIONAL REHABILITATION SERVICES.—The first sentence of subsection (c)(6) of section 1881 of such Act is amended by inserting before the period the following: "and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment".

(i) NATIONAL END STAGE RENAL DISEASE REGISTRY.—

(1) ESTABLISHMENT OF REGISTRY.—Subsection (c) of section 1881 of such Act is further amended by adding at the end the following new paragraph:

"(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

"(A) the preparation of the annual report to the Congress required under subsection (g);

"(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

"(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

"(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

"(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.".

(2) REPORT.—The Secretary of Health and Human Services shall submit to the Congress, no later than January 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) and shall establish such registry by not later than January 1, 1988.

(j) FUNDING OF ESRD NETWORK ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b)(7) of section 1881 of the Social Security Act is amended by adding at the end the following new sentence: "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to treatment furnished on or after January 1, 1987.

(k) PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES.—

(1) ESTABLISHMENT OF PROTOCOLS.—Paragraph (7) of subsection (f) of section 1881 of the Social Security Act is amended to read as follows:

"(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

"(B) The Secretary shall study and review the appropriateness of establishing protocols on standards and conditions for the reuse (where appropriate) of other dialysis supplies (such as blood lines, transducer filters, and dialyzer caps). If the Secretary determines that the establishment of such a protocol with respect to any such dialysis supplies is appropriate, the Secretary may establish such a protocol.

"(C) The Secretary shall incorporate protocols established under this paragraph into the requirements for facilities prescribed under subsection (b)(1)(A) and failure to follow such a protocol subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol.".

(2) DEADLINE AND REPORT.—The Secretary of Health and Human Services—

(A) shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than January 1, 1988, and

(B) shall report to the Congress, not later than January 1, 1988, on the study and review conducted under section 1881(f)(7)(B) of such Act.

(l) EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by subsections (e), (f), and (g) shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1).

SEC. 10234. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) ADDITIONAL MEMBERS FOR PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) 2 ADDITIONAL MEMBERS.—Section 1845(a)(2) of the Social Security Act (42 U.S.C. 1395w-1(a)(2)) is amended by striking "11 individuals" and inserting "13 individuals".

(2) APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by paragraph (1), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

(b) EFFECTIVE DATE OF VOLUNTARY DISENROLLMENT FROM MEDICARE.—

(1) IN GENERAL.—The second and sixth sentences of section 1838(b) of the Social Security Act (42 U.S.C. 1395p(b)) are each amended by striking "following the calendar quarter".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to notices filed on or after October 1, 1986.

(c) STUDY ON PROSPECTIVE PAYMENT OF RADIOLOGY, ANESTHESIA, AND PATHOLOGY SERVICES TO HOSPITAL INPATIENTS.—The Secretary of Health and Human Services shall study and report to the Committee on Ways and Means of the House of Representatives, by April 1, 1987, concerning the design and implementation of a prospective payment system for payment, under part B of title XVIII of the Social Security, for radiology, anesthesia, and pathology services furnished to hospital inpatients. Such report shall include data, from a representative sample, showing, for discharges classified within each diagnosis-related group, the distribution of total reasonable charges and costs for each inpatient discharge for such services.

PART 4—IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS

SEC. 10241. IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS.

(a) PRO REVIEW OF HOSPITAL DENIAL NOTICES.—

(1) IN GENERAL.—Section 1154 of the Social Security Act (42 U.S.C. 1320c-3) is amended by adding at the end the following new subsection:

"(d)(1) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

"(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1879) of the determination.

"(2) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

"(B) the attending physician has not agreed with the hospital's determination,

the hospital may request the appropriate peer review organization to review under subsection (a) the validity of the hospital's determination.

"(3)(A) If a patient (or a patient's representative)—

"(i) has received a notice under paragraph (1), and

"(ii) requests the appropriate peer review organization to review the determination,

then, the organization shall conduct a review under subsection (a) of the validity of the hospital's determination and shall provide notice (by telephone and in writing) to the patient or representative and the hospital and attending physician involved of the results of the review. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or whether or not the patient will be liable for payment for such continued care.

"(B) If a patient (or a patient's representative) requests a review under subparagraph (A) while the patient is still an inpatient in the hospital and not later than noon of the first working day after the date the patient receives the notice under paragraph (1), then—

"(i) the hospital shall provide to the appropriate peer review organization the records required to review the determination by the close of business of such first working day, and

"(ii) the peer review organization must provide the notice under subparagraph (A) by not later than one full working day after the date the organization has received the request and such records.

"(4) If—

"(A) a request is made under paragraph (3)(A) not later than noon of the first working day after the date the patient (or patient's representative) receives the notice under paragraph (1), and

"(B) the conditions described in section 1879(a)(2) with respect to the patient or representative are met,

the hospital may not charge the patient for inpatient hospital services furnished before noon of the day after the date the patient or representative receives notice of the peer review organization's decision.

"(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative)."

(2) EFFECTIVE DATE.—(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act.

(B) Section 1154(d)(4) of the Social Security Act (as added by the amendment made by paragraph (1)) shall take effect on the date of the enactment of this Act.

(b) PRO REVIEW OF INPATIENT HOSPITAL SERVICES AND EARLY READMISSION CASES.—

(1) TIMELY PROVISION OF HOSPITAL INFORMATION.—Section 1153 of such Act (42 U.S.C. 1320c-2) is amended by adding at the end the following new subsection:

"(g) The Secretary shall provide that peer review organizations receive each month, on a timely basis, either directly from hospitals or through fiscal intermediaries data necessary to initiate the review process under section 1154(a) on a timely basis."

(2) REQUIRING REVIEW OF EARLY READMISSION CASES.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by section 9401(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraph:

"(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an 'early readmission case' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge."

(3) EFFECTIVE DATES.—(A) The Secretary of Health and Human Services shall implement the amendment made by paragraph (1) not later than 6 months after the date of the enactment of this Act.

(B) The amendment made by paragraph (2) shall apply to contracts entered into or renewed on or after January 1, 1987.

(c) REQUIRING PRO REVIEW OF QUALITY OF CARE.—

(1) ALLOCATION OF FUNDS FOR QUALITY CARE REVIEW.—Section 1154(a)(4) of such Act (42 U.S.C. 1320c-3(a)(4)) is amended by adding at the end the following: "Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities relating to quality of services is made among the different cases and settings (including inpatient hospital care, post-acute-care settings, ambulatory settings, health maintenance organizations, and competitive medical plans). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.".

(2) REQUIRING REVIEW OF HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Such section is further amended—

(A) by inserting "(A)" after "(4)",

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

"(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a contract under section 1876 for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings.", and

(C) by adding at the end of such subparagraph the following: "Under the contract

the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.".

(3) IDENTIFICATION OF METHODS FOR IDENTIFYING CASES OF SUBSTANDARD CARE.—Section 1154 of such Act (42 U.S.C. 1320c-3), as amended by subsection (a)(1), is amended by adding at the end the following new subsection:

"(e) The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4)) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care."

(4) EFFECTIVE DATES.—(A) The amendments made by paragraphs (1) and (2)(B) shall apply to contracts as of January 1, 1987.

(B) The amendment made by paragraph (2)(C) shall apply to review activities conducted by organizations on or after January 1, 1988.

(C) The amendment made by the paragraph (3) becomes effective on the date of the enactment of this Act.

(d) REQUIRING CONSUMER REPRESENTATIVE ON PEER REVIEW BOARDS.—

(1) IN GENERAL.—Section 1152 of such Act (42 U.S.C. 1320c-1) is amended—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting "; and", and

(C) by adding at the end the following new paragraph:

"(3) has at least one individual who is a representative of consumers on its board of directors."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts entered into or renewed on or after January 1, 1987.

(e) IMPROVING PEER REVIEW RESPONSIVENESS TO BENEFICIARY COMPLAINTS.—

(1) APPROPRIATE REVIEW OF COMPLAINTS REQUIRED.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by subsection (b)(2), is further amended by adding at the end the following new paragraph:

"(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under title XVIII) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such title (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's conclusions respecting the complaint and final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act.

(f) SHARING OF INFORMATION BY PEER REVIEW ORGANIZATIONS.—

(1) IN GENERAL.—Section 1160(b)(1) of such Act (42 U.S.C. 1320c-9(b)(1)) is amended—

(A) by striking "and" at the end of subparagraph (B),

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

"(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1865 in accrediting providers for purposes of meeting the conditions described in title XVIII, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body in carrying out its respective function which is within the jurisdiction of the agency or body under State law or under section 1865; and"; and

(C) by inserting after subparagraph (C) the following new subparagraph:

"(D) to assist State ombudsmen and State protection and advocacy officials who the Secretary identifies as having responsibility for assuring the quality of care furnished by providers or practitioners, which data and information shall be provided by the peer review organization to any such ombudsman or official upon request relating to a specific provider or practitioner, but only to the extent that such data and information are related to the quality of care furnished by a provider or practitioner and only if the peer review organization determines that the data and information may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services of a quality which meets professionally recognized standards of health care, and that the data and information are needed by the ombudsman or official in carrying out official duties;".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act.

(g) FUNDING OF ADDITIONAL PRO ACTIVITIES.—

(1) THROUGH AGREEMENTS WITH HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—Section 1866(a) of such Act (42 U.S.C. 1395cc(a)) is amended—

(A) in paragraph (1)(F)—

(i) by redesignating clauses (i), (ii), and (iii), as subclauses (I), (II), and (III), respectively,

(ii) by inserting "(i)" after "(F)", and

(iii) by adding at the end the following new clause:

"(ii) in the case of hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (4)(A);"; and

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

"(4)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1154(a)(4)(A) and under section 1154(a)(14) with respect to services, furnished by the hospital, facility, or agency involved, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such an agreement to the hospital, facility, or agency shall be considered a cost incurred by such hospital, facility, or agency in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, facility, or agency in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of title XI.".

(2) THROUGH AGREEMENTS WITH HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)), as amended by section 10222(f) of this subtitle, is amended by adding at the end the following new paragraph:

"(7)(A) Each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the eligible organization is located) under which the peer review organization will perform functions under section 1154(a)(4)(B) and section 1154(a)(14) (other than those performed under contracts described in section 1866(a)(1)(F)) with respect to services, furnished by the eligible organization, for which payment may be made under this title.

"(B) For purpose of payment under this title, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriations Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of title XI.".

(3) EFFECTIVE DATE.—

(A) HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—The amendments made by paragraph (1) shall apply to provider agreements as of October 1, 1987.

(B) HMOs AND CMPS.—The amendment made by paragraph (2) shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act, as of January 1, 1987.

PART 5—ASSURING ACCESS TO HEALTH CARE

SEC. 10251. INCENTIVES FOR THE ESTABLISHMENT OF STATE HEALTH INSURANCE POOLS.

(a) GENERAL RULE.—Chapter 41 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subchapter:

"Subchapter B—Large Employers Not Members of Qualified State Health Insurance Pools

"Sec. 4912. Tax on wages of large employers not members of qualified State health insurance pools.

"SEC. 4912. TAX ON WAGES OF LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS.

"(a) TAX IMPOSED.—In the case of a large employer which—

"(1) employs any individual to perform services in a State that has established a qualified health insurance pool, and

"(2) is not a participating member of that pool in a taxable year at any time at which such services are performed,

there is hereby imposed a tax equal to 5 percent of the wages paid by the employer during the taxable year for services performed in the State by its employees.

"(b) LARGE EMPLOYER.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'large employer' means an employer who, on each of some 20 days during the taxable year or the preceding taxable year, each day being in a different calendar week, employed for some portion of the day (whether or not at the same moment of time) 20 or more individuals.

"(2) EXCEPTION FOR GOVERNMENTAL UNITS.—The term 'large employer' shall not include the United States, any State or political subdivision thereof, or any possession of the United States or any agency or instrumentality of any of the foregoing (including the United States Postal Service and Postal Rate Commission); except that such term shall include any nonappropriated fund instrumentality of the United States.

"(c) QUALIFIED HEALTH INSURANCE POOL.—For purposes of this section, the term 'qualified health insurance pool' means any organization which—

"(1) is a nonprofit corporation established pursuant to and regulated by State law;

"(2) permits any large employer doing business in the State to be a participating member;

"(3) makes available (without regard to health conditions) to all residents of the State, who are not eligible for benefits under part A of title XVIII of the Social Security Act, levels of health insurance typical of the levels of coverage provided through large employer groups, except that—

"(A) any such level of insurance must limit the amount of the annual out-of-pocket expenses for covered services under individual coverage to $1,500 and under family coverage to $3,000,

"(B) any such level of insurance may not establish a lifetime benefit limit for any individual of less than $500,000,

"(C) subject to subparagraph (A), such insurance may provide for a choice of deductibles (in addition to the deductibles typical of levels of coverage provided through large employer groups), but not to exceed $1,000 for each covered individual,

"(D) such insurance may deny coverage for covered services for preexisting conditions for a period not to exceed 6 months, and

"(E) such insurance must include as covered services the purchase and repair of medically necessary durable medical equipment;

"(4) charges a pool premium rate expected to be self-supporting based upon a reasonable actuarial determination of anticipated experience and expected expenses, such pool premium rate in no event to exceed 150 percent of average premium rates for individual standard risks in the State for comparable coverage; and

"(5) assesses losses of the pool equitably among all participating members.

Nothing in this subsection shall be construed as preventing a State or other entity from providing for payment of part or all of the premium of an enrollee and from varying the amount of such payment based on the enrollee's income or other basis.

"(d) OTHER DEFINITIONS.—

"(1) USE OF FUTA DEFINITIONS.—For purposes of this section, the terms 'wages', 'employee', and 'employer' have the meanings given such terms in subsections (a), (c), and (d), respectively, of section 3401.

"(2) STATE.—The term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico.

"(e) CROSS REFERENCE.—

"(1) For provision denying deduction for tax imposed by this section, see section 275(a)(6).

"(2) For provisions making deficiency procedures applicable to tax imposed by this section, see section 6211 et seq."

(b) CLERICAL AMENDMENTS.—

(1) Chapter 41 of such Code is amended by striking the chapter heading and inserting the following:

"CHAPTER 41—PUBLIC CHARITIES; LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS

"Subchapter A. Public charities.

"Subchapter B. Large employers not members of qualified State health insurance pools.

"Subchapter A—Public Charities".

(2) The table of chapters for subtitle D of such Code is amended by striking the item relating to chapter 41 and inserting the following:

"Chapter 41. Public charities; large employers not members of qualified State health insurance pools."

(3) Subparagraph (B) of section 6104(c)(1) of such Code is amended by striking "or chapter 41 or 42" and inserting ", subchapter A of chapter 41 or chapter 42".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 1988.

(d) ESTABLISHMENT OF QUALIFIED STATE HEALTH INSURANCE POOLS.—Congress intends that each State should establish a qualified health insurance pool (described in section 4912(c) of the Internal Revenue Code of 1954) by not later than January 1, 1988, or, if later, the end of the first regular State legislative session that begins after the date of the enactment of this Act.

SEC. 10252. COBRA TECHNICAL AMENDMENTS RELATING TO CONTINUATION OF EMPLOYER-BASED HEALTH INSURANCE COVERAGE.

(a) MODIFICATION OF COVERAGE.—Paragraph (2)(A) of section 162(k) of the Internal Revenue Code of 1954 (relating to type of benefit coverage) is amended by adding at the end the following: "If coverage is modified under the plan for similarly situated beneficiaries, such coverage shall also be modified in the same manner for all qualified beneficiaries covered under the plan.".

(b) MAXIMUM PERIOD OF CONTINUATION COVERAGE.—Paragraph (2)(B)(i) of such section (relating to maximum period of continuation coverage) is amended—

(1) by striking out the period at the end and inserting a semicolon, and

(2) by adding at the end the following:

"except that in the case of a qualified beneficiary with respect to whom more than one qualifying event occurs, the date may be extended under this clause but in no case may the coverage period with respect to such events (other than the period applicable to a qualifying event described in paragraph (3)(F)) exceed a 36-month period for such qualified beneficiary.".

(c) GRACE PERIOD FOR PAYMENT OF PREMIUMS.—Paragraph (2)(B)(iii) of such section (relating to failure to pay premium) is amended by adding at the end the following: "Payment shall be considered to be timely if made within 30 days of the date due or within such longer period as applies to or under the plan."

(d) ELECTION BY BENEFICIARIES.—Paragraph (5) of such section (relating to elections) is amended by adding at the end the following new subparagraph:

"(C) RIGHT TO INDIVIDUAL ELECTION.—Notwithstanding subparagraph (B), each qualified beneficiary is entitled to make a separate election with respect to continuation coverage for that beneficiary and, if there is a choice of type of coverage under the plan, to make a separate selection among such types of coverage.".

(e) NOTICE REQUIREMENT.—Paragraph (6)(C) of such section (relating to notice requirements) is amended by inserting "within 60 days of the date of the qualifying event" after "paragraph (3)".

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 10253. CONTINUATION COVERAGE FOR RETIREES IN CASES OF BANKRUPTCIES.

(a) LOSS OF COVERAGE OF RETIREE THROUGH BANKRUPTCY AS QUALIFYING EVENT.—Paragraph (3) of section 162(k) of the Internal Revenue Code of 1954 (relating to qualifying event with respect to continuation coverage requirements under group health plans) is amended by adding at the end the following:

"(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in paragraph (7)(B)(iii) within one year before or after the date of commencement of the proceeding."

(b) PERIOD OF CONTINUATION COVERAGE.—

(1) LIFE OF COVERED EMPLOYEE OR WIDOW AND ADDITIONAL 36 MONTHS FOR SURVIVING

SPOUSE AND DEPENDENTS.—Clause (i) of section 162(k)(2)(B) of such Code (relating to maximum period) is amended—

(A) by striking "and" at the end of subclause (I),

(B) in subclause (II), by inserting "or (II)" after "(I)",

(C) by redesignating subclause (II) as subclause (III), and

(D) by inserting after subclause (I) the following new subclause:

"(II) a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in paragraph (7)(B)(iii)(III)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee, and".

(2) COVERAGE NOT LOST UPON ENTITLEMENT TO MEDICARE BENEFITS.—Subclause (II) of section 162(k)(2)(B)(iv) of such Code (relating to reemployment or medicare eligibility) is amended by inserting "in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iii)," before "entitled".

(c) DEFINITION OF QUALIFIED BENEFICIARY MODIFIED IN REORGANIZATION CASES.—Section 162(k)(7)(B) of such Code (relating to special rule for termination and reduced employment in definition of qualified beneficiary) is amended by adding at the end the following new clause:

"(iii) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in paragraph (3)(F), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

"(I) as the spouse of the covered employee,

"(II) as the dependent child of the employee, or

"(III) as the surviving spouse of the covered employee.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect as if included in section 10001 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1) and section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985, the amendments made by this section and by section 10001 of such Act shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1954, and

(B) a qualifying event described in section 162(k)(3)(A) of such Code relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1954 applies to covered employees who retired before, on, or after the date of the enactment of this Act.

Subtitle D—Revenue Provisions

PART I—EXTENSION OF EXCISE TAX ON COMMUNICATIONS SERVICES

SEC. 10301. EXTENSION OF EXCISE TAX ON COMMUNICATIONS SERVICES.

(a) IN GENERAL.—The table contained in paragraph (2) of section 4251(b) of the Internal Revenue Code of 1954 (relating to imposition of tax on communications services) is amended to read as follows:

"With respect to amounts paid pursuant to bills first rendered:	The applicable percentage is:
During 1987, 1988, or 1989	3
During 1990 or thereafter	0."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts paid for communications services pursuant to bills first rendered after December 31, 1986.

SEC. 10302. STUDY OF COMMUNICATION SERVICES NOT SUBJECT TO FEDERAL EXCISE TAX.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of communication services which are exempt from the tax imposed by section 4251 of the Internal Revenue Code of 1954 by reason of being a private communication service (as defined in section 4252(d) of such Code) or by reason of a specific exemption from such tax under section 4253 of such Code. Such study shall include an estimate of the reduction in tax revenues by reason of each such exemption and shall describe the types of persons which benefit from each such exemption.

(b) REPORT.—The report of the study under subsection (a) shall be submitted, not later than December 31, 1987, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART II—INCREASES IN CERTAIN PENALTIES

SEC. 10311. INCREASE IN PENALTY FOR UNDERPAYMENTS OF TAX DEPOSITS.

(a) IN GENERAL.—Subsection (a) of section 6656 of the Internal Revenue Code of 1954 (relating to failure to make deposit of taxes or understatement of deposits) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to deposits the date prescribed for the making of which is after the date of the enactment of this Act.

SEC. 10312. INCREASE IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF LIABILITY.

(a) IN GENERAL.—Subsection (a) of section 6661 of the Internal Revenue Code of 1954 (relating to substantial understatement of liability) is amended to read as follows:

"(a) ADDITION TO TAX.—If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to 25 percent of the amount of any underpayment attributable to such understatement."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

PART III—CERTAIN EXCISE TAX DEPOSITS ACCELERATED

SEC. 10321. CERTAIN EXCISE TAX DEPOSITS ACCELERATED.

(a) TOBACCO.—Paragraph (2) of section 5703(b) of the Internal Revenue Code of 1954 (relating to method of payment of tax) is amended to read as follows:

"(2) TIME FOR PAYMENT OF TAXES.—

"(A) IN GENERAL.—In the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period under bond for deferred payment of tax, the last day for payment of such taxes shall be the 14th day after the last day of such semimonthly period.

"(B) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this subparagraph, the due date under subparagraph (A) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(b) WINES AND BEER.—Section 5061 of such Code (relating to method of collecting tax) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TIME FOR COLLECTING TAX ON WINES AND BEER.—

"(1) IN GENERAL.—In the case of wines and beer to which this part applies (other than subsection (b) of this section) which are withdrawn under bond for deferred payment of tax or from bonded premises (including customs custody), the last day for payment of such tax shall be the 14th day after the last day of the semimonthly period during which the withdrawal occurred.

"(2) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this paragraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to removals during semimonthly periods ending on or after December 31, 1986.

(2) SPECIAL RULE FOR TOBACCO FOR SEMIMONTHLY PERIOD ENDING DECEMBER 15, 1986.—With respect to remittances for tobacco products and cigarette papers and tubes of the tax imposed by section 5701 of the Internal Revenue Code of 1954 for the semimonthly period ending on December 15, 1986, the last day for payment of such remittances shall be January 14, 1987.

PART IV—TAX TREATMENT OF CONRAIL PUBLIC SALE

SEC. 10331. TAX TREATMENT OF CONRAIL PUBLIC SALE.

(a) TREATMENT AS NEW CORPORATION.—

(1) IN GENERAL.—For periods after the public sale, for purposes of the Internal Revenue Code of 1954, Conrail shall be treated as a new corporation which purchased all of its assets as of the beginning of the day after the date of the public sale for an amount equal to the deemed purchase price.

(2) ALLOCATION AMONG ASSETS.—The deemed purchase price shall be allocated among the assets of Conrail in accordance with the temporary regulations prescribed under section 338 of the Internal Revenue Code of 1954 (as such regulations were in effect on the date of the enactment of this Act). The Secretary shall establish specific guidelines for carrying out the preceding sentence so that the basis of each asset will be clearly ascertainable.

(3) DEEMED PURCHASE PRICE.—For purposes of this subsection, the deemed purchase price is an amount equal to the gross amount received pursuant to the public sale, multiplied by a fraction—

(A) the numerator of which is 100 percent, and

(B) the denominator of which is the percentage (by value) of the stock of Conrail sold in the public sale.

The amount determined under the preceding sentence shall be adjusted under regulations prescribed by the Secretary for liabilities of Conrail and other relevant items.

(b) NO INCOME FROM CANCELLATION OF DEBT OR PREFERRED STOCK.—No amount shall be included in the gross income of any person by reason of any cancellation of any obligation (or preferred stock) of Conrail in connection with the public sale.

(c) DISALLOWANCE OF CERTAIN DEDUCTIONS.—No deduction shall be allowed to Conrail for any amount which is paid after the date of the public sale to employees of Conrail for services performed on or before the date of the public sale in order to increase wages or benefits to industry standards.

(d) WAIVER OF CERTAIN EMPLOYEE STOCK OWNERSHIP PLAN PROVISIONS.—For purposes of determining whether the employee stock ownership plans of Conrail meet the qualifications of sections 401 and 501 of the Internal Revenue Code of 1954—

(1) the limits of section 415 of such Code (relating to limitations on benefits and contributions under qualified plans) shall not apply with respect to interests in stock transferred pursuant to this Act or a law heretofore enacted, and

(2) the 2-year waiting period for withdrawals shall not apply to participant withdrawals of amounts (or shares) in their accounts in connection with the public sale.

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

(1) CONRAIL.—The term "Conrail" means the Consolidated Rail Corporation. Such term includes any corporation which was a subsidiary of Conrail immediately before the public sale.

(2) PUBLIC SALE.—The term "public sale" means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act. If there is more than 1 public offering under such Act, such term means the sale pursuant to the initial public offering under such Act.

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

PART V—PORT USE TAX AND RELATED TRUST FUND; INLAND WATERWAYS TRUST FUND

SEC. 10341. IMPOSITION OF PORT USE TAX.

(a) GENERAL RULE.—Chapter 36 of the Internal Revenue Code of 1954 (relating to certain other excise taxes) is amended by inserting after the chapter heading the following new subchapter:

"Subchapter A—Port Use Tax

"Sec. 4461. Imposition of tax.

"Sec. 4462. Definitions and special rules.

"SEC. 4461. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any port use.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any port use shall be 0.04 percent of the value of the cargo involved.

"(c) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by—

"(1) in the case of cargo entering the United States, the importer,

"(2) in the case of cargo to be exported from the United States, the exporter, or

"(3) in any other case, the shipper.

"SEC. 4462. DEFINITIONS AND SPECIAL RULES.

"(a) PORT USE.—For purposes of this subchapter—

"(1) PORT USE.—The term 'port use' means—

"(A) the loading of commercial cargo on, or

"(B) the unloading of commercial cargo from,

a commercial vessel at a port in the United States.

"(2) PORT.—The term 'port' means any port or channel in the United States with a depth authorized by law of more than 14 feet. The term does not include any port or channel with respect to which no Federal funds have been used for construction, maintenance, or operation.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) COMMERCIAL CARGO.—The term 'commercial cargo' means any cargo other than fuel supplies, ship's stores, sea stores, or legitimate equipment for the vessel.

"(2) COMMERCIAL VESSEL.—The term 'commercial vessel' means any vessel used—

"(A) in the business of transporting cargo by water for compensation or hire, or

"(B) in transporting cargo by water in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).

"(3) VALUE.—The term 'value' means—

"(A) in the case of an arms length transaction, the sales price determined under the principles of section 4216(a); or

"(B) in any other case, a constructive sales price determined under regulations prescribed by the Secretary.

To the extent provided in regulations, value may be determined on the basis of standard commercial documentation.

"(c) EXEMPTION FOR HAWAII AND POSSESSIONS.—

"(1) UNITED STATES NOT TO INCLUDE HAWAII OR POSSESSIONS.—For purposes of this subchapter, the term 'United States' shall not include Hawaii or any possession of the United States.

"(2) SHIPMENTS TO HAWAII OR POSSESSIONS.—No tax shall be imposed by this subchapter with respect to any cargo loaded on a vessel for transportation to Hawaii or any possession of the United States for ultimate use or consumption in Hawaii or any possession of the United States.

"(d) EXEMPTION FOR TAX WHERE TRANSPORTATION SUBJECT TO TAX IMPOSED BY SECTION 4042.—No tax shall be imposed under this subchapter with respect to any cargo if any portion of the transportation of such cargo on the vessel concerned has (or will be) transportation subject to the tax imposed by section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

"(e) EXEMPTION FOR UNITED STATES.—No tax shall be imposed under this subchapter on the United States or any agency or instrumentality thereof.

"(f) EXTENSION OF PROVISIONS OF LAW APPLICABLE TO CUSTOMS DUTY.—

"(1) IN GENERAL.—Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs law shall apply in respect of cargo subject to the tax imposed by this subchapter (and in respect of persons liable therefor) in the same manner as if such cargo were cargo imported into the United States. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the value of the cargo.

"(2) JURISDICTION OF COURTS AND AGENCIES.—For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, the tax imposed by this subchapter shall be treated as if such tax were a customs duty.

"(3) ADMINISTRATIVE PROVISIONS APPLICABLE TO TAX LAW NOT TO APPLY.—The tax imposed by this subchapter shall not be treated as a tax for purposes of subtitle F of this title or any other provision of law relating to the administration and enforcement of internal revenue taxes.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter including—

"(1) regulations providing that only 1 tax shall be imposed under this subchapter with respect to the transportation of any cargo on the same vessel, and

"(2) regulations exempting any transaction or class of transactions from the tax imposed by this subchapter where the collection of such tax is not administratively practical."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 36 of such Code is amended by inserting the following before the item relating to subchapter D:

"Subchapter A. Port use tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 10342. CREATION OF PORT INFRASTRUCTURE DEVELOPMENT AND IMPROVEMENT TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. PORT INFRASTRUCTURE DEVELOPMENT AND IMPROVEMENT TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Port Infrastructure Development and Improvement Trust Fund' (hereinafter in this section referred to as the 'Port Trust Fund'), consisting of such amounts as may be—

"(1) appropriated to the Port Trust Fund as provided in this section,

"(2) appropriated to the Port Trust Fund pursuant to section 10342(b) of the Omnibus Budget Reconciliation Act of 1986, or

"(3) credited to the Port Trust Fund as provided in section 9602(b).

"(b) TRANSFER TO PORT TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—There are hereby appropriated to the Port Trust Fund amounts equivalent to the taxes received in the Treasury under section 4461 (relating to port use tax).

"(c) EXPENDITURES FROM PORT TRUST FUND.—

"(1) IN GENERAL.—Amounts in the Port Trust Fund shall be available, as provided by appropriation Acts, for making expenditures for—

"(A) feasibility studies for, and construction, operation, and maintenance of, projects for ports by the Secretary,

"(B) feasibility studies for, and construction, rehabilitation, operation, and maintenance of, projects for ports for the Saint Lawrence Seaway by the Saint Lawrence Seaway Development Corporation,

"(C) relocations of utilities, structures, and other improvements, necessary for construction, operation, and maintenance of

projects referred to in subparagraph (A) or (B),

"(D) making payments to any non-Federal interest which has planned and designed or planned, designed, and constructed a port in accordance with section 104 of the Water Resources Development Act of 1986,

"(E) grants under sections 113 and 114 of such Act, and

"(F) the payment of rebates of tolls or charges pursuant to section 13 of the Act of May 13, 1954 (as in effect on the date of the enactment of this section), and

"(G) the payment of all expenses of administration incurred by the Department of the Treasury in administering subchapter A of chapter 36 (relating to port use tax).

"(2) DEFINITIONS AND SPECIAL RULES.—For purposes of paragraph (1)—

"(A) CONSTRUCTION DEFINED.—The term 'construction' includes any planning, designing, engineering, and surveying which is necessary to carry out a project for a port and which is performed after authorization of the project.

"(B) PORT DEFINED.—The term 'port' has the meaning given such term by section 115 of the Water Resources Development Act of 1986.

"(C) LIMITATION ON REBATE.—The amount of rebate of any toll or charge which may be paid out of the Port Trust Fund under paragraph (1)(F) shall not exceed the portion of such toll or charge which is attributable to cargo on which tax was (or is to be) imposed by section 4461 of the Internal Revenue Code of 1954.

"(D) REFERENCE TO SECTIONS.—Any reference to a section of the Water Resources Development Act of 1986 shall be treated as a reference to such section as in effect on the date of the enactment of this section."

(b) AUTHORIZATION OF APPROPRIATIONS TO PORT TRUST FUND.—There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Port Infrastructure Development and Improvement Trust Fund for each fiscal year beginning after September 30, 1986, an amount equal to the excess of—

(1) $1,000,000,000, over

(2) the amount of tax imposed by section 4461 of the Internal Revenue Code of 1954 (relating to port use tax) which the Secretary of the Treasury estimates will be received by such Trust Fund during such year.

(c) REBATES OF SAINT LAWRENCE SEAWAY TOLLS.—The Act of May 13, 1954 is amended by adding at the end thereof the following new section:

"REBATE OF CHARGES OR TOLLS

"SEC. 13. (a) The Corporation shall certify to the Secretary of the Treasury, in such form and at such times as the Secretary of the Treasury shall prescribe—

"(1) the identity of any person who pays a charge or toll to the Corporation pursuant to section 12 of this Act with respect to a commercial vessel (as defined in section 4462(b)(2) of the Internal Revenue Code of 1954), and

"(2) the amount of the toll or charge paid by such person with respect to such vessel.

"(b) Within 30 days of the receipt of a certification described in subsection (a), the Secretary of the Treasury shall rebate, out of the Port Infrastructure Development and Improvement Trust Fund, to the person described in subsection (a) the amount of the charge or toll paid pursuant to section 12 of this Act which is attributable to cargo on which tax was (or is to be) imposed by section 4461 of the Internal Revenue Code of 1954."

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Port Infrastructure Development and Improvement Trust Fund."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 10343. INLAND WATERWAYS TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9505 the following new section:

"SEC. 9506. INLAND WATERWAYS TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Inland Waterways Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—There are hereby appropriated to the Inland Waterways Trust Fund amounts determined by the Secretary to be equivalent to the taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

"(c) EXPENDITURES FROM TRUST FUND.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Inland Waterways Trust Fund shall be available, as provided by appropriation Acts, for making construction and rehabilitation expenditures for navigation on the inland and coastal waterways of the United States described in section 206 of the Inland Waterways Revenue Act of 1978, as in effect on the date of the enactment of this section.

"(2) EXCEPTION FOR CERTAIN PROJECTS.—

"(A) CONSTRUCTION PROJECTS.—Not more than ⅓ of the cost of any construction to which section 202(a) of the Water Resources Development Act of 1986 applies (as in effect on the date of the enactment of this section) may be paid from the Inland Waterways Trust Fund.

"(B) CERTAIN RELOCATION EXPENSES.—Not more than ⅙ of the cost of any relocation to which section 202(b) of such Act applies (as in effect on the date of the enactment of this section) may be paid from the Inland Waterways Trust Fund."

(b) CONFORMING AMENDMENTS.—Sections 203 and 204 of the Inland Waterways Revenue Act of 1978 (relating to Inland Waterways Trust Fund) are hereby repealed.

(c) FUEL USE ON TENNESSEE-TOMBIGBEE WATERWAY SUBJECT TO INLAND WATERWAY TAX.—Section 206 of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following:

"(27) Tennessee-Tombigbee Waterway: From Pickwick Pool on the Tennessee River at RM 215 to Demopolis, Alabama, on the Tombigbee River at RM 215.4.".

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end thereof the following new item:

"Sec. 9506. Inland Waterways Trust Fund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1987.

(2) SPECIAL RULE FOR TENNESSEE-TOMBIGBEE WATERWAY.—For purposes of section 9506(c)(1) of the Internal Revenue Code of 1954 (as added by this section), the amendment made by subsection (c) shall be treated as taking effect on the date of the enactment of this Act.

(3) INLAND WATERWAYS TRUST FUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Inland Waterways Trust Fund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Inland Waterways Trust Fund established by section 203 of the Inland Waterways Revenue Act of 1978. Any reference in any law to the Inland Waterways Trust Fund established by such section 203 shall be deemed to include (wherever appropriate) a reference to the Inland Waterways Trust Fund established by this section.

PART VI—TAX ON PETROLEUM AND OIL SPILL LIABILITY TRUST FUND

SEC. 10351. TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is 0.79 cent a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of—

"(1) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, over

"(2) the amount of such payments taken into account under this subsection for all prior periods."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Hazardous Substance Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

"(2) OIL SPILL RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1986, and before January 1, 1992."

(2) Subsection (c) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended to read as follows:

"(c) TERMINATION.—The tax imposed by this section shall not apply after September 30, 1985."

(3) Paragraph (1) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980 (relating to transfers to Response Trust Fund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c)."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 10352. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974,

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

"(c) EXPENDITURES.—

"(1) GENERAL EXPENDITURE PURPOSES.—

"(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in section 6501(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 6544 of such Act.

"(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) REFERENCES TO OTHER ACTS.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A)(i), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made to the Oil Spill Liability Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in such Fund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Oil Spill Liability Trust Fund after September 30, 1991, and all advances to such Fund shall be repaid on or before such date.

"(C) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act (or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

PART VII—CUSTOMS REVENUES

SEC. 10361. CUSTOMS USER FEE FOR THE PROCESSING OF MERCHANDISE ENTRIES.

(a) AMOUNT OF FEE.—Subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)) is amended by adding at the end thereof the following new paragraph:

"(9) For the processing of each formal entry of merchandise for consumption, a fee (which is imposed on the importer of record of the merchandise) in an amount equal to the following percentage of the appraised value, as determined under the customs laws, of the merchandise:

"(A) 0.5 percent if the merchandise is entered after November 30, 1986, and before October 1, 1987.

"(B) 0.2 percent if the merchandise is entered after September 30, 1987.

For purposes of this paragraph, the term 'merchandise' does not include any article classifiable under any provision of schedule 8 of the Tariff Schedules of the United States.".

(b) CUSTOMS USER FEE ACCOUNT.—Paragraph (1) of section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(1)) is amended to read as follows: "(1) Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), all of the fees collected under subsection (a) shall be deposited into a separate account, which shall be known as the 'Customs User Fee Account', within the general fund of the Treasury of the United States. Except as provided in paragraph (2), all monies in the Customs User Fee Account shall be available, to the extent provided for in appropriation Acts, for the necessary expenses of the United States Customs Service in carrying out its operations, except operations funded under the Customs Forfeiture Fund. At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the

United States Government for the services provided by the Customs Service.".

PART VIII—COORDINATION WITH OTHER PROVISIONS

SEC. 10371. COORDINATION WITH OTHER PROVISIONS.

Nothing in any provision of this Act (other than this title) shall be construed as—

(1) imposing any tax (or exempting any person or property from any tax),

(2) establishing any trust fund, or

(3) authorizing amounts to be expended from any trust fund.

Page 552, after line 2, insert the following new title:

TITLE XI—MISCELLANEOUS

SEC. 11001. APPROPRIATIONS REDUCTION.

(a) APPROPRIATIONS REDUCTION.—All discretionary appropriations made for fiscal year 1987 in any Act making or continuing appropriations (whether enacted before or after the enactment of this Act) shall be automatically reduced, in the manner described in subsection (b), to the extent necessary to achieve a reduction in budget outlays to a level $1,000,000,000 below the level of outlays allocated in House Report 99-666 to the Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974 in such fiscal year.

(b) MANNER OF REDUCTION.—The reduction in discretionary appropriations under subsection (a) shall be made in the manner provided in section 251(a)(3)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985, as though subsection (a) of this section were a Presidential order issued under section 252 of such Act and the amount of the deficit excess to be eliminated were the amount necessary to achieve a reduction in budget outlays to a level $1,000,000,000 below the level of outlays allocated in House Report 99-666 to the Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974 in such fiscal year, and shall take effect on the date of the enactment of this Act or the date of the enactment of such Act making or continuing appropriations, whichever is later.

SEC. 11002. APPROPRIATIONS FOR IRS ENFORCEMENT.

For purposes of reconciliation, in order to provide for an accurate estimate of revenue raised by increased appropriations for the Internal Revenue Service, the enacted appropriations measure providing funding for the Internal Revenue Service for the fiscal year ending September 30, 1987, will include the following funding levels: for "Salaries and Expenses", $95,147,000; for "Processing Tax Returns", $1,332,902,000; for "Examinations and Appeals", $1,623,162,000; and for "Investigation, Collection, and Taxpayer Service", $1,196,581,000: *Provided*, That the allocation to the Senate Committee on Appropriations pursuant to section 302(a) of the Budget Act, as amended, under Senate Concurrent Resolution 120, the concurrent resolution on the budget for fiscal year 1987, is increased by $300,000,000 in both new budget authority and outlays.

SEC. 11003. REVENUE SHARING PAYMENTS.

Notwithstanding section 6702(b) of title 31, United States Code, the Secretary of the Treasury shall make the installment payment of revenue sharing funds under chapter 67 of such title that is otherwise required to be paid on or before October 5, 1986, by no later than September 30, 1986.

SEC. 11004. BUDGETARY TREATMENT OF SALES OF LOAN ASSETS.

(a) ASSET SALES AS DEFICIT REDUCTIONS.—Any sale (whether with or without recourse) of loan assets by the United States shall be treated as a sale of assets and counted as offsetting collections which reduce the federal deficit for purposes of Part C of the Balanced Budget and Emergency Deficit Control Act of 1985. In calculating the budget base levels and in estimating the deficit under sections 251(a)(1) and 251(c)(1) of such Act and under any other appropriate provision of such Act, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office shall treat any sale of loan assets (whether with or without recourse) as a reduction of the federal deficit.

(b) BUDGET SUBMISSIONS OF THE PRESIDENT.—For purposes of the President's budget submissions under chapter 11 of title 31 of the Unites States Code, any sale (whether with or without recourse) of loan assets by the United States shall be treated as a sale of assets and counted as offsetting collections which reduce the federal deficit.

SEC. 11005. EDUCATION PROGRAM REDUCTIONS.

For provisions of law which reduce spending in programs within the jurisdiction of the Committee on Education and Labor, see the conference report on S. 1965, the Higher Education Amendments of 1986 (H. Report 99-861).

Page 2, after the item relating to title X (which appears between lines 1 and 2), insert the following:

Title XI. Miscellaneous.

On page 2, on line 11, insert "to the Government" after "proceeds".

On page 2, between lines 12 and 13, insert the following:

"(1) $1,000,000,000 from such sales during fiscal year 1987,".

On page 2, on line 13, strike out "(1)" and insert in lieu thereof "(2)", and on line 15, strike out "(2)" and insert in lieu thereof "(3)".

On page 3, strike out lines 6 through 11 and insert in lieu thereof the following:

"(c) CONTRACT PROVISIONS.—Consistent with section 309A(e) of the Consolidated Farm and Rural Development Act, as amended by subsection (b), any sale of notes, as described in subsection (a), shall not alter the terms specified in the note, except that, on sale, a note shall not be subject to the provisions of section 333(c) of the Consolidated Farm and Rural Development Act.".

On page 4, after line 3, insert the following:

"(f) Prior to selling any note, as described in subsection (a), the Secretary of Agriculture shall require persons offering to purchase the note to demonstrate an ability to service, or provide resources for servicing, the loans represented by the note, including the ability or resources to provide technical assistance, additional credit, and such other services that the Secretary deems necessary to ensure the continued performance of the loan.".

On page 4, on line 13, insert "(or any loan advance thereunder)" after "loan", and on line 14, insert "(or advance)" after "loan".

On page 4, line 17, strike out "antee," and insert in lieu thereof "antee (which shall be fully transferable and assignable without condition),".

On page 4, strike out lines 18 to 20 and insert in lieu thereof the following:

"'(3) the borrower certifies that any savings from such prepayment will be passed on to its consumers or used to improve the financial strength of the borrower in cases of financial hardship.'".

On page 6, line 5, strike out "loan." and insert in lieu thereof the following: "loan, except when sold to or prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at the rate set by the Administrator. The exception contained in the preceding sentence shall be effective for the period ending September 30, 1987.".

On page 6, strike out "To the extent" on line 15 and all that follows down through the end of line 22, and insert in lieu thereof the following: "The regulations shall facilitate prepayments of loans, as described in subsection (a) except as specifically provided for in this Act, that increases the cost to borrowers of obtaining private capital for prepayment.".

Page 18, strike line 16 and all that follows through page 25, line 3, and insert the following:

TITLE III—COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SEC. 3001. SALE OF RURAL HOUSING LOANS.

(a) REQUIRED SALES TO PUBLIC.—The Secretary of Agriculture shall take such actions as may be necessary to ensure that loans made under title V of the Housing Act of 1949 are sold to the public in amounts sufficient to provide a net reduction in outlays, from the proceeds of such sales, of not less than—

(1) $1,405,000,000 in fiscal year 1987;

(2) $549,000,000 in fiscal year 1988; and

(3) $462,000,000 in fiscal year 1989.

(b) PROCEDURES AND TERMS OF SALES.—

(1) ESTABLISHMENT OF GUIDELINES.—The Secretary of Agriculture shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including the kind of protections that should be provided to borrowers and terms that will ensure that the sale of the loans will be made at the lowest practicable cost to the Federal Government.

(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Secretary of Agriculture shall use the Federal Financing Bank as an agent to sell the loans, unless the Secretary determines that the sale of loans directly by the Secretary will result in a higher rate of return to the Federal Government. If the Secretary determines to sell loans directly under this paragraph, the Secretary shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Secretary of Agriculture shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) REPORTS BY SECRETARY.—The Secretary of Agriculture shall submit periodic reports

to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of the loans. The Secretary shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1989.

(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Secretary of Agriculture described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Secretary as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) RELATION TO OTHER LAW.—The sale of loans under subsection (a) shall not be subject to any requirement under section 517 of the Housing Act of 1949 or any other law that the loans be insured or guaranteed when sold, or to any requirement under paragraph (2) or (3) of subsection (d) of such section 517.

SEC. 3002. SALE OF EXPORT-IMPORT BANK LOANS.

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 15. SALE OF BANK LOANS.

"(a) REQUIRED SALES TO PUBLIC.—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $2,810,000,000 in fiscal year 1987 from the proceeds of such sales.

"(b) PROCEDURES AND TERMS OF SALES.—

"(1) ESTABLISHMENT OF GUIDELINES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

"(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

"(c) REPORTS TO CONGRESS.—

"(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

"(2) REPORTS BY BANK.—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

"(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

"(d) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan by the Bank under this section shall not be subject to any Federal or State securities law.".

SEC. 3003. THE HOUSING ACT OF 1986.

The provisions of H.R. 1, as passed by the House of Representatives on June 12, 1986, are hereby enacted into law.

II. The following are the amendments made in order under House Resolution.

An amendment to be offered by Mr. Rodino of New Jersey, or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a member opposed thereto.

On page 160 strike line 15 and all that follows thereafter through page 161, line 10.

An amendment to be offered by Mr. Wylie of Ohio or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a member opposed thereto.

Strike section 3003 of the bill as inserted by the first group of amendments.

III. The following are the amendments made in order under House Resolution.

An amendment to be offered by Mr. Rodino of New Jersey, or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a member opposed thereto.

On page 160 strike line 15 and all that follows thereafter through page 161, line 10.

An amendment to be offered by Mr. Wylie of Ohio or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a member opposed thereto.

Strike section 3003 of the bill as inserted by the first group of amendments.

Mr. LEATH of Texas. Mr. Chairman, I would ask the gentlewoman from Illinois [Mrs. MARTIN] if she has any closing statement she would like to make under the unanimous-consent request?

Mrs. MARTIN of Illinois. Mr. Chairman, we are sitting here waiting for the amendment we thought was going to be offered.

Mr. LEATH of Texas. I think we are both surprised that we did not have one.

Mrs. MARTIN of Illinois. Yes, the chairman of the committee, obviously, has not chosen to offer the amendment.

Yes, I will use up the 5 minutes, if that is what the Chair wishes to move to.

Mr. LEATH of Texas. In the meantime, we will look for our chairman to use up his time.

Mrs. MARTIN of Illinois. Mr. Chairman, I would caution the gentleman that we are not going to go back and forth on this. If he is not here, we will not be doing the amendment.

Mr. LEATH of Texas. No, I meant for the 5 minutes.

Mrs. MARTIN of Illinois. Yes, indeed.

Mr. Chairman, I am going to ask for a clarification.

May I assume from the Chair that the minority will be using its 5 minutes or that amount of it that it chooses; then to the majority, to the chairman or his designee, and then we will move to the vote; that we are now through with amendments since none have been presented. Is that correct?

The CHAIRMAN. The Chair will state that the gentlewoman is correct; that she would have her 5 minutes and then the gentleman from Texas [Mr. LEATH] would have his 5 minutes, since neither amendment made in order is being offered.

Mrs. MARTIN of Illinois. Mr. Chairman, I believe the House is ready for a vote. I will yield back my 5 minutes.

The CHAIRMAN. What is the pleasure of the gentleman from Pennsylvania?

Mr. GRAY of Pennsylvania. Mr. Chairman, it is my understanding that we have 5 minutes left, and the other side has yielded back the balance of their time. Is that correct?

The CHAIRMAN. The gentleman is correct.

Mr. GRAY of Pennsylvania. Mr. Chairman, my colleagues, let me conclude by saying we have had a lively

and spirited debate, and I think all of us who have spoken have really stated a concern that we share.

I think all who have come to the well; Republicans, Democrats, moderates, conservatives, liberals, are truly concerned about this deficit. We may not agree on the best way to go about it, but I would just say, Mr. Chairman, that this vote today is not going to be on whether we have the ideal package that each of us would want; whether or not this package represents 3 or 4 months of deliberations, or whether or not this package will solve the problem. It will not.

I would just ask my colleagues to remember one thing. That is, if we do not have this package, what other package can be put together that gets us $15 billion worth of deficit reduction, gets signed by the President which it must be, and can pass this House by 218 votes, as well as the other body.

Therefore I think when you ask yourself that question, and the time limit that we have which is by next Wednesday, we must reduce the deficit by $15 billion for 1987; I think we come up with one answer: That answer is, this is the vehicle.

Therefore, I urge Members to vote for this reconciliation package. It is not perfect, it does not do all that many of us would like it to do. However, it does get the job done. It would be irresponsible for us to allow a $24 billion sequester to take place. Therefore, I thank my colleagues from the other side for their leadership, and I urge all Members to vote for this reconciliation package.

The CHAIRMAN. All time has expired.

Under the rule, the Committee rises.

Accordingly the committee rose; and the Speaker pro tempore (Mr. MONTGOMERY) having assumed the chair, Mr. SEIBERLING, 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. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, pursuant to House Resolution 558, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The amendments printed in section 1 of House Report 99-871 are considered as having been adopted.

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 pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRENZEL. 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 pro tempore. 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 309, nays 106, not voting 17, as follows:

[Roll No. 408]

YEAS—309

Abercrombie
Ackerman
Akaka
Alexander
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Bartlett
Bateman
Bates
Bedell
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boulter
Boxer
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Chapman
Chappell
Cheney
Clay
Clinger
Coats
Cobey
Coble
Coelho
Coleman (MO)
Collins
Combest
Conte
Cooper
Coughlin
Courter
Coyne
Crockett
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Derrick
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Emerson
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Hatcher
Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Holt
Horton
Howard
Hoyer
Hughes
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Lagomarsino
Lantos
Latta
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lipinski
Lloyd
Loeffler
Long
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Mack
MacKay
Madigan
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCloskey
McCollum
McCurdy
McDade
McGrath
McHugh
McKernan
McKinney
McMillan
Meyers
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Montgomery
Moody
Morrison (WA)
Mrazek
Murphy
Murtha
Natcher
Neal
Nowak
Oakar
Oberstar
Obey
Ortiz
Owens
Panetta
Parris
Pashayan
Pease
Pepper
Perkins
Price
Pursell
Quillen
Rahall
Rangel
Reid
Richardson
Rinaldo
Ritter
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Schneider
Schroeder
Schuette
Schumer
Seiberling
Sensenbrenner
Sharp
Shuster
Sikorski
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (NE)
Smith (NJ)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stark
Stokes
Strang
Stratton
Studds
Sundquist
Sweeney
Synar
Tallon
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Vento
Visclosky
Volkmer
Waldon
Walgren
Waxman
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (MO)

NAYS—106

Anderson
Archer
Armey
Badham
Barnes
Barton
Beilenson
Brown (CO)
Burton (IN)
Byron
Callahan
Carper
Carr
Chandler
Coleman (TX)
Craig
Crane
Daniel
Dannemeyer
DeLay
DeWine
Dickinson
Dornan (CA)
Dreier
Duncan
Early
Edwards (OK)
English
Evans (IA)
Fawell
Fiedler
Frenzel
Gekas
Gingrich
Goodling
Gradison
Gregg
Hall, Ralph
Hammerschmidt
Hansen
Hartnett
Hiler
Hillis
Hopkins
Hubbard
Huckaby
Hunter
Hutto
Hyde
Ireland
Jones (OK)
Kemp
Kramer
LaFalce
Leach (IA)
Lightfoot
Livingston
Lungren
Marlenee
McCandless
Monson
Moorhead
Morrison (CT)
Myers
Nelson
Nichols
Nielson
Olin
Oxley
Packard
Penny
Petri
Pickle
Porter
Ray
Regula
Ridge
Roberts
Robinson
Roemer
Rudd
Schaefer
Schulze
Shaw
Shelby
Shumway
Siljander
Smith (IA)
Smith, Denny (OR)
Smith, Robert (NH)
Snyder
Stallings
Stenholm
Stump
Swift
Swindall
Tauke
Tauzin
Thomas (CA)
Traxler
Vander Jagt
Vucanovich
Walker
Watkins
Whitten
Wright

NOT VOTING—17

Boland
Breaux
Broomfield
Burton (CA)
Campbell
Carney
Chappie
Conyers
Fowler
Grotberg
Kindness
Manton
McEwen
Moore
Scheuer
Young (FL)
Zschau

□ 1605

The Clerk announced the following pair:

On this vote:

Mr. Manton for, with Mr. Kindness against.

Mr. ENGLISH changed his vote from "yea" to "nay."

Mr. GILMAN and Mr. PARRIS changed their votes from "nay" to "yea."

Mr. SIKORSKI changed his vote from "yea" to "present."

Mr. SIKORSKI changed his vote from "present" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. SCHEUER. Mr. Speaker, on rollcall No. 408, the rollcall vote on final passage of the bill H.R. 5300, the Omnibus Budget Reconciliation Act, I was unavoidably absent due to appearing on the Ted Koppel public television show, "Who Shall Live and Who Shall Die." It is a show about the agonizingly difficult problems affecting our country concerning biomedical ethics.

Mr. Speaker, if I had been here, I would have voted "yes."

GENERAL LEAVE

Mr. GRAY of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous matter, on H.R. 5300, the bill just passed.

The SPEAKER pro tempore. (Mr. MONTGOMERY). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Mr. BONIOR of Michigan. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill H.R. 5300, the Clerk make the following correction: In subsections (b) and (c) of section 4912 of the Internal Revenue Code, as added by section 10251 as included in the report of the Committee on Rules on House Resolution 558, make the changes which appear on the first page of the amendments included in the report of the Committee on Rules—directed to pages 541 and 542 of the original bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

CONFERENCE REPORT ON S. 1965, HIGHER EDUCATION ACT AMENDMENTS OF 1986

Mr. BONIOR of Michigan. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 557 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 557

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes, all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. BONIOR] is recognized for 1 hour.

Mr. BONIOR of Michigan. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Missouri [Mr. TAYLOR], pending which I yield myself such time as I may consume.

House Resolution 557 waives all points of order against the conference report on the bill S. 1965, the Higher Education Act Amendments of 1986. The rule also waives all points of order against consideration of the conference report.

These waivers are necessary to prevent a point of order from lying against the conference report on the grounds that it exceeds the scope of the differences committed to conference. A waiver of the 3-day layover rule for conference reports is also necessary in order to expedite consideration of this vital legislation.

Finally, the rule provides that the conference report shall be considered as having been read when called up for consideration.

Mr. Speaker, this is a simple rule that will allow the House to proceed to immediate consideration of the conference report on the Higher Education Act Amendments of 1986. This bill is the single most important legislation affecting postsecondary education in America. Authorization for most of the programs contained in it is scheduled to expire at the end of this fiscal year.

Passage of this conference report will reauthorize and extend such programs as student loans, Pell grants, and other important higher education programs for an additional 5 years. This conference report has been developed with strong bipartisan support.

Mr. Speaker, I urge this body to reaffirm our Nation's commitment to higher education by passing this rule and moving to immediate adoption of this legislation.

□ 1615

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

Mr. Speaker, House Resolution 577 is a rule waiving points of order against the conference report on the Higher Education Act Amendments of 1986, legislation which is of vital interest to thousands of the Nation's college and university students.

This rule is designed to facilitate House consideration of bipartisan agreement on the bill, S. 1956. The rule protects the conference report against points of order that otherwise might lie against it on the ground that the report contains nongermane matter or that it exceeds the scope of the differences committed on conference.

In addition, the rule waives points of order that would otherwise lie against the consideration of the conference report. In this case, the waiver is necessary because the report has not been available for the required 3 days.

Mr. Speaker, the conference report made in order by this rule is solidly supported by the Republican members of the Committee on Education and Labor and is the result of a long and difficult conference. When the House originally passed H.R. 3700 in December of last year, I was among those who voted in favor of the legislation. If anything, the conference resulted in improvements to the House-passed bill. I am pleased to be able to support it here today.

Mr. Speaker, I want to take a minute to point out that the conference report made in order by this rule authorizes $10.2 billion for higher education programs in 1987. The House-passed bill, H.R. 3700, authorized $11.5 billion, and the conferees should be commended for trimming the overall costs of this legislation while expanding the current provisions of our Higher Education Act.

Mr. Speaker, the conferees adopted proposals that bring student loan spending in line with the targets contained in our congressional budget resolution, while at the same time making more aid available to poor students attending college less than half the time.

The congressional budget resolution called for changes that would reduce projected outlays for guaranteed student loans by $395 million over 3 years.

The major programs authorized for a 5-year period by the conference report are guaranteed student loans and Pell grants. The total authorization for guaranteed student loans is $3.2 billion, and the total for Pell grants is $4.6 billion.

Mr. Speaker, the new authorizations for student financial assistance are expensive, but the conferees included provisions that require all students to pass a financial needs test to qualify for guaranteed student loans, and students are prohibited from borrowing more than they actually need.

These strict requirements will apply to all students, and family assets must be considered in the assessment of financial needs.

Mr. Speaker, there are over 13,200 students at the University of Missouri who attended school last year with a guaranteed student loan. These students had over $35.4 million worth of

loans last year, for an average of $2,600 per student.

In addition, there are about 6,800 students at the University of Missouri who were given a Pell Grant last year. The average Pell Grant was $1,300, and over $8.9 million in grant assistance was made available.

Mr. Speaker, the conference report complies with the budget resolution adopted by the House and will be explained in more detail by the members of the Committee on Education and Labor.

I urge my colleagues to adopt this rule.

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

Mr. TAYLOR. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding to me.

Mr. Speaker, I am trying to figure out what the points of order are that we are waiving. This is a very simple rule and it should be no problem. If I understood the gentleman correctly, we are waiving the points of order with regard to germaneness in the bill.

Do we know what the nongermane sections may be of this particular piece of legislation?

Mr. TAYLOR. I do not think there actually are any nongermane amendments to the bill. It does waive the 3-day layover rule, however.

Mr. WALKER. If the gentleman will continue to yield, that one troubles me a litle bit. I understand that the bill that we have coming to the floor is a conference report that is several inches thick. None of us have had a chance to see that. My guess is that we are probably wearing out a copy machine somewhere so that the Members might have a chance to look at that before we pass it, and yet one more copy machine will give up its life to provide us with information on the floor yet today. Nevertheless, we are adopting a rule that then does not permit us very much time to look through a fairly thick stack of documents.

Was the Rules Committee given a chance to look at all of this material before we waived the 3-day rule on that size of a document?

Mr. TAYLOR. Yes, sir. The Rules Committee had that material.

Mr. Speaker, I would note that the conference report materials were delivered to the Committee on Rules on Tuesday, but the report was printed in the CONGRESSIONAL RECORD on Monday, September 22.

Mr. WALKER. All right. I thank the gentleman.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding to me.

Mr. Speaker, perhaps I can answer, at least in part, the gentleman's question. The items that are nongermane under our rules, for example, are the Senate's projects that they had for specific schools. We agreed to an equal distribution of those things between the House and the Senate. They had no fiscal implication because they come out of already authorized money.

We had a provision that was developed with respect to unemployed people and guaranteed student loans which would be technically outside the scope.

One more that is more important, the changes that were made to reach the numbers for the 1987 reconciliation were in some instances outside the scope as far as our bill was concerned because they were picked up later in order to make it match what the Budget Committee was calling upon us to save in reconciliation.

Mr. TAYLOR. It is my understanding that the waiver of the differences committed to the conference rather than germaneness itself; is that right, Mr. Chairman?

Mr. FORD of Michigan. Yes. The problem with the reconciliation factors is that they were outside of the scope of conference.

Mr. TAYLOR. It is my understanding that the report signed by and is supported by every Member of the House committee and the other body on both sides of the political aisle and in both bodies; is that correct?

Mr. FORD of Michigan. That is correct. There were 33 conferees from the House.

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

Mr. TAYLOR. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding to me.

Mr. Speaker, I do not see any need for a vote on this, but just so we clarify, I think what I just heard was that the things that went outside the scope of the conference was basically a tradeoff of projects for various Members of both bodies that are down in the bill. That is all fine and dandy for the people who served on the conference committee and it is nice that we could go through the process. It gives everybody a little bit of funding. Of course, once again we hear that those things do not cost us anything. I am a wee bit concerned that those are some of the things that we do not find when we have a conference report dropped on the floor, no chance to look through it, and then we find out a few days later just how many special, little projects were buried down in there for the people to have direct influence on the legislation.

I just raise it as a note of caution because I think that it may not be just this conference report, it may not be just this bill; we may see a number of things like this as the session winds down. I just put the Members of the House on warning that we are not going to go through this very many more times where it takes this kind of process without having votes on some of these issues because I do not think it is proper for us to be considering things that we really do not have any idea what is in them when we are asked to vote.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding to me.

Mr. Speaker, I would simply like to say to the gentleman from Pennsylvania that I can assure you that there is no project in the bill for any Member of the House that was in H.R. 3700 when it passed the House. It is Senate projects that were not in the bill that they thought up as we went along. The committee on that side is controlled by your party and I wanted to get along with them.

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

□ 1625

Mr. BONIOR of Michigan. Mr. Speaker, I have no further requests for time, and 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.

Mr. FORD of Michigan. Mr. Speaker, pursuant to House Resolution 557, I call up the conference report on the Senate bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to House Resolution 557, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Monday, September 22, 1986, at page H7912.)

The SPEAKER pro tempore. The gentleman from Michigan [Mr. FORD] will be recognized for 30 minutes and the gentleman from Vermont [Mr. JEFFORDS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise with great pride in support of the conference report accompanying S. 1965, the Higher Education Amendments Act of 1986. As chairman of the Subcommittee on Postsecondary Education, it has been

my privilege to be deeply involved in the development of this conference report.

This conference report represents a continuation of the long tradition of bipartisan support for higher education. While the conferees were always mindful of the budget constraints that we must live with, there was never a question of our commitment to meeting the needs of the students and postsecondary education institutions of this Nation and to the important role the Federal Government must play in recognizing the rapidly changing face of American higher education.

This conference report maintains all the Federal student financial assistance programs but fine tunes them to ensure that those students with the most need will receive the assistance they deserve and to the extent possible will receive that aid in the form of grants and low-interest loans. One of the major thrusts of both bodies in designing this legislation was to reestablish an appropriate balance between grant and loan aid. We were keenly aware of the unmanageable debt levels that many students were undertaking to meet the costs of higher education. As a result, the conference report before you contains substantial increases in maximum grant aid available to students, but only modest increases in loan amounts. Moreover, in the future all students will have to demonstrate their need for a loan before they can borrow. This will eliminate unnecessary borrowing and excessive indebtedness in the future.

I am equally pleased that this conference report recognizes the shifts in the students bodies of our campuses. For the first time the Congress is fully recognizing that today's students are not the traditional 18 to 22 year olds who live on campus and are full-time students. Many of our current students are less than full time in their mid to late twenties with the responsibilities of jobs and families. They are returning to school because they realize that further education is essential if they are to compete in today's job market. These students will now be able to apply for direct student aid and will have necessary services, such as child care, made available to them.

The provisions of this conference report were not purchased with increased authorizations and costs. S. 1965 is composed of carefully balanced reductions and savings in many areas and selected high priority increases in other areas. The conference report will result in approximately $2 billion less in authorizations for fiscal year 1987 than the fiscal year 1986 authorizations contained in current law. The maximum authorization for subsequent years are also capped to ensure that they do not exceed inflation. In particular, the costs of the Guaranteed Student Loan Program, which are real costs since this program is an entitlement program is estimated to reduce spending over the next 3 fiscal years by approximately $400 million, which more than meets the fiscal year 1987 reconciliation requirements.

It would be impossible for me, in the brief time available, to appropriately credit all the individual efforts of those who have contributed to this legislation. Let me single out only a few: Mr. HAWKINS of California's legislation to revise title III and to more effectively serve the needs of historically black colleges and universities; Mr. COLEMAN of Missouri's proposals for graduate fellowships and to improve collections of student loans; Mr. JEFFORDS of Vermont's provisions to reestablish a Loan Consolidation Program; Mr. BIAGGI of New York's efforts on the behalf of nontraditional students and teachers; Mr. WILLIAMS of Montana's and Mr. GUNDERSON of Wisconsin's legislation in support of nontraditional students in title I; Mr. ECKART of Ohio's "Dislocated Workers Act of 1985"; Mr. BRUCE of Illinois' proposals to improve the student financial aid programs and his "National Higher Education and Economic Development Act"; Mr. DYMALLY of California's legislation for university/high school partnerships aimed at dropout prevention, and Mr. CHANDLER of Washington's bill for midcareer teacher training.

There are, however, Mr. Speaker, two errors in the statement of manager's which I would like to correct at this time:

In the discussion of the provisions for the supplemental loan programs for students and parents, the statement of the managers erroneously states that the interest rate is to be calculated according to the 12-month T-bill. This reference should be to the 3-month T-bill, as it is correctly stated in the legislation.

In title XI the conference report states that one-third of the appropriation will be available for part A and two-thirds will be available for part B. These proportions should be reversed two-thirds for part A and one-third for part B. The legislation language is correct in this matter.

Mr. Speaker, at this point I would like to outline some of the very important specifics of the conference report.

Title I of the report is designed to assist institutions to meet the special needs of nontraditional students and students whose access to continuing postsecondary education programs has been limited. Title I of the bill—Postsecondary Programs for Nontraditional Students—constitutes a complete substitute for title I of the current Higher Education Act of 1965.

Title I provides a 4-year grant program to assist institutions to establish programs, strengthen existing capacity, or support cooperative agreements with other organizations to meet the continuing education needs of adults, and to a limited extent, to develop and provide support services such as counseling, off-campus outreach, and continuing education delivery systems.

The conference agreement reauthorizes title II which provides grants to libraries for adding to their resources, to train library personnel, and to strengthen college research library capabilities.

Since 1983, the appropriations committees have refused to appropriate funds for college library resource grants under II-A because there was no needs-based criteria under which grants were made. In this conference agreement, a new needs test is imposed for grant eligibility among college libraries, which will target grants to the most needy libraries in the country.

Title II-B which makes grants available for the training of libraries and for research and demonstration is reauthorized without substantive change.

Title II-C, strengthening college research libraries, is amended to include, for the first time, medium- to small-size research libraries that have been unable to compete with the large ones in the past.

A new part D, "College Library Technology and Cooperation Grants," authorizes competitive grants of up to $15,000—which must be matched by one-third by grant recipients—to enable them to fully participate in the new systems of library computer technology and to take full advantage of technological advances in library science.

Title III of the conference report is intended to provide grants of assistance to less-developed colleges and universities which serve low-income and minority students in an effort to help these institutions strengthen their academic programs and management abilities and to move toward self-sufficiency. Section 301 sets forth Congress' findings that many postsecondary institutions are struggling to survive in the face of declining enrollments and scarce resources, and that there is a strong national interest in ensuring the stability of these institutions and enhancing their role in providing equal access to a higher education for low-income and minority students. The purpose of this title is to assist these institutions in equalizing educational opportunity. I am particularly pleased by the set-aside of funds for institutions which serve the highest percentage of minorities and which are not historically black colleges.

Under title IV, the report increases the maximum awards for the Pell grant and supplemental educational opportunity programs and increases authorizations for the College Work

Study Program. Loan limits for the Guaranteed Student Loan Program are established at $2,625 for undergraduates in their first 2 years, $4,000 in the final 2 years, and $7,500 for graduate and professional students.

One statutory need analysis is established for the Pell Grant Program and another statutory need analysis for the other student assistance programs.

There are increases in interest rates from 8 to 10 percent for the GSL Program beginning in the fifth year of repayment as well as provisions which increase collections on defaulted student loans.

Title V in the report does not respond to all of today's teacher-related issues—such as the demand for higher salaries, safer school environments, or higher standards of achievement for students and teachers alike—because those are issues that must remain the responsibility of State and local governments.

What title V does offer are opportunities for the recruitment, retention, and development of professional skills for teachers, administrators, and other school personnel. To recruit talented individuals for careers in teaching, title V offers 4-year teacher scholarships under its Congressional Teacher Scholarship Program for prospective teachers in both public and private elementary and secondary schools, and it offers the midcareer teacher training program to retain individuals who want to move from education releated occupations to the field of teaching.

Title V continues the Talented Teacher Fellowship Program, and renames it in honor of Mrs. Christa McAuliffe. The program awards 1-year fellowships to experienced teachers who are selected by their peers for outstanding classroom work. This is a paid sabbatical, and is intended to give well-deserved recognition to good teachers and to encourage them to remain in the teaching profession.

For more than 2.4 million teachers currently teaching 40 million children in the Nation's schools, title V authorizes grants to establish professional development resource centers. Center programs will be designed by the teachers themselves to help upgrade their subject matter expertise, and to learn new classroom management and teaching techniques.

Title V also continues the leadership in education administration programs [LEAD] which offers leadership development opportunities for school administrators, local superintendents, and principals to help them create more effective schools.

Title V also authorizes the University-High School Partnership Program to provide assistance to at-risk secondary students from low-income families and communities to help them remain in school to graduation, to prepare them for better employment prospects, and to encourage them to pursue postsecondary training.

Title VI of the report extends and reinvigorates the foreign language and international studies programs that are the legacies of the National Defense Education Act. In my view, the $55 million authorized for these programs in fiscal year 1987 is one of the best investments we are making toward enhancing America's security through improved understandings and informed negotiations, and toward strengthening our ability to compete effectively in the international marketplace.

From a recent newspaper story comes compelling evidence of the importance of training provided through title VI programs: "A shortage of Berber translators, according to intelligence sources, contributes to the death of Army Sgt. Kenneth T. Ford. Intercepted Libyan messages warning of the Berlin nightclub bombing in which Ford was killed April 5, went untranslated several days because of an increasingly common problem: A shortage of skilled translators."

The legislation creates three new programs under part A—international and foreign language students; intensive summer language institutes and advanced students and faculty; and an authorization for the acquisition of foreign periodicals. I believe we have demonstrated a resolve to address some of our Nation's shortcomings in international politics through the newly created and strengthened centerpiece programs of title VI. In addition, by continuing the highly successful business and international education programs, first authorized in 1980, we convey our respect of the addage "business in the language of the customer."

Title VII of the report creates the College Construction Loan Insurance Corporation to increase the capital available for academic facilities.

A new part A of title IX is authorized to recruit talented but disadvantaged undergraduate students for graduate work and a new part D is authorized to increase fellowship aid to graduate students.

A new part A is authorized for title XI which encourages postsecondary education institutions in activities which further economic growth and productivity. Title XI also continues and refines the Urban Grant University Program in which I take great pride.

Mr. Speaker, before concluding I would like to pay special tribute to all the members of the Subcommittee on Postsecondary Education who have participated with me in the 2-year journey to bring this bill to fruition. The bipartisan cooperation, hard work, and diligence of all of the members have made this monumental bill possible. I would also like to commend the staff of all the members for their professionalism and invaluable contributions to the successful consideration of this bill. I particularly appreciate the work of the staff of the Subcommittee on Postsecondary Education: Tom Wolanin, the staff director, and the other members of the staff, Maryln McAdam, Birdie Kyle, Kris Gilbert and Gloria Watson.

I urge passage of the conference report.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in support of Conference Report 861, the Higher Education Amendments of 1986. This bill amends and extends the Higher Education Act of 1965 from fiscal year 1986 through the end of fiscal year 1991. I believe that this represents the most important education legislation to be considered by the 99th Congress.

Last year we celebrated the 20th anniversary of the signing of the original Higher Education Act, which established the first comprehensive Federal commitment to higher education. This Federal commitment provided grant, work, and loan opportunities which allowed many college students to realize their dreams for college and graduate school. At the same time, the act was enacted to provide resources to ensure that our colleges and universities be the very best in the world. This commitment was continued in H.R. 3700, the House version of the reauthorization of the Higher Education Act, and I am pleased to report to the House that this is continued in the final legislative product.

Since the enactment of the act 21 years ago, the Federal role in postsecondary education has revolved around four principal concepts:

First, equality of educational opportunity for students, encouraged through an array of student aid programs that emphasize educational access for low and low to middle-income students.

Second, a measure of student choice among postsecondary educational institutions through student aid requirements that take into account cost differences among institutions.

Third, support for the concept of diversity among America's postsecondary institutions, through program eligibility criteria that permit participation in all forms of postsecondary education.

And finally, the meeting of certain special educational needs through a number of categorical assistance programs targeted to such areas as college libraries, international education and teacher training.

These very important concepts are preserved in our conference agreement with the Senate and improved to better meet the contemporary needs

of our great system of higher education.

This conference agreement is the product of a thorough, bi-partisan effort to reauthorize the programs within the Higher Education Act. I would like to compliment our Chairman BILL FORD on the leadership he has shown in shepherding H.R. 3700 through the House and bringing the conference on H.R. 3700 and S. 1965 to a successful conclusion. I would also like to compliment both our full committee chairman, Mr. HAWKINS, and the ranking member, Mr. JEFFORDS, both of these distinguished Members lent the expertise of their considerable experience in developing education legislation to help assure that the final product reflected the important principles contained in H.R. 3700.

It would have been desirable if the reauthorization of the Higher Education Act could have been developed exclusively with a view toward the needs and desires of higher education as we move into the next decade. Unfortunately throughout this process, the reauthorization has had to reflect the financial limitations created by our deepening budget deficit. I believe that the conference report we bring before the House today reconciles these competing policy objectives.

The overall authorization of this bill, $10.2 billion for fiscal year 1987 is actually less than the current fiscal year 1986 authorization of $11.6 billion. We eliminated programs that have been unfunded and outdated, replacing them with programs designed to meet the contemporary needs of higher education. We have modified our needs analysis system to ensure that it treats students and parents fairly and ensures that our limited financial aid resources are directed at the neediest students. We made major reforms in our student loan programs to rid them of fraud and abuse.

In the interest of time, I will forgo a lengthy discussion of the numerous provisions included in the bill. I would, however, like to highlight a few important components included in the bill:

Our Budget Committee has required that the bill include $395 million in savings within the Guaranteed Student Loan Program in accordance with the fiscal year 1987 Budget Reconciliation Act. Consequently, the final legislative product incorporates a number of legislative changes that have the effect of meeting our budget requirements when compared to the program under current law. Included in the program changes are:

First, a series of amendments designed to prevent student loan defaults and improve collection efforts;

Second, a requirement that all students undergo a needs analysis to establish their eligibility for a loan (current law requires that only students from families whose income exceeds $30,000 demonstrate need);

Third, a reduction in the special allowance paid to lenders from 3.5 percent to 3.25 percent;

Fourth, the establishment of a reinsurance fee for State guarding agencies dependent upon their default rate;

Fifth, an increase in borrower interest from 8 to 10 percent beginning in the fifth year of repayment. Also, included in the bill is a provision which protects students from being charged an unjustifiably high interest rate in times of low interest rates by providing that any borrower interest paid in excess of the basic special allowance formula is applied to the borrower's principal balance.

The bill contains a tightening of the definition of independent student. This new definition was crafted to prevent the potential abuses of the independent student status within our title IV programs.

The bill raises the borrowing limits within the GSL, Supplemental GSL and NDSL Program. These increases while modest in the face of escalating education costs, attempt to provide more resources for students and their families.

The bill establishes a nonprofit corporation created to insure loans to colleges for the construction and renovation of facilities. This addresses in part, perhaps one of the most serious problems facing higher education in the coming decade—the deterioration of its physical plant infrustructure.

The bill makes several important improvements in Federal support for graduate education. Our last reauthorization, The Education Amendments of 1980, set forth as a part of the agenda for the National Commission on Student Financial Assistance the charge to study and report on graduate education. The Commission was directed to study the following: The adequacy of sources and levels of support for graduate students; the extent to which talented individuals are dissuaded from graduate study by cost considerations; the growing levels of indebtedness of graduate students and; the status of minorities in various fields of graduate study.

In December 1983, the Commission, chaired by New York University President and former Colleague John Brademas, released its report: "Signs of Trouble and Erosion: A Report on Graduate Education in America." This report spotlighted the very real deterioration of support for graduate education over the past 20 years. The report highlighted five major problems: First, shortages of highly trained talent in key fields, such as science and engineering; second, difficulties in maintaining high quality faculty; third, loss of talented students, especially women and minorities due to lack of adequate financial resources; fourth, deterioration of the infrastructure which supports graduate research and training; and fifth, potential loss of a generation of scholarship in many fundamental fields of knowledge.

Because of the central importance of graduate education to the Nation, the findings of this report alarmed me. The findings of this report were confirmed repeatedly again as we listened to witnesses and reviewed the status of our graduate education enterprise. We found that the number of applications for graduate study had declined, and that the percentage of students who enroll each year is progressively the larger proportion of those who apply. The brightest college graduates are not pursuing graduate education in the numbers that they were 15 years ago. In critical areas of national interest, we found that we are not producing a sufficient number of doctorates; for example, in 1984, over half of all engineering doctorates were awarded to foreign nationals.

While the costs of graduate education have steadily increased, substantial reductions have occurred in the amount and quality of support available to even our best graduate students. Federally funded fellowships and traineeships dropped from 60,000 in 1969 to fewer than 13,000 in 1981. Both undergraduate and graduate students have become increasingly dependent on loans to finance their education. Between 1974 and 1984, the percentage of Federal aid provided to graduate and professional students in the form of loans increased from 26 to 73 percent.

Because of the fundamental importance of graduate education to the Nation, I believe that it was imperative that we responded to this phenomenon in reauthorization of the Higher Education Act. For this reason, I introduced earlier to this Congress, a bill creating a new fellowship program for graduate students. The bill was adopted by the House and agreed to by the Senate as a part of this conference report.

This new program creates a new part D of title IX. It creates a fellowship program which authorizes the Department of Education to award grants to graduate departments in areas of national need. Grants would be awarded on the basis of merit from competing proposals as judged by panels of nationally recognized academic experts. Graduate departments would use the funds to provide followships to talented graduate students for up to 3 years.

This method—awarding grants to graduate departments who have documented a track record of excellence, for the support of promising graduate students—is a proven mechanism for targeting Federal financial assistance for graduate education to where it can do the most good for our Nation. In

our final agreement, this program was authorized at $30 million for fiscal year 1987.

I would be remiss in not pointing out the conferees also adopted a program authored by Representative DYMALLY, which was contained in the House bill. This program addresses another critical need, by providing funds for the identification of students from minority groups underrepresented in graduate education and providing these students with opportunities to which will prepare them for graduate study.

This bill has strong bipartisan backing. It reflects sound education policy while at the same time shows concern for our fiscal responsibilities. I urge my colleagues to show their support for higher education by voting "yes" for this conference report.

□ 1635

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. GAYDOS].

Mr. GAYDOS. Mr. Speaker, I rise to strongly support this conference report on the Higher Education Act reauthorization, S. 1965. As is typical of conference efforts, this is a compromise. We gave on some points and the Senate gave on others. Clearly, though, while no one is totally satisfied with the final result, neither is anyone totally dissatisfied.

As one knowledgeable educator said recently, "It is probably the best product we could have gotten under the constraints of the times and the circumstances under which we had to operate."

I am particularly pleased to note that the measure we are considering continues to make available trade, technical, and vocational training for those students who seek more immediate access to job opportunities instead of the conventional postsecondary path to a 4-year college degree.

This is especially relevant to the people in my district and in those districts that have suffered from the devastating effects of unfair and overwhelming foreign competition to our basic industries.

In my district alone, there were more than 30,000 employed steelworkers just 5 years ago. Today, there are less than 5,000 and most of them are on strike. These are not teen-aged dropouts. These are men and women in their thirties, forties, and fifties.

These are family people, homeowners, and responsible members of the community. There is in this bill before us the potential to help them find new careers through vocational training in proprietary schools and community colleges. In these settings they train to become truck drivers, word processors, or health aides through the assistance of guaranteed student loans [GSLS] and Pell grants.

There are, for example, some 5,000 private trade, technical, and business schools eligible to train such students. In my own family, one of my daughters chose to be trained as a secretary, which she is today, at the Bradford School in Pittsburgh.

These schools fill an important and growing need, especially among men and women who are seeking training in new fields because their past jobs have disappeared or because they are not interested in the traditional type of postsecondary education.

The bill before us is a compromise. It is the product of many long hours and a great deal of frustration. Our colleague from Michigan, who is chairman of the Subcommittee on Postsecondary Education, and his staff deserve a great deal of praise for their herculean efforts to bring this bill back to the floor.

As a member of the conference committee, I know of the many hours and long days put into the conference process. I know of the frustrations as agreements on key issues reached one day seemed to unravel in the light of the next day.

Still, for all the hours and the frustration, the bill does provide the basic framework governing the Federal role in higher education for the next 5 years.

The final authorization figure of $10.2 billion for the entire package seems to be a bit low considering the importance of higher education to the future of this country, but it was the best we could achieve.

As I said earlier, this measure is neither totally satisfying nor objectionable. There is little doubt that some technical amendments and other kinds of fine tuning will be necessary in the next Congress, but that is the way things tend to be.

Still in all, this is a good bill and I urge everyone to vote for its passage.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 5 minutes to our ranking Republican member, the gentleman from Vermont [Mr. JEFFORDS], who made significant contributions to the success of this conference report.

Mr. JEFFORDS. Mr. Speaker, the Higher Education Amendments of 1986 have evolved over the past 2 years as a bipartisan piece of legislation. I am pleased to be a cosponsor of this bill and I wish to congratulate the two House Members most responsible for this successful legislative effort, my colleagues from Michigan, Mr. FORD, the chairman of the Subcommittee on Postsecondary Education and the ranking Republican of the subcommittee from Missouri, Mr. COLEMAN.

The legislation before us today strikes a balance between contradictory forces—the continuing high budget deficits and corresponding need to hold the line on spending, and the importance of Federal financial aid to students and parents. Federal financial aid has become by far the largest contributor to student aid—approximately 80 percent of all student aid comes from the Federal Government—and it has become an increasingly important dimension of college finances.

This reauthorization reaffirms the strong Republican commitment of support for postsecondary education and equal opportunity for all citizens. The bill focuses on strengthening the most important component of the Higher Education Act, student financial aid, while at the same time providing new initiatives in the categorical assistance programs which are directed toward meeting the needs of our dynamic system of higher education.

Keeping the enterprise of higher education strong and vital through Federal programs is very important not only to our Nation as a whole, but also to my home State of Vermont. Institutions of higher education constitute the third largest employer in my State, with 31,000 students attending Vermont's 30 institutions of higher education. Two-thirds of those 31,000 students receive some combination of Federal grants, work opportunities, loans, interest subsidies, and loan guarantees. In addition many Vermont institutions benefit from the categorical programs in the act.

In the interest of time, I will not go into a detailed explanation of the conference agreement. I would, however, like to touch on a few of the provisions in the final bill which I was personally involved in developing.

The conference agreement includes a provision which established a National Commission to examine the responsibilities of parents, students, Government, and institutions of higher education to fund the expenses of postsecondary education. The purpose of this Commission is to report to Congress information that will assist us in developing a fair and equitable Federal policy with respect to financial aid. Without knowledge of our responsibilities and expectations how can we plan for a comprehensive Federal policy now so that we are able to meet our future needs?

One area that I believe this Commission must thoroughly assess and assist the Congress in reexamining before the next reauthorization is the definition of the independent student. The current law definition presents some potential for abuse; therefore, these amendments contain a substantial revision of the independent student definition. Under the new, stricter definition, students are presumed to be independent if they are 24 years or older; if they are married, responsible for legal dependents, a graduate or professional student, a veteran, an orphan or ward of the court; or if they can prove

they have been supporting themselves independently for 2 years prior to receiving a student aid award.

This new definition addresses the objective of the conferees—a tighter definition which attempts to end the potential abuses. However, larger policy questions still remain. At what point should a student be considered independent from his or her parents? Should policy be based on the belief that by the time a student turns a certain age parents are no longer financially responsible for them? Our new definition of the independent student may be rewarding the parents of independent students by relieving them of the responsibility of paying for their child's education. By allowing their children to declare themselves independent, we are allowing these students to be eligible for larger student aid awards.

In addition, these amendments include a provision which allows students with high loan debts to consolidate these loans and extend their overall repayment period. Consolidation is included as a means of reducing the potential for default by reducing the initial monthly payments to be made by the students. For example, a student with a loan debt of $10,000, could reduce his monthly payment by about $25, or a total of $300 per year. Such a sum is significant to a student who is fresh out of school and starting in a new job. The costs of higher education are continuing to increase; therefore students will be graduating with even higher loan debts in the future. I believe that this provision will yield even greater benefits to students in the future due to these increasing costs.

The conference agreement also makes some major revisions to the interest rate structure for parent and student supplemental loans. Under the present program an interest rate of up to 12 percent can be charged. A survey of the current program indicates that almost without exception a flat 12-percent interest rate is being charged. I believe that lenders should have made an effort to tie this program to a more market sensitive rate. With T-bills at less than 6 percent, T plus 3.25 percent is approximately 9 percent, a spread of 12 percent is unjustifiably high. Had lenders exercised the current option available to them, the conferees would not have felt compelled to revise the interest rate structure.

Under the conference substitute, all new supplemental loans will be made with an interest rate based on market rates, the 91-day T-bill plus 3.75 percent, with a cap of 12 percent. In addition, holders of old supplemental loans would be eligible to refinance their old loans under the new interest rate structure. The conferees adopted this change out of concern that the interest rate on the supplemental loan programs was disproportionately high.

I would like to note here that there is an inconsistency between the actual legislative language and the statement of managers regarding the T-bill used to determine the variable interest rate in this proposal. The legislative language is correct. It is my intent that the 91-day T-bill be used in this calculation, and I appreciate the chairman's willingness to make the appropriate correction in the report to conform with the legislation.

This change was made in recognition of the need for middle-income students and parents to have access to student loan capital to finance their education. It is our belief that this change will not undermine the continued partnership of the lending community and the Federal Government in making this program available to the public. The conference susbtitute has been designed so that these provisions can be implemented easily and fairly for students, parents, and banks.

At that urging of the lending community, we did not make the refinancing component of this provision mandatory. However, I would like to call attention to the fact refinancing can be immediately implemented upon enactment of this legislation. It is my hope that the lending community will participate aggressively in this Refinancing Program and view it as a means for expanding their supplemental loan portfolio. The conference agreement recommends that Congress conduct an oversight hearing concerning the implementation and availability of this program.

I would like to thank my colleagues, MARGE ROUKEMA and JOHN MCKERNAN for raising the issue of market sensitivity during House consideration of the bill. I believe that their contributions added considerably to the successful resolution of these provisions.

Another substantial change to past practice is the recapture of interest paid by the borrower in excess of the basic special allowance formula. The bill includes an increase in borrower interest on a GSL from 8 percent to 10 percent in the borrowers fifth year of repayment. This change is a provision from the House bill. It was incorporated to recognize that once a student is out of school and employed, the student can handle a greater portion of the interest. In light of making this interest rate increase in the fifth year, the conferees agreed to a further provision which will ensure that students will not be required to pay interest in excess of the basic special allowance payment. Under this provision any excess interest paid will be credited to the borrowers principal by either lengthening or shortening the period of repayment or by recalculating the borrowers monthly repayments on an annual basis. I would like to emphasize that any benefit accrued by these provisions is intended to be returned to the borrower.

Overall, I would like to reiterate my support for House Report 861. I urge my colleagues to join me in reauthorizing these programs for fiscal years 1987-91.

Mr. FORD of Michigan. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. BIAGGI].

Mr. BIAGGI. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise as a cosponsor of the House-passed higher education amendments, and as a member of the conference committee, to urge my colleagues to support the conference report on S. 1965. This conference was long and difficult; but I feel confident that this legislation addresses the current and future needs of the higher education community, especially the students.

I want to congratulate and commend the distinguished chairman of the Postsecondary Education Subcommittee and primary negotiator in this process, my good friend and distinguished colleague, BILL FORD. His extraordinary leadership, craftsmanship, spirit of compromise and dedication to serving the needs of higher education was instrumental and essential in arriving at the legislation we bring before you today.

A special exception was made for Chairman FORD to continue to be the chairman of this subcommittee. I can only tell you upon reflection that this was the wisest thing this House has done, at least that the Democratic Caucus has done.

As I've said before, higher education has no greater friend and no greater champion. He has demonstrated this through his tremendous efforts in conducting over 36 hearings on higher education concerns, molding H.R. 3700 from these hearings and from the concerns of the members of the Postsecondary Education Subcommittee, diligently ensuring its favorable House consideration, and working with the Senate for the last month and a half, resolving the differences between the House and Senate legislation in a manner which would best benefit the higher education community.

I would also like to commend the ranking Republican on this subcommittee, TOM COLEMAN, for his significant and substantial contributions to this legislation. His contributions in reducing student loan default rates and in improving our commitment to graduate education, as well as his significant efforts in other areas in order to achieve this compromise, are reflective of his dedication to addressing postsecondary education needs.

I would also like to commend our distinguished chairman, GUS HAWKINS, who in keeping with his long-

standing commitment to quality in education lent his experience and expertise to molding a title 3 which addresses the needs of historically black colleges, institutions that serve a large number of minorities, as well as other needy institutions.

I would also like to recognize the many and significant contributions of the ranking Republican member of this committee, JIM JEFFORDS, and commend him especially for his efforts in the area of loan consolidation.

Mr. Speaker, since I joined the House Education and Labor Committee in 1969, I have participated in four reauthorizations of the Higher Education Act of 1965. In the past 20 years, postsecondary education has greatly changed. The student of the sixties is not the student of the eighties; the institutions have changed and grown; and the cost of education has greatly risen. Each reauthorization, this committee seeks to amend and adapt this important legislation to meet the changing needs of the higher education community. In the midseventies we tackled the problem of unavailability of guaranteed student loans by providing banks with added incentives to join this program. We have addressed the growing cost of education with new student aid programs. We have retargeted our aid depending on the needs appropriate at the time. This year we address many of the rising needs of higher education. These needs include lifting barriers to the nontraditional student, the rising cost of higher education, the increasing teacher shortage, and the increase in student default rates, among others. I would like to focus on some of the specific aspects of this important legislation.

REMOVES BARRIERS TO NONTRADITIONAL STUDENTS

In our numerous hearings in the last 2 years, one significant fact stood out—not enough was being done for the most rapidly growing segment of our student population—the nontraditional student. One point that is quite important to stress is the changing demographics of the population of the educational institution. No longer are our college campuses exclusively filled with recent high school graduates enrolled in 4-year programs. Currently over 40 percent of our students attend on a part-time basis; that figure is expected to increase to over 50 percent by the end of this reauthorization. Two-thirds of our community college students are part-time students. By 1992, it is estimated that one-half of our higher education students will be 25 or older.

I first addressed this problem early in this Congress, when I introduced H.R. 2711, the Fair Financial Aid for Part-Time Students Act, which sought to remove the barriers to the nontraditional student. This bill was incorporated in part into H.R. 3700, and a compromise was achieved with the Senate which would, for the first time, remove the present discrimination against needy students who, because of family or other responsibilities, cannot attend school on at least a half time basis. Financial aid will now depend on need, not on the number of credits a student is taking. This conference report contains provisions which will ensure that part-time students will receive a reasonable proportion of campus-based financial aid. This report for the first time allows less-than-half-time students to become eligible for Pell grants, phasing the neediest students in first. I would like to thank my colleague, Mr. Penny for his enthusiastic support of the less-than-half time student.

This legislation also contains provisions which will more fairly calculate the cost of attending school for these nontraditional students, such as including provisions for child care and by updating the definition of an independent student. We have also included a child care pilot project to examine the effect of campus-based child care on our student enrollment. Thanks largely to the dedicated efforts of Pat Williams and Steve Gunderson, title 1, which supports continuing education programs, focusing on our adult students, was reformed and reauthorized.

TEACHER RECRUITMENT AND RETENTION

Another problem on this rise in our Nation's education community is the increased shortage of teachers. We can expect a teacher shortage of one million by 1990. While enrollment in higher education programs in the last decade has increased by over one-third, the enrollment in teacher education programs has decreased by one-third. Even the President's report, "A Nation at Risk" cited teacher recruitment and retention as a major problem in our schools today. In an effort to address these shortages, I introduced legislation, H.R. 2742, which was incorporated into the higher education amendments to provide a 3-year guaranteed student loan deferral for those entering the field of teaching in areas of shortage. These areas of shortage include geographic areas and subject areas. We seek to address special problems such as early retirement provisions in certain areas which reduce the teacher population, incentives for minorities to enter teaching in areas with a high percentage of minority students, areas with mandated teacher testing, which reduces teacher supply, and areas which must presently resort to emergency certification to fill the classroom. I feel this is a positive step toward addressing these grave problems.

I would also like to commend Chairman FORD for his work in title V, particularly the school-university partnerships, the Midcareer Teacher Training Program, and the establishment of professional development resource centers.

REFORMS IN STUDENT AID PROVISIONS

One of the most notable changes in higher education in the past 20 years is the cost of higher education and Congress's response to that cost. Consider that the value of student aid has dropped 21 percent in the past 5 years. In 1979, the average Pell grant covered 46 percent of a student's costs. Today it only covers 26 percent. Consider that the dependence on loans has dramatically risen. Under 10 years ago, only 15 percent of our lowest income students borrowed, instead of relying on grants. Today that figure has risen to 57 percent. Combine these statistics with the National Institute of Independent Colleges and Universities' estimate that after 4 years of college, the debts of the neediest students are larger than their family incomes, and the result is our neediest students being inadequately served, thus being forced to discontinue their education or graduate with unjustly burdensome debts.

Both the House and the Senate have placed a greater emphasis on grant money for the lowest income students, instead of forcing them to become heavily burdened by debt. Pell grant maximums are increased to $2,300 in the year of enactment of this legislation, and by increments of $200 for each year thereafter, until the maximum grant reaches $3,100 in fiscal year 1991. Guaranteed student loan limits are increased to $2,625 for those students in their first 2 years of school, and $5,000 for other undergraduates. Limits for graduate students are increased to $7,500. This maintains the committee's commitment that students should not be forced into excessive debt, while providing flexibility for students attending high cost institutions. Also, since the highest default rate occurs in the first 2 years, this addresses the problem of student loan defaulters.

TACKLING STUDENT LOAN DEFAULTERS

The conference committee addresses the problem of student loan defaults by reinstating the Loan Consolidation Program, requiring the multiple disbursement of loans, and extending the unemployment deferment to 2 years—unemployment is the major reason for defaulting on student loans. All together these provisions represent over $180 million in savings over the life of the bill.

This bill's total authorizations is over $2 billion under current authorizations. This bill is fiscally responsible.

ADDRESSING THE NEEDS OF GRADUATE STUDENTS

In 1983, our former colleague John Brademas, now president of New York University, reported that between 1969 and 1981 the number of graduate fel-

lowships had dropped from 60,000 to 13,000. Our committee addressed this concern in title IX, largely by Mr. COLEMAN's bill H.R. 2199, which I cosponsored. The conference report provides for grants to graduate students in areas of need. A provision I authored would include nondegree granting institutions in eligibility for this graduate assistance. The Museum of Natural History in New York City brought to my attention that there are graduate students studying at museums, libraries, botanical gardens, and other institutions which do not grant degrees, that are gaining access to information vital to their research, information often not present anywhere save the museum or library.

FEDERAL SUPPORT IN OTHER HIGHER EDUCATION AREAS

This conference report reauthorizes and strengthens the TRIO programs, which were established to assist the disadvantaged student in completing high school and attaining postsecondary education. The conference report includes a special program targeted at encouraging minority students to enroll in graduate education, which along with provisions in title IX, seeks to address the grave imbalance of minorities in graduate school and therefore in teaching positions.

This legislation reforms the allocation formula for campus-based aid programs to more fairly serve institutions with large numbers of needy students. The conference report retains the House language keeping the student's GSL interest rate at 8 percent for the first 5 years after graduation. It renames the National Direct Student Loan Program in honor of our distinguished former chairman Carl Perkins.

CONCLUSION

In the end we produced what we feel is a very substantial piece of legislation that will assure the continued support on the part of the Federal Government for the next 5 years to so many aspiring students. This legislation was reauthorized in a very extensive fashion in cooperation with the Senate. In what seemed to be at the outset an almost impossible conflict, reason prevailed, adjustments were made, accommodations were arrived at, and we are here today. This bill is comprehensive; there are many important provisions I did not mention today. This conference report responds satisfactorily to the needs of the higher education community. Given the conditions of the day, I think we could not have produced anything better. Hopefully, in the future when the financial situation ameliorates itself, we will be able to improve.

This conference report does address the main concerns of higher education assistance—that of providing equal educational opportunities to all students regardless of race, creed, handicap, national origin, and perhaps most importantly, financial background. This legislation attempts to remove barriers that face all postsecondary students and attempts to assist students in fulfilling their goals and dreams. While not perfect, this legislation is an important step in our continuing and increasing efforts to educating the people of America. This country has historically placed a significant value on education, this legislation ensures that this priority is reaffirmed and revitalized.

Before I close, I would like to enter into a colloquy with the chairman just for clarification of the RECORD.

Mr. Speaker, to clarify the committee's intent with respect to the language of section 484(D) of the bill dealing with ability to benefit students, am I correct in my understanding that if a student is admitted under counseling, we expect the institution to keep records showing that student has the ability to benefit?

Mr. FORD of Michigan. Mr. Speaker, if the gentleman will yield, yes, that is correct.

Mr. BIAGGI. Am I also correct in my understanding that if a student fails the admission test and the institution deems that the student can benefit from the education upon receiving appropriate remediation, we expect the school to maintain records justifying that decision.

Mr. FORD of Michigan. Mr. Speaker, if the gentleman will yield further, yes, that is correct.

Mr. BIAGGI. Mr. Speaker, I thank the gentleman.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 4 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

□ 1650

Mrs. ROUKEMA. Mr. Speaker, I wish to express my support for S. 1965, The Higher Education Amendments of 1986, which extend the Federal student aid and other higher education programs through fiscal year 1991. My reasons for supporting this bill are based primarily upon my strong support for the student aid programs we are reauthorizing. I believe that student aid is one of the few areas where a Federal education role is essential. In providing financial assistance to students on the basis of need, we ensure that no one is denied access to college solely due to the lack of financial resources.

I would at this time like to commend the gentleman from Michigan [Mr. FORD], the chairman, and the gentleman from Missouri [Mr. COLEMAN], the ranking Republican, on the Postsecondary Education Subcommittee and the gentleman from Vermont [Mr. JEFFORDS], the ranking minority member in the full committee. As a member of the subcommittee myself, I have seen the degree of dedication and innumerable hours of work that they have devoted to the passage of this legislation. I would also like to commend the Members of the Senate who worked so hard in conference to resolve the differences between the House and Senate bills.

Although I had earlier been concerned about the very large total authorization amount contained in the House bill, particularly in these days of fiscal constraints, I am pleased that we worked out a reasonable compromise between House and Senate authorization levels in conference.

I am gratified that a provision contained in an earlier amendment I had introduced was incorporated into this bill, although on a narrower scale than I had hoped. In subcommittee, I offered an amendment to the Guaranteed Student Loan Program which would have based student's initial interest rate on prevailing market conditions by linking interest rates to T-bill rates.

My amendment would have included some limits to ensure against windfalls for lenders or excessive rates for students. This idea of linking interest rates to the T-bill was adopted by conferees not in the Guaranteed Student Loan Program, but in the Supplemental Loan Program. Although that amendment was not adopted, it was included in this bill.

Thanks to the effort of the gentleman from Vermont [Mr. JEFFORDS] it was introduced to apply to the Supplemental Loan Program. I do not believe that we should totally insulate students from fluctuations in the financial market. I certainly think this is a step in the right direction, a step toward variable rate loans. We can observe how this principle works in the Supplemental Loan Program. Hopefully, when we revisit the Higher Education Act in the future, we can apply what we have learned to the GSL Program without encountering the administrative problems raised by the banking community.

H.R. 3700 also contains a significant reform by including a new independent-student definition. If there is one area that virtually everyone agreed was in need of reform in the student aid programs, it was the arbitrary rules governing independent-student status. These rules were virtually impossible to verify. Consequently, there was every reason to believe that widespread abuses were occurring.

The conferees have remedied this by basically adopting the House provisions. These provisions require a student to either be at least 23 years old or to fall within one of certain specific categories—for example, married, orphan, graduate or professional student, and so forth. In addition, a student who does not fall within one of

these categories would be able to prove independence with proper documentation. Fortunately, the conferees have retained the additional requirement that students applying for independent status shall not have been claimed as a dependent for income tax purposes by their parents or anyone else other than a spouse for 2 previous years. This requirement, which I was able to add on the House floor, retains the one element of the previous test which was easily verifiable. The new definition of independent student should provide more predictability, consistency and fairness, as well as cut down on false claims of independence.

Finally, I would like to mention another important improvement which this bill addresses. That is in the area of debt burdens acquired by students who take out guaranteed student loans. Under the previous system, students were also too frequently unaware of the costs of their loans; many, if not most, students were unaware of the monthly payments they would have to make until their loans actually came due. Since students have some control over costs in choosing which higher education institution to attend, it is important that in making that decision they be fully aware of the long-term financial implications and not be overextended.

For this reason, the bill includes a provision I offered in committee which requires the Secretary of Education to provide the necessary information regarding potential student loan debt burdens to students at the time they make their higher education plans. The senior in high school must know that if he or she decides to attend a high-cost institution, it will probably mean a large debt burden upon graduation. I like to call this "truth in lending" in the student loan programs.

In sum, we will be making some important improvements in the Higher Education Act when we enact these amendments. I therefore wholeheartedly support this reauthorization of the act.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. OWENS].

Mr. OWENS. Mr. Speaker, despite the fact that there have been very few headlines connected with this particular bill and the media have paid no attention to it, this bill is one of the most important items to be passed in this session of the legislation, and history will show that the steps taken here are far more significant in keeping America strong than many of the other items that have been dealt with in this session.

I want to congratulate the chairman of the committee, the gentleman from Michigan [Mr. FORD]. As expected, he and his staff have done a very competent and thorough job. But beyond that, the citizen participation and the participation by the entire education community in the shaping of this bill was quite exceptional. Provision was made for numerous hearings and for input that I think was at a maximum from all quarters of the education community. As a result of this tremendous input and the flexibility of the chairman and the members of the committee, I think that we have a bill which cannot be excelled in any way in terms of dealing with all of the various problems related to higher education.

The bill has provisions which maximize opportunities for those who want to learn, for those who have potential. Contrary to anything that Prime Minister Nakasone may say, geniuses exist in all parts of our society—in all races, all ethnic groups, and at all economic levels—and the Higher Education Assistance Act is just one part of providing opportunities for those geniuses, those people with leadership ability, and just ordinary people who can be improved by education, to get the kind of assistance that they need from their Government.

The bill is to be commended for maximizing those opportunities for those who have the greatest needs. It also is to be commended for recognizing the needs of the historically black colleges. The historically black colleges are a very tiny fraction of the total constellation of the American higher education community, but their special recognition in this bill allows them to make the contribution that they can make toward the bigger goals of the American higher education community.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. GOODLING].

Mr. GOODLING. Mr. Speaker, I rise only to compliment the chairman of the subcommittee and the ranking minority member. The manner in which the bill was put together is different from that of some committees on which I serve. We not only were given an opportunity to participate, we were encouraged to participate. If you do not believe that that is different, serve on the Budget Committee sometime as a minority member. We can participate in reconciliation there—that is the bad guy—but putting it together is something else.

I do want to congratulate both Chairman FORD and the gentleman from Missouri [Mr. COLEMAN], because we spent hours and hours and hours going all over this country and having hearings here, and then put together a bill that I think will improve our whole higher education program. so again, I compliment both for their efforts.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. PENNY].

Mr. PENNY. Mr. Speaker, I urge a vote in support of the conference report on the reauthorization of the Higher Education Act of 1965. The report before us today is the result of several weeks of negotiations between the House and Senate on over 700 points of disagreement.

Mr. Speaker, conferees agreed to a fiscal year 1987 authorization level that represents a savings of $500 million over the House-passed bill, while maintaining and strengthening needed aid programs.

In addition to making some savings, the conference report makes important and needed policy changes. Conferees agreed that student financial assistance should be extended to the growing number of nontraditional students on our college campuses. For the first time, students enrolled on a less-than-half-time basis will be given access to student aid programs. This change reflects the present reality on our college campuses. Part-time and less-than-half-time students now comprise 41 percent of all national postsecondary enrollment. It's time, Mr. Speaker, that people striving to make a better life for themselves by advancing their education are given a chance. Most part-time students are those training for a better job, or people retraining for a new career after being laid off from a declining industry or losing their farm.

Mr. Speaker, this change and several others represent a significant step forward in our efforts to ensure access to education. I want to thank the gentleman from Michigan [Mr. FORD], the chairman of the subcommittee, for his leadership and his hard work, and that of both the minority and majority members of the Subcommittee on Postsecondary Education, which is reflected in this conference report.

Mr. Speaker, I urge my colleagues to support the conference report.

□ 1700

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. GUNDERSON.]

Mr. GUNDERSON. Mr. Speaker, following the recent completion of the House/Senate conference committee's work on the reauthorization of the Higher Education Act of 1965 (S. 1965), I would like to commend the House Postsecondary Education Subcommittee chairman, Mr. FORD, and the ranking minority member of the subcommittee, Mr. COLEMAN, for their dedication and leadership throughout this reauthorization process.

S. 1965, a bipartisan effort in both Houses, responsibly extends the Federal commitment to higher education through student and institutional programs. Changes in student assistance programs are geared toward reducing

a borrower's dependence on loans while at the same time realizing the cost of attending school continues to increase. Also addressed, are the changing trends in postsecondary students and their institutional and service needs.

Passage of this conference report concludes an extensive reauthorization process commenced by both the House and Senate on February 14, 1985.

I am pleased by the direction this legislation takes to respond to significant challenges facing our higher education community, those being:

Demographic changes in the student population;

Increasing costs of attending higher education institutions;

The need to adapt to changing technology with programs and curriculum that will prepare students properly; and

Federal budgetary constraints.

This reauthorization establishes a funding level for fiscal year 1987 of $10.2 billion. Title IV, student assistance programs make up the majority of this package—98 percent—thereby making more aid available to students. This is an impressive Federal commitment to the future of higher education and access to it. With public university costs, approaching $5,000 to $8,000 annually in some instances and private institutional costs double that of its public counterpart, Federal financial assistance is becoming a greater necessity.

In my home State, of the entire University of Wisconsin system—enrollment equals 165,000 approximate—more than 63,400 University of Wisconsin students receive financial assistance equalling over $207 million. It is certain this reauthorization will provide greater access and financially assist more students. The positive impact of this act will be further amplified by the fact that these figures do not include student participation or funding from the many independent institutions, vocational education institutions, or junior colleges throughout Wisconsin.

In addition to the well-publicized student financial aid programs, for which this act is known, this reauthorization contains other important programs, such as cooperative education, libraries, graduate education, and nontraditional student programs. A number of objectives have guided us throughout this process. First, the need to respond to the changing needs and clientele of the postsecondary student population. Title I gives the act a new focus to help colleges and universities be more responsible to part-time students and working adults, and eliminate institutional barriers. This can be accomplished by developing creative and innovative educational delivery systems—cooperative and consortia arrangements to more effectively address regional educational needs.

Second, we confronted the budgetary limitations placed upon us by the deficit and our economic responsibilities. Recognizing the need for adequate funding for education, we responded to the fact that Federal resources are not limitless. This conference report responsibly increases the GSL loan limit, the maximum amount available in the Pell grant program, and campus-based programs. Under the direction of the Secretary of Education, a study will be conducted concerning the problems of escalating postsecondary education costs. This conference report is both fiscally and programmatically sound.

Third, we improved the administration and quality of the programs reauthorized by the conference report. Congress must insure that these programs function in an administratively efficient and effective manner, promote incentives for the improved quality of individual programs and postsecondary education generally, and respond to the financial needs of students. This conference report does this.

Additionally, the new law will assist the higher education community meet the changing needs of our student population. John Naisbitt, social forecaster and author of Megatrends considers, "In education we are moving from the short-term considerations of completing our training at the end of high school or college to lifelong education and training." This 5-year reauthorization puts this concept into practice.

In this lifelong educational spectrum, the number of traditional college age students 18 to 21 continues to decline, while older students over age 22 account for 41 percent of the national college and university student body. This compares with 28 percent in 1970. Between 1970 and 1983, enrollment for all students increased by 28 percent. During the same period, enrollment for older adult learners increased by 70 percent. By 1991, it is expected that adult learners will make up 50 percent of the postsecondary student population.

Accordingly, many House conferees sought to improve Federal law as it pertains to the expanding nontraditional adult learner population. Working with Representative WILLIAMS to refocus the direction of title I—previously continuing education—postsecondary programs for nontraditional students, we developed a program to assist universities adapt to the needs of the growing nontraditional student population. Creation and implementation of on- and off-campus programs will enable institutions to reach out to nontraditional learners.

The approach taken toward higher education programs in this act is both progressive and responsive. We have been fiscally responsible and practical in addressing the financial needs of the Nation's student, while at the same time, recognizing the changing face of higher education and responding to it.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. BRUCE].

Mr. BRUCE. Mr. Speaker, I rise today in support of the conference report on the higher education amendments of 1986. As a member of the Postsecondary Education Subcommittee, I know the time and diligence it has taken to bring this final bill to the floor. I believe the bill reflects the true spirit of compromise and I would like to commend the chairman of the subcommittee, the distinguished gentleman from Michigan [Mr. FORD], who carefully guided us through this process.

Undertaking this bill was no small task—for the conference agreement we are considering today will chart the future of Federal support to higher education for the next 5 years. The final bill strikes an important balance between fiscal responsibility and the goals of access and choice. In recent years, choice has all but disappeared and access has been eroded. Budgetary constraints prevent us from fully realizing those goals, but I believe today we have moved closer than ever before to the goals envisioned by the act's original authors 21 years ago.

This bill has particular significance to me because the district I represent has one of the largest concentrations of college students in the Nation. Fourteen percent of the adult population is enrolled in one of the district's seven community colleges or two universities.

The Student Aid Programs are particularly important. More than 20,000 students in the district receive some form of student aid. Over 12,000 students at the University of Illinois alone benefit from the Guaranteed Student Loan Program.

By strengthening Pell grants as the foundation of student aid, and by increasing the loan limits under guaranteed student loans, this bill responds to the problems of rising tuition costs, shrinking grant aid and the growing dependency on loans to finance a college education. The bill also responds to the changing student population by making aid available to students attending school less than half time.

Throughout the conference, decisions were made with the understanding that these times demand fiscal responsibility and accountability. Without this recognition, we threaten the future of those we seek to help. And so the bill, in addition to meeting our budget targets this year, makes long term changes to ensure the fiscal in-

tegrity of its programs. For example, in response to GSL defaults, the bill caps the amount to be borrowed by first- and second-year students—the years where default rates are the highest. The bill also includes a provision I authored which calls for student loans to be made in installments. This provision is estimated to save over $300 million per year without dropping any students from the program.

I would like to take this opportunity to thank my colleagues for their support of my initiative to link colleges and universities with local governments, business and others to work on economic development issues. With a small Federal investment, this is one way we can work to stem the tide of economic decline experienced in our communities.

In conclusion, Mr. Speaker, the legislation we are considering today is an investment of the best kind—an investment in the future of our young. The programs represented in this legislation reflect both an opportunity for millions of young men and women, and a sound investment in a strong and prosperous America.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 3 minutes to the gentleman from Iowa [Mr. TAUKE].

Mr. TAUKE. Mr. Speaker, I rise in strong support of the conference report on S. 1965, the Higher Education Amendments of 1986. I comment Chairman HARKINS and Chairman FORD for their leadership in bringing this conference report before us, and I congratulate the ranking Republicans on the committee and subcommittee, Mr. JEFFORDS and Mr. COLEMAN respectively, for their diligence and efforts to construct a balanced bill to reauthorize the Higher Education Act of 1965.

Congress was faced with a difficult task when it began the reauthorization of this act. We were confronted with the need to expand financial aid programs in order to help students meet the rising costs of a college education and to ensure that financial burdens did not become insurmountable hurdles to pursuing a higher education in this country. At the same time, we had to remain mindful of the need to control the overall cost of this bill to the Federal Government in light of the current budget crisis.

Many of the conferees would have preferred a much greater expansion of student financial aid programs in this bill. I commend my colleagues for recognizing budget constraints and working within difficult spending limitations in developing this legislation, which successfully holds the line on the overall cost of the programs authorized by this legislation.

While this bill does successfully control the cost of higher education programs, it does not do so at the expense of students. Availability of student aid is increased by this bill, but in ways that will not bust the budget. For instance, loan limits are raised in the Guaranteed Student Loan Program, thereby making larger loans available to help students meet rising costs at limited expense to the Federal Government. Moreover, the special subsidies provided to lenders participating in the Guaranteed Student Loan Program are reduced slightly, a provision which does not jeopardize the continuation of the program or limit access to loans, but which saves the taxpayers millions of dollars.

The conference agreement also recognizes the increasing number of nontraditional students enrolled in postsecondary education programs and addresses this growing area of need. The compromise reached to increase the aid available to these nontraditional students also rightly protects fulltime students from reductions in aid as a result of this expansion of the population eligible for student aid programs.

Finally, I want to commend the gentleman from Vermont, Mr. JEFFORDS, for his work on the comprehensive, loan consolidation program included in this conference agreement. The ability to consolidate loans is an important benefit to students who are graduating from postsecondary education with large debt burdens. Manageable repayment schedules will also decrease the default rate on Government guaranteed loans, and thus reduce the cost of these programs.

I strongly support this conference report and urge my colleagues to join in the passage of this comprehensive, responsible legislation.

□ 1710

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, most of the Members have dealt with the substance of the bill, and others will continue to do so; however, I wish to deal with the spirit which prevailed during the many hours of the conference committee meetings.

First, I want to commend the chair of the Subcommittee on Postsecondary Education, the gentleman from Michigan [Mr. FORD] for his efforts.

Mr. Speaker, in this extremely conservative time of fiscal constraints, when the national priorities tend more to be in terms of military emphasis in addressing the security needs of this great Nation of ours, the House and Senate Committees on Higher Education have been most triumphant against the odds of reducing the significance of higher education in America.

The conference report which is now before both Houses represents bipartisanship in its greatest hour, and perhaps more importantly it represents the willingness of the Members of this Congress to address the present and future needs of higher education, and thereby securing the future of America.

Noteworthy of the agreements to be highlighted are the increases in student financial assistance to the poor and almost poor of this Nation; the realization that Americans, as a people, are aging and all cohorts are to be afforded the opportunity for education—the nontraditional students; the search to address the high numbers of dropouts in this Nation and programs which help this population secure higher education; the increases in programs such as trio which has been most successful over the years and provides the poor with opportunity and chances for successful livelihoods; the recognition that black Americans and minorities of all races and creeds contribute to the greatness of this Nation and, therefore, the opportunities granted by the title III programs; the recognition that graduate education in all areas is important to the continued greatness of America and, therefore, Patricia Harris grants; the cognizance that fair is fair and the programs which were adopted to treat equitably all colleges and universities of the Nation.

This is an excellent bill which is being brought to this floor. Staff have worked hard and long for months and Members of both Chambers have given unselfishly of their time and energies to assure that higher education in America is a solution to the record inflation, the growing numbers of illiterates, and the overextended under and unemployment lines.

I urge swift passage of the conference report and congratulate my colleagues in both Houses and on both sides of the aisles for making a most significant piece of legislation a part of the 99th Congress.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, I do concur with many of the speakers that this conference report is a substantial improvement over the version that passed the House. The legislation is technically well-thought-out and well-legislated. In fact, it does reduce total spending from $10.7 and $10.2 billion from the version we passed in the House.

In addition, it provides other improvements: A need analysis, a 6-month grace period, interest rates increased in the 5th year, consolidation of repayments, and an increase in auxiliary loans.

I would call to the attention of the House floor that the bottom line is still the bottom line. This conference report proposes to increase expenditures in the higher education areas by $1.6 billion from fiscal year 1986 to

fiscal year 1987. Expenditures in fiscal year 1986 were $8.6 billion; $3.5 billion in Pell Grants, that would be proposed to be increased by about a billion dollars; $3 billion in GSL, that would be proposed of an increase of $200 million; and $1.8 billion in the remaining grant programs, and that would be proposed to be increased to $2.4 billion.

We will, if we pass this, and I believe we will; I have no illusions about the final vote; it will have an effect on sequestration, on Gramm-Rudman, on the deficit. I think the House should not adopt this version until the conference report comes back with a spending cap of a freeze at the fiscal year 1986 levels.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES. Mr. Speaker, I rise to express my strong support for the conference agreement on the Higher Education Act amendments. As one of the House conferees on this legislation, I would like to personally compliment Chairman FORD and ranking member COLEMAN for their perseverance in fighting for a conference agreement that we in this body can—and should—be proud of and fully support. In addition, I would like to compliment Chairman FORD's staff for all of their tireless efforts in working out many of the differences between H.R. 3700 and S. 1965.

While it may not contain provisions meeting each and every Members' desires, including my own, I want to tell my colleagues, given the financial restraints we worked under, it is the best possible agreement that we were able to work out with the other body. Regardless of personal desires, each and every Member of Congress will have thousands of constituents who will benefit from the provisions of this agreement. Indeed, our entire Nation will benefit from this agreement.

I urge my colleagues on both sides of the aisle to vote yes on passage of this legislation.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from Maine [Mr. MCKERNAN].

Mr. MCKERNAN. Mr. Speaker, I want to just say to the leadership of the Committee on Education and Labor and the staff what a privilege it has been for me to serve on that committee during this term that we are reauthorizing such an important piece of legislation.

Particularly I want to thank the chairman, the gentleman from Michigan [Mr. FORD] and his staff, as well as the ranking member, the gentleman from Missouri [Mr. COLEMAN] and his staff, and the ranking member of the full committee, the gentleman from Vermont [Mr. JEFFORDS], because they have been of incredible assistance to me and my staff as we have tried to address problems that are specific to Maine children who need the opportunity for higher education.

Whether they are problems that are unique to our own secondary market where we are trying to give more opportunity to Maine children for higher education; whether it is the problem of rent subsidies being considered a part of income for the nontraditional students who need that help in order to go back to school; whether it is expanding the work-study programs to make sure that we can put more funds into job placement, so that we can make sure that we have the opportunities that are going to be essential for a work-study program to work; or whether it is just changing the opportunities the students have under the Guaranteed Student Loan Program.

Maine has the lowest percentage of students in this country who go on to higher education, but the largest percentage who use guaranteed student loans.

I believe the kind of changes that we have made are going to allow more Maine students and more students throughout this country to have the opportunity to use government assistance to make sure that they have the opportunity to get the education which is going to be so important for their futures.

Mr. Speaker, I think we have satisfied the goal that we started out with, thanks to the leadership on our committee putting education ahead of partisan politics. That is the way legislation ought to be crafted, and I am convinced that will mean we are going to have more opportunity for students in this country within the limited dollars that we have.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, quite often when the Congress considers major legislation of this type, it has difficulty drafting the legislation in a way that affects the future. We so often know what has happened in the past that sometimes we in effect fight the last war.

I am pleased that the chairman and those of us who worked on this legislation were able to draft it in a way that we took a close look and affected the lives of the new college student.

There is a myth, Mr. Speaker, that the American college student is 18 years old, male, unmarried, not working, and enrolled in the business school. I do not know if that was ever true, but it certainly is not true today; and this bill really takes a major step at working with what we might call the nontraditional college student, the student that is more and more making up the majority of the student population on the campus.

With this legislation we try to provide appropriate assistance to returning students, to single parent students, to workers who have been thrown out of work in these last two recessions in the past few years, and want to return to a campus to pick up additional kinds of skills.

□ 1720

Time does not allow me to enumerate all of the many, many pages of changes that are in this bill which will affect the new students coming onto the campuses today and tomorrow. I want to commend the chairman for his leadership in ensuring that this bill affects those types of students and I would like to also commend my colleagues on both sides of the aisle, particularly, if I might take the risk of singling out one colleague, particulary Mr. GUNDERSON on the minority side of the aisle for the excellent work that he did in coordinating and cooperating with me and others in writing this bill in a way that it takes care of the nontraditional new college student who is going to be on America's campuses.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. HENRY].

Mr. HENRY. Mr. Speaker, I rise in support of the conference report on S. 1965, the higher education amendments of 1986. This legislation responds to the two overriding concerns today when it comes to Federal student financial assistance—making more dollars available, both in grants and in subsidized loans, for those students unable to pay the increasing costs of higher education, while also tightening eligibility criteria and collection procedures, to insure that only those students who need Federal aid receive it, and that those who do receive loans repay them. The bill maintains the critical combinations of Federal grants and loans which have been so important in insuring educational opportunity to our young people, and increasingly, older workers who need retraining and further education as well.

In addition, the conference report follows the House bill and includes a new program to address one of the most pressing needs of higher education today—the critical need for new and upgraded research and educational facilities. By involving private capital in this new program of loan insurance and reinsurance for educational facilities, this program will allow us to leverage a large number of dollars for college construction with relatively few Federal dollars involved.

I want to also commend the outstanding efforts of Chairman FORD, and of my ranking member of the subcommittee, Mr. COLEMAN, and to the chairman and ranking member of the full committee, Chairman HAWKINS and Mr. JEFFORDS for all of their work on this legislation. It is a tribute to

them, as well as an acknowledgement of the importance of these higher education programs to our present and future strength as a nation, that this measure has maintained such a level of bipartisan support throughout the legislative process.

Finally, let me mention two particular provisions in the legislation. Under present law, there are two supplemental loan programs—the Supplemental Loan Program for Students [SLS] which is available to graduate and professional students and to undergraduate students who have been deemed to be independent, and PLUS loans, which are available to parents of dependent students. While the loans are in many ways similar—there is, for example, no interest subsidy paid by the Government—the repayment terms under the two programs are different. Under the student loan program, the borrower has the option, with the lender, to either pay only the interest on the loan while the student remains in school, or to capitalize the interest and begin repayment after completing school. Under the parent loan program, repayment of both principal and interest must begin within 90 days of disbursement of the loan, under existing law.

The conference report makes two important changes in the parent loan program, which should go a very long way in making this program more useful to families whose income and assets prevent them from getting a guaranteed student loan, or for whom the GSL does not meet educational costs. The first is to add a variable interest rate, based on the U.S. Treasury bills, a change which was due to the efforts of Congressman JEFFORDS. The second change would allow flexibility in the repayment terms of these loans, adding the interest only while in school and capitalization options presently available under the student loan program, to this program. The combination of these changes will make this program more useful to families which are caught in the crunch between increasing educational costs, and the new restrictions on the more expensive GSL Program.

I have already mentioned the new construction loan program included in title VII of the conference report. The bill also includes, in conjunction with that program, a nondiscrimination provision, initially added by the other body. While the intent of that provision was to insure that none of the benefit of this program goes to those schools which follow policies of racial or other discrimination—an intent which I agree with—the language adopted by the other body would have precluded the participation in this program by a great number of private schools which maintain their identity through the religious faith commitment of faculty, staff, and/or students. Many of these schools are no longer, or have never been, formally tied to or controlled by a particular church or denomination, but nonetheless have maintained a commitment to an identifiable set of religious beliefs and ask their faculty, staff, and/or students to accept these as well. While it would have been my first preference to simply remove the prohibition on religious discrimination, as has been done in all of the other education statutes, it was not possible to get the other body to agree. So language has been included in the bill clarifying that these institutions which follow an identifiable set of religious beliefs, and which require their faculty, staffs, or students to accept these religious beliefs, are not thereby prohibited from participating in this program.

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. ATKINS].

Mr. ATKINS. Mr. Speaker, the $10.2 billion authorized by this legislation is about the best investment in this country's future that I can imagine. It will open the doors of educational opportunity to more than 12 million students. While we have provided the educational opportunities our society so desperately needs, we have held spending below current authorization levels. We have targeted financial aid to students and families with the greatest need, and we have found affordable methods of assisting middle-income families.

We have raised financial aid levels to reflect the increased costs of higher education. We have reenacted a student loan consolidation program that will let students stretch out their repayments and lower their debt burdens. We have set up new tougher procedures for collecting on defaulted student loans.

That we can improve the act's student aid programs and save money at the same time is a tribute to the bipartisan effort that went into the drafting of this bill. I would especially like to congratulate our chairman, Mr. FORD, for his unending efforts on behalf of this legislation.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Mr. Speaker, darned near everything has been said on this bill. I just want to rise and say "thank you" to the chairman of the Subcommittee on Higher Education, "thank you" to the ranking member of both the subcommittee and of the committee.

Last year I read in the Wall Street Journal about a program up at Harvard that struck my imagination as one that might be useful for the whole country, one that would take people who had served in a career for some time, 20 or 25 years and then train them to be a teacher.

So I went to Mr. FORD and asked him his ideas about it. He said, "Why don't you introduce a bill?" Later he suggested "let's put it in the Higher Education Act."

Then he helped me get it through the conference committee, as did the gentlemen from Missouri [Mr. COLEMAN] and Vermont [Mr. JEFFORDS].

I think this is an example of people from different parties working together, holding hearings in my State, and I just want to stop for just a moment, from all the rest of the discussion of this and just say that this is a little personal triumph for me. It is my first bill through the Congress, and I am tickled about that. But you never do anything alone.

Especially to you, Mr. Chairman, "thanks a million."

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. KILDEE].

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

Mr. KILDEE. I yield to the gentleman from California.

Mr. PANETTA. I thank the gentleman for yielding.

Mr. Speaker, I rise to pay tribute to the chairman and those involved in this conference, particularly on the foreign language areas, title VI. If we are going to have strong higher education in this country, it does have to emphasize foreign language training.

Mr. KILDEE. Mr. Speaker, I rise in support of the conference report on S. 1965, the Higher Education Act Amendments of 1986. This conference report will help achieve the goal of equal educational opportunity by reauthorizing grants and loans to the Nation's colleges and their students for 5 years. I commend the gentleman from Michigan, Chairman FORD, for skillfully guiding this important measure through Congress, and I urge my colleagues to support it.

I was a conferee for title XIII of this measure, which creates an autonomous Institute of American Indian and Alaskan Native Culture and Arts. This institute will be a continuation of the excellent program in Santa Fe, NM, which I have had the privilege of visiting. Special attention in the long effort to take this vital step goes to Congressman RICHARDSON, who has worked for several years on these provisions. I am sure that it will allow continued growth in the program. I believe the institute will be a showplace for young Indian artists and artisans.

I must also mention the fact that the conference report on S. 1965 takes the first step in recognizing the need to preserve and foster native Hawaiian art and culture. The grant program authorized by this section is not in

competition with, but is separate and in addition to, the program in Santa Fe. As such, it is to be commended and supported.

In addition, the conference report on S. 1965 incorporates provisions from H.R. 147, which I introduced on January 5, 1985, and which is cosponsored by 78 Members of the House. These provisions ensure funding for the National Diffusion Network.

The National Diffusion Network [NDN] was created in 1974 by the Department of Health, Education, and Welfare. Its objective is to carry out a congressional mandate to improve educational quality through the dissemination of exemplary educational programs to school districts throughout the United States. It is the only program in the country that has this objective. The NDN also provides assistance to school districts that wish to adopt and operate any of these programs. Though relatively small, the NDN has amassed an impressive record of success in meeting this objective.

Since 1974, the NDN has been fostering the improvement of educational practice in school districts in all 50 States, the District of Columbia, the Virgin Islands, and Puerto Rico.

Currently, NDN programs are funded from tier II of the Secretary's discretionary fund. This provision ensures funding under the Secretary's fund by moving it into tier I of this fund.

Also incorporated into the conference report on S. 1965 are provisions from H.R. 2210, which I introduced on April 24, 1985. H.R. 2210 adds two principals to the Assessment Policy Committee [APC], a body established by Congress to help assess education policymaking at the local, State, and Federal levels.

These provisions will enhance the important task of assessing the achievement levels of children and young adults in the basic skills of reading, mathematics, and communication.

Congress mandated a national assessment of education progress when it enacted Public Law 95-561, the General Education Provisions Act [GEPA]. The APC is charged with the task of selecting the learning areas to be assessed, developing goals and assessment objectives, identifying appropriate methodology and ground rules for measuring educational progress and determining the form and content of the assessment's report, as well as the method of dissemination. The APC also conducts studies on how to improve the ultimate use of the national assessment.

Principals set the learning climate, are the curriculum leaders and are the ones who implement change in each school. They observe and assess the daily implementation of curricula. Secondary and elementary principals would bring to the APC a much needed perspective of the every day implementation and assessment of curricula. This measure affords the utilization of this perspective.

Finally, Mr. Speaker, I would like to take this opportunity to express my heartfelt appreciation to Mr. David Solis, formerly of my staff, whose hard work, contributed greatly to the National Diffusion Network and the Assessment Policy Committee provisions of this bill. Mr. Solis has recently returned to the teaching profession, and I am sure we all wish him well in his future endeavors.

Again, Mr. Speaker, I urge my colleagues to support the conference report on S. 1965.

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. FASCELL], the chairman of the Committee on Foreign Affairs.

Mr. FASCELL. Mr. Speaker, I take this time to engage the subcommittee chairman in a colloquy.

Mr. Speaker, I understand that the conference agreement contains language creating a special commission which will study the issue of title IV eligibility for students whose immigration status is pending or is in some other way unclarified.

Mr. FORD of Michigan. Mr. Speaker, if the gentleman will yield, yes there is report language to this effect.

Mr. FASCELL. I would like to suggest that one component of the commission's study in this area be an examination of the special concerns of higher education institutions like Miami-Dade Community College in Miami, FL. Miami-Dade is the largest community college in the United States and has a long and distinguished record of educating students from other nations. The commission should pay special attention to the students of Nicaraguan descent who are enrolled at Miami-Dade and other higher education facilities in south Florida. The administration's refusal to clarify the immigration status of these students has placed their educational future in peril. Miami-Dade argues that an educated populace is a productive populace. I trust that these special concerns can be included in the commission's mandate.

Mr. FORD of Michigan. I, too, would hope that the commission would pay special attention to concerns of this nature.

Mr. Speaker, I yield 1 minute to the gentleman from Kentucky [Mr. PERKINS].

Mr. PERKINS. Mr. Speaker, I appreciate the chairman giving me this opportunity to rise and voice my strong support for this conference report. We have gone through an extensive examination of all the higher education programs and I feel that we have been able to put together a bill that addresses many of the needs that are facing the higher education community today. I feel that this bill also provides the structure for today's programs to face tomorrow's problems as higher education grows and expands through the 5-year life of this reauthorization.

In this conference report we were able to preserve the present interest rates on the guaranteed student loans that are used and critically needed by today's students. We were also able to open the door of hope and access a little wider for the nontraditional students. Many of the truly deserving will become eligible for Pell grants in the coming years as a result of this initiative. Hopefully we will be wise enough to continue to build on this idea and provide more access for nontraditional students in the future.

I congratulate the chairman of our postsecondary subcommittee on his excellent leadership and hard work throughout the hearings, markups, and the conference proceedings with the Senate. Because of Congressman FORD's dedication to this legislation we have a reauthorization that deserves unanimous support from both Houses of Congress. I urge everyone to vote for approval of this conference report on S. 1965.

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from the Virgin Islands [Mr. DE LUGO].

Mr. ECKART of Ohio. Mr. Speaker, will the gentleman yield?

Mr. DE LUGO. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Speaker, the Education and Labor Committee, and the conference committee both on which I sit, faced a formidable task in reauthorizing the Higher Education Act. While increasing tuitions at institutions force more students to seek financial assistance, the budget deficits are placing great pressure on Congress to control student aid costs. Through enormous diligence, we were successful in drafting a bill which provides more aid to individual students while keeping costs down.

I am particularly pleased with this bill as it serves the needs of the nontraditional students. As a Representative of northeastern Ohio, I have striven to provide assistance to the many workers in my district who have permanently lost their jobs. The economic dislocation in our economy has been enormous in the past decade, with millions of workers losing their jobs. Thousands of those coming from northern Ohio. Yet, few Federal funds are available to help these workers get back on their feet. This Congress, I introduced a provision, included in this bill, which allows dislocated workers to qualify for student aid so that they

can pursue additional education and training to reenter the work force.

Significant barriers stand in the way of these pursuits. Many of these workers have financial responsibilities such as owning homes and providing for their families, which render them ineligible for assistance. My amendment allows that for these workers, the principal place of residence is not computed as an asset, and unemploymet insurance is not considered income to determine their needs for Federal aid. This provision is also extraordinary because it provides these workers with the opportunity to enter an educational or retraining program unique to their particular needs and abilities.

Mr. Speaker, education is the stepladder by which each generation improves over the past.

Job retraining and education opportunity are the keys to future economic development in the industrial Midwest. It is not enough to retool our factories; we must also reskill our workers as well. Hope, access, opportunity, this conference report represents that for millions in our society.

Mr. Speaker, I urge support for this legislation. I commend Chairman HAWKINS and Chairman FORD for their excellent work in writing this legislation.

Mr. DE LUGO. Mr. Speaker, I rise in support of approval of the conference report on the Higher Education Act Amendments of 1986. While I regret that we could not be more generous in authorizing these programs, I believe that passage of the proposal before this body today will reaffirm Congress' commitment to assuring access to higher education.

I am particularly pleased to note that, in referring to the definition of "historically black colleges and universities" under title III, of the act, the conference report specifies that the definition includes "many institutions * * * at least one established as late as 1963". The College of the Virgin Islands is one such institution.

The College of the Virgin Islands was created to serve the needs of the U.S. Virgin Islands community. This is a primarily black community, and the school was created to offer an access to higher education previously unavailable to the native West Indian residents of the territory. The school has done, and continues to do, a commendable job in this regard. It fits squarely within the objectives of the part B set-aside. Its student body has historically been primarily black, and is expected to be in the future.

Unfortunately, earlier definitions of historically black institutions had excluded the College of the Virgin Islands because it was created after the landmark civil rights case, Brown versus The Board of Education. Yet, the college's function has been the same as those institutions: to provide quality postsecondary education to black students with limited access to other institutions of higher learning.

I thank the gentleman from California, Chairman HAWKINS, the gentleman from Michigan, BILL FORD, chairman of the conference committee for their role in making clear that the College of the Virgin Islands is included under the part B set-aside. I appreciate their understanding of the importance of the college to the future of the U.S. Virgin Islands and their care in assuring that black students in that part of the country benefit from the same consideration as their mainland counterparts.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, let me just say there has been a lot of commendation today to the Members who have been involved. I also want to say thank you to the fine staff which has supported us. This is a very complicated and complex bill and subject matter, and both the Republican and Democratic staff members deserve a great deal of credit for the success of this particular conference report.

I think all of us want to thank them today.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. COLEMAN of Missouri. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding.

Mr. Speaker, I thank the gentleman from Missouri for his remarks, and I associate myself with his remarks. Indeed, this has been a monumental task for both the majority and minority, and they have performed well.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield the balance of our time to the gentleman from Michigan [Mr. PURSELL].

Mr. PURSELL. I thank the gentleman for yielding.

Mr. Speaker, as a member of the Committee on Appropriations' Subcommittee on Higher Education, I want to say congratulations to Chairman FORD and Congressman COLEMAN and others who have presented an outstanding bill for this country for the next 5 years.

Mr. NATCHER and I and others on the subcommittee have set aside the reserves, earmarked dollars for higher education, and we are prepared to fully fund the authorization bill at the maximum level.

I just want to congratulate Congressman FORD and others who have an outstanding long career of providing funds for our students and people in higher education in America.

I congratulate the gentleman for an outstanding piece of work and yield back the balance of my time.

Mr. McCAIN. Mr. Speaker, today I rise in strong support of the conference report on the Reauthorization of the Higher Education Act. During the 98th Congress, I served on the Committee on Education and Labor which was holding preliminary hearings on this topic and since then I have taken a strong interest in this reauthorization. My district includes one of our Nation's largest and finest universities, Arizona State University, and my State of Arizona is the home of several other fine institutions of higher learning. The huge private and State funding available to many Eastern schools does not exist for schools in my State. That is why this bill is so important to me.

I was most gratified to see that changes were made allowing for increased student loans and grants. The action to expand aid to part time and nontraditional students is extremely important to me and to Arizona. As many Members have said today, the archtypical college student is no longer 18 to 22 years old, upper middle class and supported by his or her parents. We need to provide for all Americans, no matter what age or background. Part-time students training for a better job or retraining to start a new career will especially benefit. In Arizona, this group includes dislocated copper workers and countless others.

This bill also provides for aid to postsecondary institutions beyond the standard 4-year college, university, or graduate school. We recognized the existence and needs of technical and business schools, so important in our Nation's move toward a high-technological service-oriented economy.

This reauthorization is vital to our Nation and I urge my colleagues' strong support. As a father, I believe this Nation must make every effort to invest in our most important natural resource, our children.

Mr. GILMAN. Mr. Speaker, I rise in support of the conference report on S. 1965, the Higher Education Act Amendments of 1986. I would like to commend the gentleman from California [Mr. HAWKINS] for the leadership he has provided us in bringing this legislation before us today and for his continuous support of higher education.

Mr. Speaker, yesterday we debated for the rights of our senior citizens. Today, we are arguing for the rights of an extremely important segment of our population, our young people. The future leaders of our Nation and this Government lies with our young citizens. A student loan or a Pell grant can make all the difference in allowing a person to receive a higher education. We must not deny them the opportunity to better themselves merely because they may not have the financial means to do so.

This legislation will help allow our nontraditional students to obtain an education. In these days of financial troubles, many students cannot afford to attend school on a full-time basis or choose to enter the work force and return to their education later. This conference report extends to those students who attend less than part time, access to aid. This will allow many of our students to remain in school while also opening doors to many of our older citizens.

I believe the conference committee has done an outstanding job in helping build a

strong higher educational system while working within strict monetary constraints. Accordingly, I urge my colleagues to support the conference report on S. 1965, to ensure the continued prosperity of our educational system and of our young people.

Mr. AKAKA. Mr. Speaker, I rise in strong support of the conference report on the bill, S. 1965, the Higher Education Act amendments.

Of particular interest to me and my constituents is a provision in the conference report which affords particular attention to native Hawaiians. Specifically, the conferees have agreed to provide funds for the purpose of establishing a Native Hawaiian Culture and Art Development Program in order that their precious art and cultural history may be preserved.

Clearly, the conferees believe, and I concur, that such a program is vital to the promotion and protection of native Hawaiian culture and art. It is generally agreed that a Native Hawaiian Culture and Art Development Program, independent of the Culture and Arts Development Institute established for American Indians and Alaskan Natives, provides the most effective means for the Federal Government to support research and scholarship in native Hawaiian art and culture.

Under the provisions of S. 1965, the Secretary will make a grant to a private, nonprofit organization or institution primarily serving and representing Hawaiian natives. It is imperative that the importance of efficient management of this grant be recognized, and as such the Secretary should ensure that said grant be made to an established organization knowledgeable in the cultural and artistic heritage of native Hawaiians. Such an institution is the Bernice Pauahi Bishop Museum, in Honolulu, HI, which serves as an invaluable resource in the study of Hawaiian culture. The Secretary would no doubt be acting in accordance with the intent of this provision to exercise maximum flexibility in allowing the Bishop Museum to administer this grant.

A very important element in the success of this program will certainly be the establishment of a governing board to control its activities. Indeed, the need for expert representation in order to ensure the long-term viability of the program cannot be overemphasized. Therefore, it is envisioned that the board shall be comprised of individuals who are native Hawaiian, or other individuals, who are widely recognized in the field of Hawaiian art and culture, of which the total number of voting members shall be 13. The members of the board should be appointed by the Governor of the State of Hawaii.

The board's leadership should include as chairman, the chairman of the Office of Hawaiian Affairs, and as vice-chairman, the president of the Bishop Museum. In addition, the president of the University of Hawaii should occupy a seat on the board. In making the 10 additional appointments, the Governor should consult with and seek nominations from native Hawaiian organizations within the State of Hawaii, and should ensure that their terms rotate, at least every 6 years. Ideally, no member would be eligible to serve in excess of two consecutive terms, but may continue to serve until such member's successor has been appointed.

Of the members first appointed, three should be appointed for terms of 2 years, three should be appointed for 4 years, and four should be appointed for terms of 6 years; as designated by the Governor at the time of appointment. Such terms will surely result in the most efficient administration possible.

The composition of its board will not be the sole determinant of success for this program. Also imperative to its success is the location of this program in an environment complementary to its objectives. As we are well aware of the historic expertise of the Bishop Museum in acquiring, preserving, and promoting the art and culture of native Hawaiians, it would be most appropriate for us to intend that the Bishop Museum be maintained as the location for the Native Hawaiian Culture and Art Development Program.

Finally, it would certainly be of great assistance to Congress if the Secretary would see that a report be submitted to the Congress annually by the Department describing the efforts being made to date to identify and perserve and perpetuate native Hawaiian art and culture.

Mr. Speaker, I am sure that I speak for Hawaii's entire population when I say that the committee and its staff should be thanked and commended for their sensitivity to the need for preservation and promotion of native Hawaiian art and culture. I would like to go on record as saying that I will be sure to monitor the progress of this program as closely as possible to ensure that the intent of Congress is best fulfilled.

Mr. HAWKINS. Mr. Speaker, I appreciate the opportunity to comment briefly and affirmatively on the conference report on S. 1965, the Higher Education Amendments of 1986.

The reauthorization of the Higher Education Act of 1965 is overwhelmingly significant today, because of the high cost of going to college, and because S. 1965 seeks to keep access to college open to all students, and especially to capable students who want to go to college, but who also have great financial need.

Additionally, S. 1965 addresses the goal of equal educational opportunity through improvements in student financial assistance programs, through balance and equity provisions in these programs, by making the system fairer in determining the share of educational costs students and their families can be expected to bear, by providing more effective service to the nontraditional student, and by providing certain increases in, and better targeting of student financial aid programs.

Of particular interest to me in this landmark proposal is title III. The provisions of this title are substantially similar to legislation I introduced earlier this year, H.R. 2907, a bill that revised and modified title III. I want to express my appreciation to the subcommittee chairman for his careful consideration of the proposed changes to title III which were ultimately adopted by the conference committee and which I believe are key to ensuring an equal opportunity for a higher education for all Americans—particularly minority, low-income, and educationally disadvantaged students.

The intent of title III is to provide grants of assistance to less developed colleges and universities which serve large numbers of low-income and minority students, in an effort to help these institutions strengthen their academic programs and management capabilities and move toward self-sufficiency. I believe it is unquestionably in our Nation's interest to ensure the stability and growth of the many postsecondary institutions that are struggling to survive in the face of declining enrollments and scarce resources. The purpose of this title is to assist these institutions in equalizing educational opportunity by expanding the avenues of access to a higher education.

While current law has provided valuable assistance to many developing postsecondary institutions, there are many other intended beneficiaries of title III assistance that have not received a sufficient or fair share of available funds—funds, I might add, that have never been adequate to assist all deserving institutions. This is particularly true for historically black colleges and universities, and other institutions serving large numbers of minority and low-income students. Accordingly, the revised title III eliminates duplicative and confusing eligibility requirements that have contributed to a lack of effective distribution of funds in the past, and is restructured to ensure that intended beneficiaries of title III funds will be eligible to receive grants of assistance.

The revised title III creates a new part which authorizes grants to historically black colleges. Other institutions with large concentrations of minority students may be eligible for title III assistance based in part on their minority enrollment. Developing schools serving large numbers of low-income students may establish title III eligibility under clearer requirements based on up-to-date student information. Also, a relatively substantial percentage of title III funds in set aside for eligible junior and community colleges. In addition to basic grants of assistance, title III recipients may receive matching grants to establish or build their endowments—certainly an important step toward achieving financial self-sufficiency for any school.

Title III is an integral and important part of S. 1965 for many reasons, not the least of which is furthering our national commitment to equal educational opportunity for all of our citizens, regardless of race, national origin, or family income. I therefore urge my colleagues to approve the conference report on S. 1965.

Mr. VENTO. Mr. Speaker, I am pleased to support the Higher Education Act amendments conference committee report.

This bill reconfirms our commitment to higher education by realistically compensating for increased costs by increasing the appropriation in this time of budget constraint.

The Higher Education Act amendments represent a significant investment in America's future. Federal student assistance is among our most successful programs. It is important to keep higher education as a national priority and to ensure that every American has the opportunity to attend college.

I am particularly happy to see a provision concerning deferments for guaranteed student loans contained in this bill. By including this one small provision we have prevented an injustice from occurring in the future. That provision is a deferment for single parents with disabled dependents.

A woman in my district is suffering due to just such an oversight in current law. She is unable to work because her 3-year-old child has cancer but was unable to obtain a deferment. Deferments were available to individuals with a disabled spouse but not for a single parent with a disabled dependent. Although she was undergoing extreme stress she has led a one women fight in demanding that this injustice be corrected. Congress listened. Due in part to my constituent's diligent efforts, people in her circumstance will be protected in the future.

Unfortunately, this change is not retroactive but it does prevent this circumstance from occurring in the future. I have been told that due to budget constraints deferments contained in this bill are not retroactive. Although I would have preferred to see this change help my constituent, I feel the change was a reasonable solution to the problem and will effectively prevent this situation from reocurring.

Importantly is the opportunity to consolidate an individuals guaranteed student loans in the conference report before us today, this is surely an avenue to help redress existing loans that provide no such deferment, if other conditions as to the amount and circumstance can be met.

I'm pleased to rise in strong support and urge my collegues to support the Higher Education Conference Committee report before the House today.

Mr. RAHALL. Mr. Speaker, I rise today in support of the conference report for S. 1965, the Higher Education Act amendments. This report represents a bipartisan rejection of the administration's proposals for deep cuts in higher education, and I commend the conferees on their diligence and efforts on behalf of our Nation's low- to middle-income students.

As a strong proponent of legislation designed to enhance our Nation's educational capabilities, I am particularly interested in this authorization bill. I have reviewed information which outlines the need for student financial aid in my home State of West Virginia and cannot overstate the hope that the adoption of this measure will provide for many of my low- to middle-income constituents who, without this assistance, would have little to no hope of obtaining a college education. I would like to briefly outline the situation in West Virginia in this regard. In this way, I hope to go beyond the basic understanding of need to show in broad terms the number of people helped by federal student financial aid in West Virginia, as well as the additional unfulfilled need that exists.

In March 1985, a report was released by the West Virginia Association of Student Financial Aid Administrators on financial aid concerns. The board of regents had conducted a survey of student assistance awarded to undergraduate students enrolled in West Virginia public and private colleges during the 1983–84 academic year. The critical importance of federally supported or regulated student aid programs is demonstrated by the fact that 76.2 percent of all assistance awarded in that year came from Federal programs. The percentages of undergraduate students receiving some form of financial assistance were 41.5 percent at public institutions, and 59.0 percent at private colleges. While approximately $100.1 million in student assistance was awarded at all levels, schools estimated a funding shortfall of $61 million in comparing demonstrated needs to available student aid dollars. The data indicate that large numbers of students are not receiving needed aid dollars at current funding levels. The report concluded that a reduction in funding may be expected to exacerbate the serious college access problem already in existence.

In addition to the Guaranteed Student Loan [GSL] Program, which subsidizes borrowing for low- to middle-income students, and the Pell Grant Program, the primary source of Federal student aid fund for low-income students, the conference agreement reauthorizes a number of other programs which are designed to enhance educational opportunities for our Nation's low- and middle-income population. Students would be allowed to borrow substantially more in low-interest loans to pay their college tuition bills, and access to Pell grants and other forms of Federal aid would be increased to part-time students due to the increasing trend of part-time attendance by people who are going to college later in life. In addition, the measure includes a revised program of support for continuing education, new grants for campus child care programs and provisions allowing students to postpone repayment of past college loans if they return to school part time.

In all, the conference report would authorize the following amounts in millions of dollars for fiscal 1987 (the figure in parentheses represents fiscal 1986 appropriations): Pell grants, $4,600, with no authorization ceiling ($3,578); guaranteed student loans, $3,200 with no authorization ceiling ($3,259); supplemental educational opportunity grants, $490 ($395); national direct student loans, $275 ($209); income-contingent loan demonstration projects, $5 ($0); college work-study, $656 ($567); TRIO, special services for the disadvantaged, $205 ($169); State student incentive grants, $85 ($73); programs for migrant farmworkers, $9 ($7); Commission on college financing, $2 ($0); merit scholarships, $8 ($0); Child care grants, $10 ($0); Veterans' services, $5 ($3); Continuing education, $10 ($0); College libraries, $30 ($7); Developing institutions, $245 ($135); Teacher training, $60 ($20); International education, $55 ($27); Facilities construction, $100 ($50); Cooperative education, $17 ($14); Graduate education, $90 ($19); Postsecondary improvement, $25 ($17); Urban universities, $17 ($0); Total, higher education programs, $10,199 ($8,549).

The programs authorized by this conference report are of vital importance in providing for the need this Nation's students face. This measure begins to bring our funding policies for education programs back from the destructive path into which the current administration has led us. This is an important step in this effort, and I commend the gentleman from Michigan [Mr. FORD], chairman of the Subcommittee on Postsecondary Education, the gentleman from California, [Mr. HAWKINS], chairman of the full Committee on Education and Labor and all those members of the committee and conferees who are responsible for bringing this promising measure before us today. I urge my colleagues to support adoption of this conference report.

Mr. DORGAN of North Dakota. Mr. Speaker, I rise in support of the conference report on the higher education reauthorization. A strong financial aid program is essential to our national security. By opening the doors of educational opportunity to all, we ensure that America will continue to have a large pool of well educated future leaders.

While the bill was being drafted in the House, I supported a provision which excludes income from foreclosure, forfeiture, liquidation, or bankruptcy from the calculation of family assets. This provision will help students from farm families qualify for the financial aid they need to continue their education.

Similarly, it is my hope that the imposition of a needs test will provide the means to a more equitable and fair distribution of Federal assistance while not proving discriminatory toward the family farmer who may be asset rich and cash poor. The asset protection measures in the bill should prevent the need to cannibalize the family's income producing assets in order to finance a student's education. However, I will be watching this new aspect of the Federal financial aid program to be sure that it does not adversely effect students who truly deserve financial assistance.

I want to thank my colleagues for their hard work on this legislation; it clearly demonstrates that with careful consideration, Federal programs can be effective and cost efficient.

Mr. FASCELL. Mr. Speaker, I rise in support of the Higher Education Act conference report, specifically the provision which reauthorizes the U.S. Institute of Peace for two additional years. The conference measure provides for funding levels identical to the Institute's initial authorization, that is $6 million for fiscal year 1987 and $10 million for fiscal year 1988.

As my colleagues will recall, the U.S. Institute of Peace was enacted in October 1984 and only recently has become operational with the appointment of its Board of Directors. Since that time, the U.S. Institute of Peace's Board of Directors has met on numerous occasions in order to move forward on establishing a viable and operational U.S. Institute of Peace.

I am pleased with the progress that the U.S. Institute of Peace has made and believe that now more than ever this Institute can serve as a vital role in the development and strengthening in peace research and education. I would like to commend my colleagues, GUS HAWKINS, the chairman of the Education and Labor Committee, and BILL FORD, chairman of the Postsecondary Education Subcommittee for their support in conference for reauthorizing the U.S. Institute of Peace.

The SPEAKER pro tempore (Mr. MONTGOMERY). All time has expired.

Mr. FORD of Michigan. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. COLEMAN of Missouri. 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 pro tempore. 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 385, nays 25, not voting 22, as follows:

[Roll No. 409]

YEAS—385

Abercrombie
Ackerman
Akaka
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Badham
Barnard
Barnes
Barton
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Biliraki
Bliley
Boehlert
Boggs
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Brooks
Brown (CA)
Brown (CO)
Bruce
Bryant
Bustamante
Byron
Callahan
Carney
Carper
Carr
Chandler
Chapman
Chappell
Clay
Clinger
Coats
Cobey
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Cooper
Coughlin
Courter
Coyne
Craig
Crockett
Daniel
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Derrick
DeWine
Dicks
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Eckert (NY)
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fiedler
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Franklin
Frenzel
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hansen
Hartnett
Hatcher
Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Loeffler
Long
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
MacKay
Madigan
Markey
Marlenee
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCloskey
McCollum
McDade
McGrath
McHugh
McKernan
McKinney
McMillan
Meyers
Mica
Mikulski
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Monson
Montgomery
Moody
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Seiberling
Sensenbrenner
Sharp
Shaw
Shelby
Shuster
Sikorski
Siljander
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stokes
Strang
Stratton
Studds
Sundquist
Sweeney
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Waldon
Walgren
Walker
Watkins
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (MO)

NAYS—25

Archer
Armey
Bartlett
Boulter
Burton (IN)
Cheney
Crane
Dannemeyer
DeLay
Dickinson
Dreier
Fields
Gregg
Lungren
Mack
McCandless
Michel
Rudd
Schaefer
Shumway
Smith, Denny (OR)
Smith, Robert (NH)
Stenholm
Stump
Swindall

NOT VOTING—22

Alexander
Boland
Breaux
Broomfield
Burton (CA)
Campbell
Chappie
Conyers
Dingell
Edgar
Fowler
Frank
Grotberg
Kindness
Manton
Martin (NY)
McCurdy
McEwen
Moore
Waxman
Young (FL)
Zschau

□ 1745

Mr. SMITH of New Hampshire changed his vote from "yea" to "nay."

Mr. OXLEY changed his vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

A REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3810, IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1985

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 99-875) on the resolution (H. Res. 559) providing for the consideration of the bill (H.R. 3810) to amend the Immigration and Nationally Act to revise and reform the immigration laws, and for other purposes, which was referred to the House Calendar and ordered to be printed.

□ 1755

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on S. 1965, Higher Education Amendments of 1986.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Michigan?

There was no objection.

AUTHORIZING THE SECRETARY OF THE SENATE TO MAKE CORRECTIONS IN ENROLLMENT OF S. 1965, HIGHER EDUCATION AMENDMENTS OF 1986

Mr. FORD of Michigan. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 394) to correct technical errors in the enrollment of the bill S. 1965, and I ask unanimous consent for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

Mr. JEFFORDS. Mr. Speaker, reserving the right to object, I do so only for the purpose of allowing the chairman of the Subcommittee on Postsecondary Education to explain what the nature of the concurrent resolution is.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Speaker, the concurrent resolution makes technical corrections to the bill which include corrections in effective dates which were agreed to by the conferees but were not reflected in the final draft of the conference report and other material which was inadvertently deleted in the final draft of the conference report. The changes in the effective dates are extremely important to enable us to meet the spending targets for the guaranteed student loans.

Mr. JEFFORDS. Mr. Speaker, I assure the body that I have reviewed these technical changes and agree with the chairman, with one little addition, that there is also a $50 threshold in there which no one even understood was going to be included. It appeared; that has been removed and I appreciate that.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 394

Resolved by the House of Representatives (the Senate concurring) That, in the enrollment of the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) In section 332(e) of the Higher Education Act of 1965 (hereafter in this concurrent resolution referred to as the "Act"), as contained in section 301 of the bill, insert after "An institution receiving a" the following: "grant under this section shall provide to the Secretary (or a designee thereof) such information (or access thereto) as may be necessary to audit or examine expenditures made from the endowment fund corpus or income in order to determine compliance with this section.

"'(f) SELECTION CRITERIA.—In selecting eligible institutions for grants under this section for any fiscal year, the Secretary shall—

"'(1) give priority to an applicant which is a recipient of a grant made under part A or part B of this title during the academic year in which the applicant is applying for a grant under this section; and

"'(2) give priority to an applicant with a greater need for such a grant, based on the current market value of the applicant's existing endowment in relation to the number of full-time equivalent students enrolled at such institution;

"'(3) consider—

"'(A) the effort made by the applicant to build or maintain its existing endowment fund; and

"'(B) the degree to which an applicant proposes to match the grant with nongovernmental funds.

"'(g) APPLICATION.—Any institution which is eligible for assistance under this section may submit to the Secretary a grant application at such time, in such form, and containing'".

(2) In section 427(a)(4) of the Act (as contained section 402(a) of the bill) strike out "interval between the first and".

(3) In section 427A(e)(3) of the Act (as contained in section 402(a) of the bill) strike out ", nor need any credit be made when the amount to be credited is less than $50".

(4) In section 428(b)(1)(O)(i) of the Act (as contained in section 402(a) of the bill) strike out "the interval between the first and second installment being dispersed" and insert in lieu thereof "the second installment being dispersed after".

(5) In section 438(b)(2)(D)(i) of the Act (as contained in section 402(a) of the bill) insert "or purchased" after "loans made".

(6) In section 402(b)(2) of the bill insert "(other than clause (ix) of each such section)" after "sections 427(a)(2)(C) and 428(b)(1)(M) of the Act".

(7) In section 406(b)(4) of the bill, insert before the period at the end thereof the following: ", in the case of programs operated under part B of title IV of the Act, or for periods of enrollment beginning on or after July 1, 1987, in the case of programs operated under subpart 2 of part A and parts C and E of such title".

(8) In section 408(a)(7) of the bill strike out "paragraph (4) and by striking out paragraphs (6) and (7)" and insert in lieu thereof "paragraph (3) and by striking out paragraphs (5), (6), and (7)".

(9) In section 606 of the bill, strike out subsection (b) and insert in lieu thereof the following:

"'(b) CONFORMING AMENDMENT.—Subsection (b) of such section is amended to read as follows:

"'(b) The Secretary shall prepare and publish an annual report listing the books and research materials produced with assistance under this title.'.".

(10) In section 1521(c)(2) of the bill, strike out "and" at the end of subparagraph (B), redesignate subparagraph (C) as subparagraph (E), and insert after subparagraph (B) the following:

"(C) include the president of the University of Hawaii,

"(D) include the president of the Bishop Museum, and".

(11) In section 901 of the Act (as contained in section 901(a) of the bill), strike out "low-income".

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

COMMUNICATION FROM THE HONORABLE WILLIAM HILL BONER, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable WILLIAM HILL BONER:

HOUSE OF REPRESENTATIVES,
Washington, DC, September 24, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, H-209, The Capitol, Washington, DC.

DEAR MR. SPEAKER: I have previously informed you that several present and former members of my staff had been served with subpoenas issued by the United States District Court for the Middle District of Tennessee. After consultation with the General Counsel to the Clerk of the House, I determined that compliance with those subpoenas was consistent with the privileges and precedents of the House and informed you of that decision.

Recently, two additional individuals who have been members of my staff have been served with similar subpoenas. I have again consulted with the General Counsel to the Clerk and, pursuant to his advice, I have determined that compliance with these subpoenas is consistent with the applicable privileges and precedents of the House.

Sincerely,

BILL BONER,
Member of Congress.

PERMISSION FOR COMMITTEE ON RULES TO FILE REPORT ON CONTINUING RESOLUTION

Mr. HALL of Ohio. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file a report providing for the consideration of the continuing resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, 1987

Mr. HALL of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 553 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 553

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the bill for failure to comply with the provisions of clause 5(a) of rule XXI are hereby waived. 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 Science and Technology, the bill shall be considered for amendment under the five-minute rule by titles instead of by sections, and each title shall be considered as having been read. 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 pro tempore. The gentleman from Ohio [Mr. HALL] is recognized for 1 hour.

Mr. HALL of Ohio. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Mississippi [Mr. LOTT], for purposes of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 553 is an open rule providing for the consideration of H.R. 5495, the NASA Authorization for fiscal year 1987.

The rule provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Science and Technology.

Under the rule, the bill shall be considered for amendment under the 5-minute rule by titles instead of by sec-

tions, and each title shall be considered as having been read. The rule also provides for one motion to recommit.

It should be noted that the rule waives clause 5(a) of rule XXI, which prohibits appropriations in a legislative bill. This technical waiver is needed because certain provisions of H.R. 5495 could be interpreted as involving appropriations in a legislative bill. This waiver, which is considered noncontroversial, has bipartisan support.

Mr. Speaker, H.R. 5495 authorizes funding for a number of programs and activities under the jurisdiction of the National Aeronautics and Space Administration. The bill contains funding for space flight, construction of facilities, control and data communications, and research and development. The measures provided by this legislation will help to restore and stimulate our space program in the wake of the *Challenger* space shuttle tragedy.

Mr. Speaker, I am not aware of any opposition to this open rule, and I urge my colleauges to adopt it.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I rise in support of the rule and this bill and commend the Committee on Science and Technology for its diligent work toward assuring a well-managed national space program. I am particularly pleased that the committee has included provisions in the legislation to prevent the obligation or expenditure of any funds for the purpose of reassigning any technical work responsibilities on a permanently manned space station.

In June of this year, NASA proposed changes in the space station program that appeared to adversely affect the Johnson Space Center, located in my district, by attempting to shift a number of work packages previously assigned to JSC to the Marshall Space Flight Center in Alabama. I was very concerned about this move, not only as it would have a negative impact on a facility located in my district which has a proven record of excellent performance, but also because the proposals made no sense in terms of either improved performance or effective cost savings.

At a time when the Nation's space programs have come under attack and when the administration is favoring a more militaristic orientation in funding for America's space efforts, I feel that we must keep a much more careful eye on any decisions that may take away from the maximum effectiveness of our civilian space program.

It is my understanding that at the committee's insistence, NASA has nearly completed its evaluations of the changes proposed earlier this summer. NASA officials have briefed me on the latest revisions of their plans, and I am confident that with the help of the committee's strong admonition, NASA will complete its justifications well before the Agency needs to obligate any of these funds.

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

Mr. Speaker, House Resolution 553 provides for the consideration of H.R. 5495 which authorizes appropriations to the National Aeronautics and Space Administration for fiscal year 1987.

The rule provides for the consideration of the bill in the Committee of the Whole, with 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Science and Technology Committee.

Following general debate, the bill will be read by title instead of by sections for amendments under the 5-minute rule. So, this is a completely open rule. Finally, the rule provides for one motion to recommit.

Mr. Speaker, the rule does include a waiver against the bill for failure to comply with clause 5(a) of rule XXI which prohibits appropriations in a legislative bill.

Mr. Speaker, H.R. 5495 authorizes approximately $7.7 billion for NASA in fiscal year 1987 for a variety of purposes including research and development, space flight, control and data communications, construction of facilities, and research and program management.

The total authorization is identical to the amount requested by the President's 1987 budget, although the committee has allocated the funds somewhat differently than requested. I think the committee is to be congratulated for doing an outstanding job in keeping this authorization bill within the budget constraints of the administration request while at the same time assuring that NASA's programs, goals and objectives remain intact.

Mr. Speaker, title III of this authorization bill will permit NASA to move forward on a new orbiter to replace the space shuttle *Challenger*, and to safely return the space shuttle fleet to flight status.

Again, this is a simple, open rule which was adopted by voice vote in the Rules Committee. Although some of the priorities have changed, it is a good bill, and I would urge my colleagues to adopt the rule and support the bill.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I have no further requests for time, and 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.

□ 1805

The SPEAKER pro tempore (Mr. GRAY of Illinois). Pursuant to House Resolution 553 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5495.

The Chair designates the gentleman from Texas [Mr. GONZALEZ] as Chairman of the Committee of the Whole and requests the gentleman from Missouri [Mr. SKELTON] to assume the chair temporarily.

□ 1806

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. 5495, with Mr. SKELTON (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Florida [Mr. FUQUA] will be recognized for 30 minutes and the gentleman from New Mexico [Mr. LUJAN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. FUQUA].

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

Mr. Chairman, I rise in support of H.R. 5495 which would authorize fiscal year 1987 funds for the National Aeronautics and Space Administration. I want to congratulate Mr. NELSON, chairman of the Subcommittee on Space Science and Applications and Mr. BROWN, Chairman of the Subcommittee on Transportation, Aviation, and Materials for their hard work and leadership in bringing this legislation to the floor. I also want to recognize the efforts of Mr. LUJAN, Mr. WALKER, and Mr. LEWIS on the other side of the aisle.

The bill we will consider today comes at a very crucial time in America's space program. The loss of the space shuttle *Challenger* on January 28 will have a profound and long lasting effect on the programs that are the source of so much pride to this Nation. A recent national public opinion survey shows quite conclusively that 85 percent of all Americans believe we should build a replacement orbiter and 89 percent want us to resume space flight operations. H.R. 5495 is responsive to this demand from the American people and I urge my colleagues to join me in support of this legislation.

The authorization level contained in H.R. 5495 meets the administration's request of $7.694B that was submitted to us shortly following the accident. We have in this bill, authorized NASA to begin construction of a new orbiter and carry out the engineering changes to the existing fleet that are required to return the shuttle to flight status. We recognize, however, that additional funding above the amount authorized in this bill will be required to carry out

this intent. We have also authorized such funds as may be needed to launch some of the backlogged Government payloads on commercially provided expendable launch vehicles.

Mr. Chairman, in bringing this bill to the floor we recognize that NASA has not yet been able to fully assess all the costs of the *Challenger* accident and all the costs of recovering from the accident. Therefore, we have authorized such sums as necessary for recovery from the accident. NASA's ongoing programs, such as space science, were virtually all impacted by the accident but we do not yet know exactly where the costs will fall. Therefore we have marked up the President's request to indicate our priorities for these programs. Let me give you details:

In the research and development area, we have authorized NASA to begin development work on the space station that has been under study for 2 years now. The space station will be our next logical step in space and will enable us to carry out commercial and scientific operations in a routine manner in the coming decades.

We have also provided funding for the Advanced Communications Satellite [ACTS] Program that will keep us in a world leadership position in the communications field. The amount of funding we have authorized will keep us roughly on track and allow a launch in 1990.

We have maintained a balanced program in science and applications that will sustain the science community until we can fully resume spaceflight operations on the shuttle and expendable launch vehicles. The amount we have authorized represents a slight increase over the fiscal year 1987 budget which will allow this program to keep pace with inflation.

In the aeronautics area we have authorized the full amount requested by the administration and we have included funding for a new start for the aerospace plane. Mr. BROWN, chairman of the Transportation, Aviation, and Materials Subcommittee will address this in more detail.

I am including in the record a comparison of the fiscal year 1986 operating plan, the fiscal year 1987 request and the committee actions taken.

I urge my colleagues to support H.R. 5495.

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

Mr. Chairman, I rise in support of the bill, H.R. 5495, authorizing appropriations for the National Aeronautics and Space Administration for fiscal year 1987. We are all aware of the need to make sacrifices. This has been a difficult year for Congress as the growing deficit continues to hamper the budget process. Gramm-Rudman has had the positive effect of making us very uncomfortable with large deficits; yet I believe most of us recognize that deep cuts in spending for R&D will do much to harm future generations.

The bill reported out of the Committee on Science and Technology reflects these dual concerns. We recognize the funding authorized in this bill is inadequate to meet the desires and expectations of the public for a rapid return to space. In a recent poll conducted by Market Opinion Research, 60 percent of the people polled supported spending "whatever is necessary" to maintain U.S. leadership in space. Many believe we have already lost our position as world leader in space technology, and that this budget falls far short of what is needed to regain that position.

However, within the constraints that Congress has placed on itself with respect to the budget, I believe this bill is a responsible effort to meet the most pressing needs.

It stays within the President's requested level for the total program, and it preserves the President's request for the space station. Small cuts or program delays are made in a number of areas to support the continuation of the Advanced Communications Technology Satellite Program. The arguments in support of this program are as valid today as they were when the program was initiated. This program will prove the feasibility of a number of advanced communication satellite technologies with a wide range of applicability. This is a small investment to ensure that the United States will maintain its lead in this rapidly expanding technology.

This bill also authorizes funding for a new budget line item in NASA's aerospace program. The $45 million for transatmospheric R&T is for the start of a new technology development program that could eventually result in a replacement for the shuttle and the next generation high speed military aircraft as well as the "Orient Express" that we have all heard so much about—the airplane that will reduce the flight time to Tokyo to 2 hours. This is an exciting program that will revolutionize the aviation industry, and also potentially reduce significantly the cost of putting payloads into orbit. We all want to see access to space become routine. This will move us in that direction.

In addition to authorizing the funding to support NASA's programs, this bill also addresses several important policy issues. This has been an especially difficult year for NASA. The tragic loss of the *Challenger* left a huge void in our space program. And as I stated at the beginning of my remarks, the public is anxious to move out in front again with our space program.

The public strongly supports manned space flight, and I believe we must do what is necessary to get us back into that arena. This bill directs NASA to begin procurement of a replacement orbiter, and it sets priorities for use of the shuttle which permits foreign and commercial users, albeit it at a low priority.

H.R. 5495 also authorizes the procurement of expendable launch services to augment the shuttle capability. I believe these are important first steps to take to restore the U.S. position of leadership in space. This bill isn't all that many of us would like to see; however, it is one which I think deserves our support, and I urge my colleagues to join me voting for this legislation.

Mr. Chairman, before I conclude my remarks, I want to take this opportunity to express my sincere appreciation for the outstanding and enlightened leadership of our chairman, DON FUQUA, and say how much we will all miss his presence on the Science and Technology Committee next year. I am sure our loss will be the aerospace industries' gain, and I wish him the very best in his new career.

Mr. FUQUA. Mr. Chairman, I yield 2 minutes to the distinguished chairman of the Subcommittee on Transportation, Aviation and Materials, the gentleman from California [Mr. BROWN].

Mr. BROWN of California. Mr. Chairman, I rise in support of H.R. 5495, the fiscal year 1987 NASA authorization. The Subcommittee on Transportation, Aviation and Materials conducted numerous field inspections and held extensive hearings here in Washington on the aeronautical part of the fiscal year 1987 NASA authorization. Testimony was taken from a variety of witnesses, both inside and outside of NASA.

Members of the subcommittee worked long and hard in carefully reviewing the NASA aeronautical program and the 1987 budget request. We found that although the dollar amount for aeronautical R&D is small—$376 million recommended by the committee this year—the payoff is very large. This is true because NASA emphasizes the high-risk, long-term research and technology that industry is financially unable or unwilling to undertake. Such efforts provide the foundation for future aircraft and engines which return many times their initial cost to our economy. In a very real sense, NASA's aeronautical R&D is an investment in our country's future.

For example, in 1985, the United States suffered an all-time record foreign trade deficit of $137 billion. And yet, as bad as this was, it would have been $12.6 billion worse, had it not been for the favorable contribution of aerospace products, the bulk of which were civil aircraft.

U.S. suppliers have built nearly 90 percent of the free world's civil air

fleet by dollar value. Our airlines are our best ambassadors, offering superior quality, safety, comfort and reliability, at economical costs. They speak well of America, to operator and user alike.

Of course, these results did not just happen. They came because we have consistently had the best products. And one of the big reasons for that has been the long-standing partnership between Government and industry in developing new aeronautical technology.

Because of this, the Committee on Science and Technology has repeatedly urged the administration and the Congress to increase the resources devoted to aeronautical R&D. We have pointed to the many long-term benefits of such investment, which are reflected in billions of dollars in sales of U.S. aircraft both here an abroad, and in millions of jobs for Americans.

Yet, in spite of its proven cost benefits, the NASA aeronautics program has not kept pace with inflation nor with the relentless pressure from our competitors, both military and commercial. For example, the administration's request for fiscal year 1987, if inflation is considered, is 3 percent less than the purchasing power of the 1981 budget. There aren't many Government programs that can make that claim.

Furthermore, anyone familiar with the dramatic increases in both the cost and complexity of new technology in the last few years knows that a level budget won't produce the same results as it once did. It simply costs more today to achieve each increment of improvement in fuel efficiency or safety or performance.

Of course, none of this would cause alarm if the Europeans, Japanese, and the South Americans had not begun to pose a serious competitive threat. But they have.

Because of this, I believe the committee's recommendation is at the low end of what is actually needed. In my view, international conditions call for expanding NASA's aeronautical program, not curtailing it.

The administration, for its part, is moving slowly in this direction. The fiscal year 1987 budget reflects a modest growth over last year—still far short of what is needed, even to compensate for past shortfalls, but about the best we can hope for in a difficult budget climate.

For this reason, the committee recommended approval of the aggregate amount requested by NASA. In addition to the aeronautics program, the subcommittee also considered a new budget line item for transatmospheric R&T. This is NASA's contribution to the joint NASA/DOD National Aerospaceplane Program, an effort to advance and prove the technology for high-speed, hypersonic flight. If successful, this program could lead the way to several very attractive applications, including a single-stage-to-oribt space transportation system and a hypersonic commercial air transport—sometimes called the Orient Express.

The committee feels it is necessary to begin this program now so that the technology will be ready in the mid-1990's, when we will need it to support the successful commercial development of space.

Furthermore, we felt it was vital for NASA to be involved fully in this program to assure the technology is developed with these important civil applications in mind. For these reasons, we are recommending approval of the full administration request—$45 million.

Mr. Chairman, I urge adoption of the bill.

Mr. LUJAN. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise today in strong support of the bill H.R. 5495, the annual fiscal year 1987 authorization for the National Aeronautics and Space Administration.

As all Members of the House already know, 1986 has been an extraordinary year for NASA. At the beginning of this year we were planning a total of 15 shuttle launches to take place during 1986. Among the planned launches were a number of truly remarkable missions. During the course of the year we had expected to launch the Galileo mission to probe the planet Jupiter, and the Ulysses mission that would have flown about the poles of the Sun and explored entirely unknown regions of the center of our solar system. We had also planned on the long awaited launching of the Hubble space telescope, a mission that will expand our frontiers in space thousands of times beyond where they can be explored today.

Unfortunately, Mr. Chairman, as all of the world now knows, on the morning of January 28, 1986, NASA, and the American people, suffered a tragic loss as the space shuttle *Challenger* exploded and crashed into the Atlantic Ocean after only 73 seconds of flight.

The National Aeronautics and Space Administration and the Committee on Science and Technology have been hampered in our attempts to plan recovery efforts because it was necessary to await the results of the Rogers Commission, and then allow the President time to review the Rogers Commission report and make his decision on the recovery plan that would win the support of the administration. Because of that, we freely admit that the budget numbers in this legislation are based on the President's budget which was submitted before the *Challenger* accident. We have worked hard to let the numbers reflect both what we have learned already, and to also reflect the priorities that the Congress feels are important in our ongoing space program.

We feel that the true importance of this legislation is the crucial new space policy that is contained in the bill.

The first, and foremost point I would make on this legislation is that we are within the budget allocations, and at the level requested in the President's budget. We have included in the bill an authorization for such sums as may be necessary for a replacement orbiter. As many Members already know, there has been substantial debate within the administration over the need for a replacement for the *Challenger*. The Committee on Science and Technology strongly supports a new orbiter. The space program of the United States, including a substantial portion of the space program of the Department of Defense, and the new manned space station which is already under development, urgently needs a four orbiter fleet to support their launch requirements. Our Committee on Science and Technology stands ready to work cooperatively with the Committee on Appropriations to find the funding necessary to move this new orbiter forward.

In the meantime, Mr. Chairman, I would stress to all Members that the Committee on Science and Technology has not yet received either the budget amendment for the replacement orbiter, or any budget justifications. This will be a major undertaking, with a total cost of some $2.96 billion. Our committee feels a strong responsibility to the Congress, and to the taxpayers of this Nation, to fully explore the administration request. We need to examine the NASA plan, to hear witnesses from the administration, from industry, and from the public, before we can fully understand the proposal.

Mr. Chairman, we have included a number of very important policy sections in this legislation which merit the full support of the House. The first, and most important, is the reestablishment of the old National Aeronautics and Space Council. As many Members will remember, this Council was a strong and effective means of recommending civil space policy to the President. Unfortunately, the old Council was ended under a reorganization plan adopted during the Nixon administration. For more than 2 years we have seen the SIG space group flounder about on the issues of space shuttle pricing and accident recovery. It is sad, but true, that many members of the SIG space group have proven to be far more interested in furthering their own petty and highly parochial interests, and in expanding their empires, than they have in protecting the national interest. I do not want to

dwell on this, but, the SIG space process has proven itself to be unable to function within the national interest. The time has come to return control of our civil space program to those who have a legitimate statutory interest in space policy.

Mr. Chairman, I would point out that there is a provision in the legislation which would allow the President to appoint advisory members to this Council from those Federal offices having statutory scientific, operational, or regulatory responsibilities for space activities. This language was the result of a compromise between myself and the gentleman from Florida, Mr. NELSON, who chairs the Subcommittee on Space Science and Applications, and our specific intent is that the directors of offices such as the Office of Commercial Space Transportation in the Department of Transportation should have a voice in this Council.

Mr. Chairman, titles III and IV of the bill constitute a complimentary program that is designed to lay a strong foundation for the return of the United States to our proper position of international leadership in space activities.

We have authorized the construction of a replacement orbiter for the *Challenger*, and have directed the Administrator to seek private sector financing for that construction if it is in the best interests of the United States. This bold, and imaginative step opens an exciting era in which we may start to see the private sector becoming directly involved in the creation of the space infrastructure needed as a part of the multibillion-dollar space based economy of the 21st century.

We have also moved forward with a plan to erase the backlog of civil governmental payloads while creating the atmosphere necessary to allow domestic ELV manufacturers to compete in the commercial marketplace with the European Space Agency Ariane launcher. In a major break with the past, we have directed the Administrator of NASA to purchase domestic ELV launch services, not launch vehicles, to ensure the United States will have assured access to space on American ELV's as a compliment to the space transportation system. Let me assure Members that this is not intended as a subsidy to the domestic U.S. ELV industry. It is our intent to let the industry know that the Congress is committed to a mixed fleet of launch vehicles, and that the Government intends to encourage domestic ELV's to compete for commercial launches in the international market.

We have also taken steps to create stability in the aerospace industry by directing that those businesses which had valid contracts with NASA at the time of the *Challenger* accident for shuttle launches should have the opportunity to receive those launches, but that they will have to take the lowest priority on the after accident launch manifest. In the new launch priority list the highest priority will go to payloads critical to the national security of the United States. The second priority will go to significant NASA payloads that have limited launch windows such as the Galileo mission to Jupiter which can only be launched once every 13 months. The third priority will go to all other governmental payloads. The lowest priority will go to all other payloads including those of commercial and foreign customers.

In order to allow our domestic ELV industry to openly and freely compete in the international commercial marketplace, we have set the price for space shuttle launches for commercial and foreign customers at a price no less than the cost of a comparable American ELV launch.

Mr. Chairman, these policies create an assurance that our space launch assets will be used in the best interest of the United States, and in a manner to encourage the domestic ELV industry. We will also provide the flexibility that will allow access to the space shuttle at a price that is not subsidized, and at the lowest priority. These policies are carefully crafted to ensure American access to space aboard a vibrant mixed fleet for many years to come.

Mr. Chairman, this bill is an excellent piece of legislation which has broad bipartisan support. It meets the President's budget, and is within the budget guidelines. It contains critical space policy that is urgently needed.

Mr. Chairman, I am proud of this legislation. I fully support it. And I urge all the Members to join in voting in favor of this bill and giving NASA an overwhelming mandate to return the United States to our proper position of space leadership.

Finally, Mr. Chairman, let me mention that today marks a major milestone in our manned space program. This bill is the last major piece of NASA legislation that will be brought to the House by the gentleman from Florida [Mr. FUQUA] who chairs the Committee on Science and Technology, and is generally recognized as the godfather of the manned space program. DON FUQUA has announced his retirement from the House after nearly a quarter of a century of service to the people of the second district. He was first elected to the 88th Congress on November 6, 1962, and has been reelected to each Congress since.

In his tenure as the chairman of the Committee on Science and Technology DON FUQUA has been an effective leader who has left a permanent mark on the science programs of this Nation. He has earned, and richly deserves, the respect of every Member of the House for his efforts over the years to preserve and protect American leadership in the fields of science and technology. I want to wish DON, and his lovely wife, Nancy, all of the very best in their retirement. It has been a pleasure, and a privilege, to have served with the gentleman from Florida.

□ 1820

Mr. FUQUA. Mr. Chairman, I yield such time as he may consume to the gentleman from Florida [Mr. NELSON], the chairman of the Subcommittee on Space Science and Applications.

Mr. NELSON of Florida. I thank the gentleman for yielding time to me.

Mr. Chairman, I want to add my personal comments of appreciation to my chairman, the gentleman from Florida [Mr. FUQUA], for his leadership in all of these decades that he has offered leadership to science and technology for this country. We all unanimously join together in a chorus of appreciation of my distinguished colleague from the State of Florida.

I would also like to express my appreciation to our ranking minority member, the gentleman from Pennsylvania [Mr. WALKER]. We have worked hard on this bill, because it has been a tough year for all of us, and we have come out with a good consensus. This will be a stabilizing year for us as we put America's space program back together and face the challenges of the future as we build from this. I think that we have a good bill here which we can all support.

Mr. Chairman, I rise in support of H.R. 5495, the NASA authorization for fiscal year 1987. I think it is fair to say this authorization is the most important for NASA in years. It deals not only with NASA's regular program, but also contains important policy provisions which will help get this Nation's space program back on its feet again.

The bill is written in four titles. Title I deals with NASA's regular program, that is, activities planned before the accident. Title II authorizes $586,000, the same as last year, for the Office of Commercial Space Transportation in DOT. Title III deals with NASA's restoration of the shuttle program following the *Challenger* accident. Title IV deals with establishing an expendable launch vehicle industry.

Let me now describe the major features of the bill:

First, title I endorses the President's request for regular NASA space programs at $7,694,400,000. Various line item changes which were adopted are described in the table attached to my statement. In particular, the bill continues the ACTS Program; the bill protects funding for science and applications programs; and the bill fully supports the space station and makes clear that it be permanently manned.

The bill recognizes that there may be some savings in NASA's regular activities as a result of the shuttle not flying, but that these savings will be largely offset by extra costs and by the loss of revenues from shuttle customers.

NASA's accounting and reprogramming is not complete but clearly NASA will incur large net costs as a result of the accident, even aside from the cost of a replacement orbiter.

Because NASA has not yet submitted a revised budget plan reflecting reprogramming as a result of the accident, the dollar figures in this bill reflect the original request as modified by the committee's priorities. For example, as mentioned earlier we reinstated the ACTS Program, and did this without significantly cutting funding for other science and applications programs.

Second, title III of the bill deals with recovery from the *Challenger* accident by four actions: Authorizing prompt return of the three-orbiter fleet to safe flight status along with the necessary supplemental funding; directing the construction of a replacement orbiter and authorizing either supplemental funding or private funding; directing NASA to use ELV's as necessary and authorizing the necessary supplemental funding; and setting launch priorities for the shuttle; in particular allowing the foreign and commercial payloads to fly on the shuttle—but at a lower priority.

Third, title IV of the bill provides for government utilization of ELV's which will foster the development of an ELV industry by the following actions:

NASA purchase through competitive procurement of ELV services—not vehicles—for the purpose of launching Government payloads.

Access by industry to Government launch facilities on an additive cost basis. This provision would apply to Government facilities not otherwise available commercially, consistent with Circular A-76 concerning performance of commercial activities.

Assuring availability of the shuttle, to commercial users on a backup basis by requiring that shuttle prices be no less than a comparable launch on a U.S. expendable launch vehicle. Special pricing arrangements for customers involved in research use of the shuttle would be continued, such as through NASA's Joint Endeavor Agreement Program.

Finally, the bill takes an important step toward improvement of the policymaking process for national space issues by reestablishing the National Aeronautics and Space Council which was originally set forth as part of the Space Act; and abolished in the early 1970's. The Council will be composed of members from NASA, State Department and the Defense Department and the chairman of the Users Advisory Group, consisting of non-Federal representatives of industries and other persons involved in aeronautical and space activities. the Council will also be composed of advisory members from Federal offices having statutory scientific, operational or regulatory responsibilities for space activities. The Council will provide important policy advise and coordination among Federal agencies involved in space matters. A permanent staff will enable the Council to carry out its responsibilities efficiently and effectively.

Mr. Chairman, the Committee on Science and Technology has brought a good bill to the floor. I urge all Members to support it.

Mr. LUJAN. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Chairman, I rise in support of H.R. 5495, the NASA authorization bill for fiscal year 1987. I'd like to commend the gentleman from Florida [Mr. FUQUA], the chairman of the committee, for his work and say that I will miss his steady hand and staunch support, but that I am grateful for the opportunity to have served with him in this House and for the incalculable contribution he has made to our space program. I'd also like to commend the gentleman from New Mexico [Mr. LUJAN], the ranking member of the committee, for his contribution, and to note the hard work of the subcommittee chairman, the gentleman from Florida [Mr. NELSON], and the gentleman from Pennsylvania [Mr. WALKER], the ranking minority member, along with the other members of the Committee on Science and Technology and the entire staff, for bringing this bill to the floor under difficult circumstances.

Indeed, this bill is something of a landmark, for it marks the return of the space shuttle fleet to flight status following the *Challenger* disaster of last January. The bill sets a target for resumption of shuttle launches in the first quarter of 1988, and calls on NASA to promptly construct a fourth shuttle orbiter to replace *Challenger* and bring the fleet to full status. The Administrator of NASA is directed to explore the availability of private funding for the replacement orbiter, and the 1958 NASA act is amended to allow NASA to accept gifts and donations of services, money, and real, personal, tangible and intangible property for construction of the orbiter. In this respect, H.R. 5495 incorporates the substance of legislation, H.R. 4202, which I introduced along with my colleague, the gentleman from Texas, JACK FIELDS, last February at the request of my constituent, Mike Webber, as well as provisions of legislation proposed by the subcommittee chairman, Mr. NELSON, and I would like to expressly thank the chairman for including this provision in the bill.

The authorization also provides for expendable launch vehicles, and calls for a plan for assured access to space, as well as a manned space station and programs in space science and technology.

I want to assure my colleagues also, in spite of some press reports, that Vandenberg Air Force Base in my district will be ready, very willing and certainly able to fulfill its role as the western and polar orbit facility for the shuttle when a vehicle is available.

This bill is essential in order to get our space program back on track

Mr. FUQUA. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. LEVINE].

Mr. LEVINE of California. Mr. Chairman, I rise in strong support of H.R. 5495, NASA authorization for fiscal year 1987.

Mr. Chairman, this country has been committed to leadership in the exploration of outer space for over two decades. The spectacular achievements of the *Mercury, Gemini,* and *Apollo* programs, as well as the unmanned missions of *Explorer* and *Voyager,* have expanded our knowledge of the universe and were—and remain—a source of national pride.

These missions revolutionized our understanding of the solar system, as have experiments conducted in the last few years on the space shuttle. Future efforts with the shuttle, space station, and additional unmanned probes promise ever more impressive advances. Spinoffs from the space program have created new technologies benefiting our scientists, doctors, and consumers.

Unfortunately, in the last few years, our commitment to space exploration has waned. Perhaps it was because what had once seemed so extraordinary became commonplace. We put men on the Moon during *Apollo,* and then terminated that program when that goal no longer seemed sufficiently worth pursuing.

The potential of the space shuttle—the world's first reusable reentry vehicle—seemed limitless only 5 years ago, and excited the imaginations of all Americans. It proved yet again that this Nation was the worldwide leader in conquering the heavens. And yet, shuttle launchings soon became so routine—although, as we know, constantly fraught with risk—that the public seemed to lose interest. This situation was coupled with the lack of direction regarding our space program both at NASA and within successive administrations.

The *Challenger* disaster and reports of wasteful spending and negligence on the part of NASA have shaken public and congressional confidence in NASA's ability to manage our civilian space program. We should all be deeply concerned about these horror stories and about the findings of the Rogers Commission report. Clearly, every effort must be made to right the wrongs which threaten the future of our space program. We cannot allow the kind of mismanagement which caused the needless deaths of the seven shuttle astronauts, and the waste of millions of tax dollars, to continue.

These events also illuminated just how far this country has slipped in the space race. *Challenger* exposed for all to see that reliance on only one means of access to space—the shuttle—left us with no options when that system failed. The Europeans, with Ariane, are presently better equipped to launch payloads into space than are we. Japan, and even China, could soon

have that capability. The authoritative Jane's Spaceflight Directory reports that the Soviet Union now holds an almost frightening lead on the United States in space experience. Even if it is an exaggeration to say, as Jane's does, that our space program has fallen 10 years behind the Soviets in the practical utilization of space, there is no doubt that we are in trouble.

Such a situation cannot be tolerated. We must redouble our efforts to expand and improve our space program. We are in critical need of positive action to end the post-*Challenger* indecision of both NASA and the Reagan administration, which blocks definition of a coherent policy that will reassert U.S. leadership in space.

I believe, Mr. Chairman, that H.R. 5495 is an essential first step. I commend the chairman of the Space Subcommittee, Mr. NELSON from Florida, and the chairman of the full committee, Mr. FUQUA, for their leadership on this and other space policy issues.

H.R. 5495 takes significant strides toward getting the shuttle program back on track. It authorizes such funds as may be necessary to construct a fourth shuttle orbiter to replace *Challenger*. It is regrettable that the administration took so many months to request another orbiter. Given the tremendous backlog of both civilian and military space missions, it should have been obvious that one was needed. Nonetheless, we welcome the administration decision even though I, along with many of my colleagues, question their wisdom of having NASA finance the orbiter through cutbacks in other NASA programs. I am pleased to see that this bill prohibits such actions from being taken.

The bill also authorizes funds to return the shuttle system to full flight status and to achieve the next shuttle flight by the first quarter of 1988. It expresses the sense of Congress both that the United States must promptly restore its space transportation capabilities without deemphasizing other space programs, and that the Government should utilize commercial rockets as well as the shuttle for placing Government payloads into orbit. The bill also includes provisions designed to help develop a commercial industry for unmanned expendable rockets for satellite launches.

Finally, the bill provides money for continued development of one of most important projects which NASA has ever undertaken—the manned space station. The success of the space station is crucial if we are ever to have a permanent presence in space, and if we are ever to undertake the kinds of experiments necessary to expand significantly our study of the planets and the universe.

All of these provisions mark major steps forward for our space program. While I recognize that the malaise which affects our space program cannot be eliminated overnight, there is no doubt that vigorous action—as embodied by this bill—backed by firm committments from the pivotal players who formulate our space policy, can restore U.S. leadership in space.

I urge my colleagues to support this bill.

Mr. Chairman, I also rise in strong support of the Torricelli amendment to H.R. 5495, which would require that NASA move toward a second source of booster rockets for the space shuttle.

I would like to commend the gentleman from New Jersey [Mr. TORRICELLI], as well as my colleagues from California [Mr. FAZIO and Mr. LOWERY] for their leadership on this issue. In the interest of promoting fiscal responsibility, and of ensuring a sound technological base as well as ensuring future launch capability for the shuttle, they have led efforts to encourage NASA to inject competition into its procurement of the solid rocket motors.

I have long been an advocate of competition, especially within the military. Last year, I authored an amendment to the DOD authorization bill requiring procurement of all major weapons systems on a competitive basis. It passed the House overwhelmingly.

During this year's authorization debate, I offered a successful amendment requiring that a competitive prototype strategy be followed in the acquisition of all major weapons systems and subsystems.

There is little doubt of the value of competition in the Government procurement process, whether in the military or civilian spheres. Increased competition encourages contractors to hold down prices and improve the quality of their products. Dual sourcing protects the Federal Government from a single source contractor that overcharges the Government for its work on produces a shoddy product. With the participation of more than one contractor on major contracts, the Government maintains access to backup research, testing, and production teams.

The GAO report on NASA's procurement of the solid rocket boosters stresses the importance of second sourcing, without which the contractor may not have the incentive to identify and correct problems in areas such as quality control and safety. The report goes on to state that it is competition which gives the Government its leverage to ensure greater efficiency and effectiveness.

We have already witnessed the importance of competition in the shuttle program. Regarding the solid rocket motors, it seems clear that significant interest in competition demonstrated by four major contractors last year caused the incumbent, Morton-Thiokol, to reduce significantly its future charges to NASA for the rocket motors. NASA is on record supporting second sourcing and stating that the mere threat of competition has already saved the Agency $100 million.

Unfortunately, NASA, while supporting second sourcing, has also dragged its feet on implementing such a policy. This amendment would require that NASA develop a plan for competition of the solid rocket boosters, and solicit competitive bids for the boosters.

The anticipated long-term savings of millions of tax dollars and of greater quality control—maintained by a permanent competitive second source—will enhance the economic viability and schedule assurances of the shuttle program. I urge my colleagues to support this important amendment.

□ 1830

Mr. LUJAN. Mr. Chairman, I yield 5 minutes to the gentleman from Florida [Mr. LEWIS].

Mr. LEWIS of Florida. Mr. Chairman, I rise in support of H.R. 5495, the fiscal year 1987 NASA authorization bill. The Subcommittee on Transportation, Aviation, and Materials unanimously supported the administration's request for their aeronautics program this year.

I know none of us are happy with the huge deficits that continue to plague us. However, we must resist the temptation to balance the budget at the expense of research and development. I am sure every one of us would be willing to borrow money to take advantage of an investment opportunity with a guaranteed return greater than the cost of borrowing. Those kinds of investment opportunities are rarely available to us as individuals, and yet I believe that funding NASA's aeronautics R&T program is as close to a risk-free investment as any of us are likely to see.

The U.S. aerospace industry continues to provide a positive trade balance. This is directly related to the investments we have made in the past in aeronautics research. There is tremendous synergism in NASA's aeronautics program; much of it is generic research that benefits all aspects of aviation, and the resulting cost of requiring each company to conduct its own basic research program would surely mean the end of our fragile competitive advantage in aviation products.

I would also like to call attention to a new line item in NASA's budget this year—transatmospherics R&T. This is the aerospace plane program which bridges the gap that now exists between aeronautics and space. The aerospace plane is the most exciting program we've seen in decades—a hypersonic research aircraft that will demonstrate the technologies needed for hypersonic transports, military aircraft, and also a single-stage-to-orbit space transportation system.

This is a joint program with DOD, and it is critically important to support a strong NASA role in this program to ensure that it remains a research program to support both civil and military applications in both aeronautics and space.

And, now I would like to turn our attention to the space program. The NASA authorization bill directs NASA to begin procurement of a replacement orbiter; moreover, it provides for the

acceptance of gifts and donations to be used for that replacement. Many children have already eagerly begun making their contributions to replace the *Challenger*.

As we all know, when the space shuttle *Challenger* accident occurred on January 28, 1986, millions of children who were expectantly waiting for the first school lesson from space, witnessed the tragedy on television. These same schoolchildren will be the space explorers of tomorrow. Therefore, I am especially pleased that this bill also provides for allowing these school children the opportunity to participate in selecting the name for a new orbiter.

Mr. Chairman, those of us on the Committee on Science and Technology recognize the need for fiscal restraint, but we also recognize the importance of a healthy research program for the future strength of our economy. Therefore, I strongly urge the adoption of this bill.

Before I return the balance of my time, Mr. Chairman, I would like to join my colleagues on the Science and Technology Committee in expressing my appreciation for the opportunity to serve on this committee under the leadership of our chairman, Mr. DON FUQUA. Chairman FUQUA has served this committee with distinction and has earned the respect and admiration of Members from both sides of the aisle. His contributions to science and technology will be long remembered, and he will be greatly missed in the years to come. I am sure he will continue to serve the aerospace community well in his new capacity as president of Aerospace Industries Association, and I wish him every success in this new venture.

Mr. FUQUA. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from New York [Mr. SCHEUER].

Mr. SCHEUER. Mr. Chairman, I too wish to raise my voice in admiration and affection of our chairman, the gentleman from Florida, DON FUQUA. He has been an inspiration to all of us who have worked with him. It has been a privilege to have been associated with him in the glorious business of space. None of us will ever forget the experience, and we give him our heartfelt best wishes for success, health and happiness in his new career ahead, and along with him his marvelous wife, Nancy.

Mr. Chairman, I rise in support of H.R. 5495, the NASA authorization bill for fiscal year 1987.

Over the past 8 months, in the wake of the *Challenger* accident, we have asked probing questions about the direction of our space program, and the competence of its administration and leadership.

Although this review is necessary and appropriate, we must not lose sight of our successes.

The Space Shuttle Program did bridge the gap between the pioneering efforts of Mercury, Gemini, and Apollo and the homesteading efforts of the space station.

The shuttle was so successful in delivering crew and cargo to and from orbit that we were essentially blinded to the dangers associated with space flight.

We were delivering satellites to orbit. We were repairing satellites in orbit. We were retrieving satellites from orbit. We were manufacturing in space. We were carrying on experiments in space. We were manuevering, untethered, in space. We were learning to utilize the unique environment of space. For 24 flights the shuttle was so successful that we began to take its success for granted. Then came flight 25, and the tragic events of January 28.

The *Challenger* accident and the resulting investigations have shaken our Nation's confidence in our space agency, our space program and, I might add, in ourselves.

This confidence can be restored. This confidence must be restored. Design problems must be solved so that we can safely and reliably exploit the shuttle's capabilities in delivering astronauts to space. Management systems must be implemented so that danger signs are detected and acted upon, in time.

Policies must be changed such that this Nation is not dependent on a single space transportation system. NASA must develop the technical muscle to ensure that in the future it will recognize and resolve recurrent problems promptly and thoroughly.

And we in the Congress must resolve to maintain a close and continuous oversight of NASA, both to ensure that flight safety is never compromised and to ensure that the agency is provided with clear, and achievable goals.

Once these changes are accomplished, NASA and space exploration will deserve our full support. And our support should be as consistent, as bold, and as proud as our belief in the Nation's pioneering spirit and inspirational destiny in space.

□ 1840

Mr. LUJAN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. FUQUA. Mr. Chairman, I yield 30 seconds to the gentleman from Ohio [Mr. SEIBERLING], a former member of the Committee on Science and Technology.

Mr. SEIBERLING. Mr. Chairman, I wanted to take this time to say that I had the privilege of serving for one Congress, my freshman term, on the Committee on Science with the distinguished gentleman from Florida [Mr. FUQUA], and I think that the Congress and the country owe him a tremendous debt of gratitude for his many years of dedicated work on the Science Committee, and in particular for his work in supporting the pioneering efforts of NASA.

I wanted to add my voice to those who were similarly phrasing his activities.

Mr. FUQUA. Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Chairman, I just walked onto the floor from a meeting, and I noticed the debate was concluding, and I did not want that to pass without the opportunity, Mr. Chairman, of expressing to you as we have heard these words so many times now, of farewell, my personal appreciation for your commitment not just to the House of Representatives but indeed to that pioneering spirit that we are so supportive of in our space effort.

Your contribution to the House, to that effort, will not be forgotten. We appreciate and will miss you as we work in the years ahead.

Mr. ANDREWS. Mr. Chairman, I want to take a moment to congratulate the leadership of the Science and Technology Committee for bringing forward this important and well-crafted authorization for NASA. Chairman NELSON and the Space Science Subcommittee held exhaustive hearings that probed the serious crisis in our Nation's space policy and helped us all to face foursquare the obstacles in the path of further exploration and development of space.

Mr. Chairman, this year's authorization for NASA is extremely important. In 1987 we will move out at full speed on the space station. Thus I think it would be timely to note for my colleagues the immense capability the station will give our country, particularly in promoting participation by the private sector.

In addition to using the space station, the private sector may have a role as the builders and operators of the station. To encourage this type of commercial role in station development, NASA has issued "Guidelines for U.S. Commercial Enterprises for Space Station Development and Operations".

These guidelines have sparked considerable interest in the private sector and will as a policy foundation upon which to build a significant commercial presence in space. As the Federal budget squeezes ever tighter on our space investment, it is the commercial sector that will be needed to expand our Nation's role in space. Therefore, space commercialization needs our most fervent promotion and support.

Areas for commercial participation as builders or operators on the station may include: habitation, medical and health, data management, communications, laboratories, payload processing, and logistics. As we move into full-scale development of the space station, these opportunities will grow significantly.

Beyond participation in the station itself, NASA is promoting commercialization of other space activities. Last year's memorandum of

understanding between NASA and Space Industries, Inc. is an example of cooperation in space hardware development. As SII continues work on its industrial space facility, they have exchanged information with the space station office which may lead to an ISF compatible with station and that may assist in the development and operational stages of the space station.

Overall, these initiatives bode well for the future of the space station. We must use the engines of free enterprise to drive our development of space and assure our Nation's role in outer space for decades to come.

Mr. GORDON. Mr. Chairman, I support H.R. 5495, the NASA authorization bill for fiscal year 1987. This bill includes funds for the shuttle program. The Space Station Program and the Space Shuttle Program are interdependent. The Space Shuttle Program is the space station's primary transportation system for construction and resupply. Included in this authorization bill are the funds to support the early years of space station construction, a major initiative for the United States to maintain world leadership in the international community of space users. Also included are funds to support precursor space laboratory flights which will develop, for this international community of space station users, the equipments and scientific experiment data base which is necessary for efficient utilization of the space station.

We must also remember that as an element in America's space transportation capability, the space shuttle still represents the major portion of our Nation's capacity for placing spacecraft on orbit. It is the shuttle that gives America its unique capability to perform on orbit repairs, servicing, refueling, retrievel, so ably demonstrated during the first 24 flights of the Shuttle Program.

The recovery and repair of the solar maximum satellite by our NASA astronauts "Ox" Van Hoften, "Pinky" Nelson, Bob Crippen, and the late Dick Scobee, saved the United States a satellite that cost over $50 million alone and demonstrated the ingenuity of teams of astronauts as they employed various means to recover a tumbling satellite.

Those who watched the extraordinary recovery of two crippled communications satellites which cost approximately $30 million each can appreciate the tremendous advances the United States has taken in manned space operations. Again, our NASA astronauts Joe Allen and Dale Gardner proved conclusively that salvaging abandoned satellites, with subsequent return to Earth in the shuttle, is an operational reality in America.

Perhaps even more remarkable was the extraordinary on-orbit recovery, repair, and redeployment of the Hughes Syncom satellite. It is estimated that by rescuing this mission, NASA saved Hughes over $50 million in satellite costs and in excess of $80 million in business revenues over the first 5 years of spacecraft operations.

It is important that we support the continued development of these shuttle unique capabilities as they are the future in space operations being pursued throughout the world. Additionally, they are the area of unique manned-space operational capabilities in which America still retains a substantial lead among the world's space programs.

Finally, I urge continued support for the Space Shuttle Program as it is a vital element of the Nation's space launch capability that provides launches of national security interest and for which the shuttle's unique capabilities are only now being explored.

Mr. BROWN of California. Mr. Chairman, as I stated earlier, I support H.R. 5495, a bill to authorize appropriations for the National Aeronautics and Space Administration for fiscal year 1987. The bill earmarks $7.7 billion for the Nation's space agency—identical to the President's request level. My colleagues on the Science and Technology Committee, with the help of the committee's expert staff, have arrived at a bill that should be agreeable to most Members of this body. Given the difficulty and uncertainty surrounding NASA as a result of the *Challenger* accident of January 28, I believe that chairman of the Space Science and Applications Subcommittee. Mr. BILL NELSON, has done an exceptional job.

The Space Subcommittee wisely restored funding for the Advanced Communications Technology Satellite [ACTS] Program at $95 million. I would have preferred, however, that the subcommittee restore the funding to $117 million as requested in the project funding profile. At $95 million, the program will experience a 6-month delay and cost overruns in excess of $40 million overall. If ACTS is delayed further, the United States will fall behind its Japanese and European competitors, who have their own vigorous advanced communications satellite technology programs.

Discussion of title I is limited because the budget figures in this bill have little to do with the budget realities at NASA. Essentially, the bill provides little more than an operating shell for NASA. Without a budget amendment from NASA, the committee was unable to form a more accurate budget proposal.

Mr. Chairman, I am concerned that perhaps we on the Science and Technology Committee have relinquished some of our authorization and oversight responsibilities to the Appropriations Committee. Jurisdiction wrangling between the authorizing and appropriating committees is a tradition in Congress. But the situation has become particularly acute in the case of the proposed space station. The Appropriations Committee has been allowed to manipulate the Space Station Program within NASA without any objections. NASA is forced to do handstands and somersaults to keep the Appropriations Committee happy. I seriously question whether this is responsible or appropriate oversight.

I would like to mention that H.R. 5495 does provide full funding for the continuation of the Mars Observer Program, scheduled for launch in 1990. Not only does this mission promise to yield a wealth of scientific understanding of Mars, but it will also coincide with the Soviet mission to the Martian moon Phobos. It would be disappointing if NASA were to recommend delaying this critical program. In finalizing its payload manifest for the space shuttle for the next 5 years, I hope NASA has the foresight to give the Mars Observer mission high priority. Also, any new space science programs and initiatives which NASA feels are important should be brought before Congress without jeopardizing other ongoing projects.

Moving on to titles III and IV of the NASA authorization bill, these new additions will provide hope and incentives needed for the United States to once again be the preeminent spacefaring nation. These measures may well be the medicine that will revitalize the Space Agency. Under title III such funds as necessary are authorized to do the necessary fixes on the shuttle, replacing the shuttle *Challenger,* and building a mixed fleet of expendable launch vehicles [ELV's] to assure U.S. access to space. The measure also establishes space shuttle payload priorities, putting commercial payloads at the bottom of the list. The bill may also open the door for private financing of additional shuttle orbiters.

Title IV is considered an experiment in fostering a private ELV industry in the United States. Under this title, NASA would be required to purchase a number of launch services each year. Some changes would also be made in the shuttle pricing policy to ensure that the space shuttle is only used as a backup launch vehicle for commercial payloads. I believe this is a comprehensive approach to determining if a private ELV industry can thrive in the United States.

While I am enthusiastic about titles III and IV of the NASA bill, I am concerned that the authorization is not backed up with specific numbers. I get the sense that the bill we are considering today goes a long way toward solving problems in the American Space Agency, but stops short of providing the definitive cure for NASA's ailments. Unless we are willing to authorize specific dollar amounts, we will be making only partial payments on our commitment, and we may end up with a Subaru without an engine.

Curiously, the Senate Appropriations Committee was able to mark up a HUD-Independent Agencies bill which earmarks $8.3 billion for NASA in fiscal year 1987—$575 million above the NASA budget before us today. The Senate Committee on Commerce, Science, and Transportation managed to report a NASA authorization bill that is also above the House NASA authorization levels by more than $100 million. I am disappointed that the Science and Technology Committee has not taken similar initiative to increase the NASA budget above the President's request. I think the committee underestimates Congress, willingness to take the appropriate steps to get the Space Agency flying again.

Simply providing minimum funding to NASA is not enough. In order for NASA to once again be the premier Space Agency in the world, it must be adequately funded. NASA must experience real growth over the next 5 to 10 years, followed by a steady level funding into the 21st century. I am not speaking only for myself. There is a growing concensus among space policy analyst that increased commitment to the U.S. civilian Space Program is crucial. Among the groups advocating enhanced NASA budgets are the American Institute of Aeronautics and Astronautics, the NASA Advisory Council, and the National Commission on Space. But clearly the most important group which supports increased funding for NASA is the American public. A

recent survey has indicated that 57 percent of the American population support an expanded civilian Space Program.

Rebuilding the U.S. Space Program to last for 100 years. However, is a difficult challenge, and will not happen in 1 year's budget. I will continue to work with my colleagues until we have arrived at a civilian Space Program worthy of the American pioneering spirit.

Again, I offer my support for H.R. 5495.

Mr. FUQUA. Mr. Chairman, I yield back the balance of my time, and I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose and the Speaker pro tempore [Mr. GRAY of Illinois] having resumed the Chair, Mr. SKELTON, 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. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, had come to no resolution thereon.

DESIGNATING THE NEZ PERCE TRAIL AS A PART OF THE NATIONAL TRAILS SYSTEM

Mr. VENTO. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 1542) to amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I do so only for the purpose of asking the gentleman from Minnesota [Mr. VENTO], the chairman of the subcommittee, to explain the measure.

Mr. VENTO. If the gentleman will yield, Mr. Speaker, the Legislation before us, S. 1542, would designate the Nez Perce (Ne-Me-Poo) Trail as a National Historic Trail.

The 1,170-mile trail, traversing through Oregon, Idaho, Wyoming and Montana was the route used by the "non-treaty" Nez Perce Indians during the summer and fall of 1877 in their attempt to flee the United States Army and seek peace in Canada. The Nez Perce, also known by their traditional Indian name Ne-Me-Poo, meaning "The People", were cited in news accounts of the day and subsequent historical analyses for their perseverance and strategy in the face of overwhelming odds.

A study of the proposed national historic trail was conducted pursuant to section 5(c) of the National Trails System Act. The study undertaken jointly by the U.S. Forest Service and the National Park Service found that it was feasible and desirable to designate the Nez Perce Trail as a component of the National Trails System. Subsequently, the National Park System Advisory Board made the determination required by the National Trails System Act that the proposed Nez Perce Historic Trail is of national significance.

Mr. Speaker, it is my understanding that the administration supports this legislation. From all the information gathered on this matter it would appear that the designation of a Nez Perce (Ne-Me-Poo) National Historic Trail would be a fitting recognition of this moment in American history.

I support adoption of this measure.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I rise in support of S. 1542, to designate the Nez Perce Trail as a national historic trail.

As the subcommittee chairman has explained, the 1,170-mile Nez Perce Trail, which passes through the State of Oregon, Idaho, Wyoming, and Montana, was the route followed by the Nez Perce Indians during their flight from the U.S. Army to Canada. The traditional name of the Nez Perce, Ne-Me-Poo, will also be recognized in the trail's designation.

The Nez Perce Trail was jointly studied by the U.S. Forest Service and the National Park Service and was found to meet the requirements under the National Trails System Act for national historic trail designation.

Under the bill's provisions, no private lands outside of federally administered areas may be acquired for the trail. The bill also authorizes appropriate marking of the trail.

The other body recently approved S. 1542. Therefore, I urge my colleagues to pass this measure and send it to the White House for presidential signature.

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1542

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Trails System Act (82 Stat. 919), as amended, is further amended as follows: Section 5(a) is amended to insert the following new paragraph:

"(14) The Nez Perce National Historic Trail, a route of approximately eleven hundred and seventy miles extending from the vicinity of Wallowa Lake, Oregon, to Bear Paw Mountain, Montana, as generally depicted in 'Nez Perce (Nee-Me-Poo) Trail Study Report' prepared by the Department of Agriculture and dated March 1982. The report shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia. The trail shall be administered by the Secretary of Agriculture. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Nez Perce National Historic Trail. The Secretary of Agriculture may designate lands outside of federally administered areas as segments of the trail upon application from the States or local governmental agencies involved if such segments meet the criteria established in this act and are administered by such agencies without expense to the United States. So that significant route segments and sites recognized as associated with the Nez Perce Trail may be distinguished by suitable markers, the Secretary of agriculture is authorized to accept the donation of suitable markers for placement at appropriate locations. Any such markers associated with the Nez Perce Trail which are to be located on lands administered by any other department or agency of the United States may be placed on such lands only with the concurrence of the head of such department or agency.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. There are authorized to be appropriated $550,000 to carry out the purposes of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1542, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

DESIGNATING THE CUMBERLAND TERMINUS OF THE CHESAPEAKE AND OHIO CANAL IN HONOR OF J. GLENN BEALL, SR.

Mr. VENTO. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 1766) to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr., and ask for its immediate consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I yield to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, S. 1766 would designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in

71-059 O-87-31 (Pt. 18)

honor of J. Glenn Beall, Sr., in recognition of his efforts to preserve and protect the canal and towpath from development.

J. Glenn Beall, Sr., served as a Member of the House of Representatives and as a U.S. Senator from Maryland during the period from 1943-65. During his service in the Congress, Mr. Beall was a leader in efforts to establish a C&O Canal National Historical Park and adjoining parkway in Maryland, sponsoring enabling legislation in the 84th, 85th, and 86th Congresses. Though his legislation was not enacted into law, President Eisenhower, by Proclamation on January 18, 1961, established the Federal lands comprising the canal as the Chesapeake and Ohio Canal National Monument. Ten years later in 1971, legislation was enacted establishing the areas as the Chesapeake and Ohio Canal National Historical Park.

Mr. Speaker, S. 1766 directs the Secretary of the Interior to erect and maintain an appropriate memorial to J. Glenn Beall, Sr., at the Cumberland terminus of the park, the cost of which is not to exceed $25,000. I understand the administration supports this measure and I add my support to its adoption.

Mr. Speaker, I want to thank the gentlewoman Congresswoman, BYRON, an able member of the Interior and Insular Affairs Committee for her assistance and help in guiding this measure to enactment. It would not have been successfully enacted without Congresswoman BYRON's leadership.

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of S. 1766. As the subcommittee chairman has explained, this bill would designate the Cumberland terminus of the C&O Canal National Historic Park in honor of J. Glenn Beall, Sr.

Senator Beall was a distinguished Member of Congress for 22 years during which he served in both bodies. His numerous contributions during his service include his efforts to protect and preserve the canal and towpath which are the prominent features of the park. He introduced the first piece of legislation aimed at preserving and restoring the canal in 1956. After years of work and negotiation, legislation was finally passed to establish the park in 1971, 1 year after Senator Beall's death.

Congressional designation of the Cumberland terminus of this unique park as a memorial to Senator Beall is an appropriate way to recognize and honor his role with regard to the canal.

The other body recently approved this measure. Therefore, I urge all of my colleagues to support S. 1766.

Mrs. BYRON. Mr. Speaker, I want to take this opportunity to extend my thanks to my subcommittee chairman, Congressman VENTO, for supporting this legislation which means a great deal to me and so many western Marylanders.

This bill dedicates the C&O canal terminus after the late Maryland Senator, J. Glenn Beall, Sr., in recognition of his efforts to protect and preserve the park's canal and towpath. During his 22 years in Congress, he maintained a personal interest in the protection of the C&O Canal National Park. In 1956, he introduced the first piece of legislation which recognized the historical importance of the canal and provided a vehicle for its preservation and restoration. While similar bills were introduced during the next 16 years, nothing was signed into law until 1971—just 1 year after Senator Beall's death. What could now be more appropriate than to dedicate the terminus—a significant portion of the canal—to his memory?

The plan for the Park Service to implement will be an attractive interpretive park with permanent exhibits, landscaping, walkways, miniplazas, and benches which would draw people to the river and the canal terminus area. This legislation authorizes a mere $25,000 which will cover the entire cost of the proposed interpretive park. A simple plaque dedicated to J. Glenn Beall will suffice as the sole object recognizing his contributions to the canal's protection.

Mr. Speaker, I cannot find anyone who does not think that this bill is an excellent idea. The Senate companion bill, introduced by Maryland Senator CHARLES MATHIAS, passed the Senate on August 1 without opposition. I urge its speedy approval in the House as well so that J. Glenn Beall's contributions to the survival and protection of this beautiful park may be recognized for all time.

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1766

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park is hereby dedicated to J. Glenn Beall, Sr. in grateful recognition of his outstanding efforts to preserve and protect the canal and towpath from development.

(b) In order to carry out the provisions of this Act, the Secretary of the Interior is authorized and directed to provide such identification by signs, including changes in existing signs, materials, maps, markets, or other means as will appropriately inform the public of the contributions of J. Glenn Beall, Sr.

(c) The Secretary of the Interior is further authorized and directed to cause to be erected and maintained, within the exterior boundaries of the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park, an appropriate memorial to J. Glenn Beall, Sr. Such memorial shall be of such design and be located at such place as the Secretary shall determine.

(d) There are authorized to be appropriated up to $25,000 to carry out the purposes of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1766, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

THE ARMS RACE AND SOVIET ECONOMIC DECLINE

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

Mr. SEIBERLING. Mr. Speaker, yesterday, I placed in the RECORD some compelling facts about our own Nation's economic crisis and the key role of the arms race in bringing it about. Today, I would like to discuss the economic crisis in the Soviet Union, which is in great measure similar in origin to the crisis we confront. In both cases, there is a smaller remedy, if the will exists to pursue it: namely, a major arms control and reduction agreement between the two superpowers.

A recent article by Jan Vanous, research director for an economic consulting firm—PlanEcon, Inc.—documents the Soviet crisis in some detail. The immediate cause of the crisis is a decline of the value of Soviet exports, especially oil. However, this comes in an economy already strained by years of excessive military spending so the effects of the decline are very serious for the Soviet Union, and help explain the increasing emphasis of the Soviet Government in reaching major arms control agreements with the United States. The Vanous article summarizes the situation this way:

The downward slide of exports and imports threatens Mikhail Gorbachev's ambitious modernization program. Just to maintain the quality of imports at last year's level, the Soviets probably will have to borrow $25 billion over the next five years, nearly doubling their gross hard-currency debt. But even this heavy borrowing, the Soviets won't be able to afford increased imports of Western machinery to modernize their economy. To save the modernization program, Gorbachev will have to change the division of the Soviet economic pie by cutting the growth of arms production in order to free capacity for production of civilian machinery.

Gorbachev's realization that he will soon have to choose between tractors and tanks has forced him to show much greater flexibility in arms negotiations than in the past. If the Reagan administration does not overplay its hand and succumb to the tempta-

tion to play it tough with the Soviets—based on an assessment that Gorbachev is "over a barrel"—it can probably secure major concessions in arms bargaining with the Soviets.

Since we in the United States face a similar economic crisis resulting in large measure from our own expenditures on the arms race, real progress on arms control ought to be the highest priority on the agenda of our own Government as well as the Government of the Soviet Union.

The full text of the Vanous article, as it appeared in the Washington Post for August 17, 1986, follows these remarks:

THE SOVIET TRADE CRISIS: CHOOSE TRACTORS OR TANKS

(By Jan Vanous)

The Soviet Union is facing a severe trade crisis, one that could force major changes in Moscow's foreign and domestic policies.

The crisis stems from the collapse of the price of oil in the world market, which has meant an unprecedented shortfall in hard currency export earnings for the Soviets and a prospective decline in ruble earnings from exports to Eastern Europe. The fall in export earnings, in turn, is forcing Moscow to reduce its imports of Western machinery and equipment and to limit imports of these goods from Eastern Europe over the next five years. This means that the Soviets will have to depend increasingly on their own domestic machinery production in an effort to replace the country's aging capital stock.

The downward slide of exports and imports threatens Mikhail Gorbachev's ambitious modernization program. Just to maintain the quantity of imports at last year's level, the Soviets probably will have to borrow $25 billion over the next five years, nearly doubling their gross hard-currency debt. But even with this heavy borrowing, the Soviets won't be able to afford increased imports of Western machinery to modernize their economy. To save the modernization program, Gorbachev will have to change the division of the Soviet economic pie by cutting the growth of arms production in order to free capacity for production of civilian machinery.

Gorbachev's realization that he will soon have to choose between tractors and tanks has forced him to show much greater flexibility in arms negotiations than in the past. If the Reagan administration does not overplay its hand and succumb to the temptation to play it tough with the Soviets—based on an assessment that Gorbachev is "over a barrel"—it can probably secure major concessions in arms bargaining with the Soviets.

Gorbachev's economic strategy has four fundamental objectives, at least three of which are now threatened by the Soviet trade crisis. The goals include:

Accelerating Soviet economic growth. The plan for 1986-90 calls for a growth of net material product (roughly corresponding to Western GNP) of 4.1 percent per year, compared to an average rate of growth of 3.2 percent during 1981-85. These plans were based in part on export and import targets that now appear impossible to achieve.

Improving labor productivity. To get higher labor productivity, Soviet leaders agree they need better management, a more enthusiastic and better disciplined labor force, and above all, new investment in plant and equipment. Gross investment in fixed capital is slated to rise 10 percent this year, remain at the same level in 1987, and then increase by about 2 percent per year during 1988-90. It was originally hoped that sharply increased imports of capital goods from Eastern Europe and the West would be key ingredients of the modernization program. But the collapse of Soviet hard-currency export earnings and looming difficulties in trade with Eastern Europe over the next few years are pushing the Soviets to rely mostly on domestic resources.

Improving the quality of production. Most Soviet products are outdated in design, break down more often than they should, and waste valuable inputs in their manufacture such as metals and energy. Quality control and efficient production will be given much greater attention than in the past. The Soviets would find it easier to raise production standards to Western levels if they could purchase new capital equipment from the West.

Assuring an adequate Soviet defense capability. This is a requirement for any Soviet leader who wants to stay in power, and Gorbachev won't sacrifice it simply to improve the performance of the civilian economy. However, the Soviets appear inclined to offer what in their terms are unprecedented concessions in arms negotiations in order to cut their defense burden and avoid having to mount a full-scale counterpart to the strategic defense initiative.

As a major oil exporter, the Soviets have been stunned by the sudden decline in oil prices. Oil and gas account for 60 percent of their exports to the non-communist world. As of mid-1986, they are receiving $10 to $12 per barrel for their oil, down 60 percent from an average of $27.50 per barrel in the fourth quarter of 1985. Since natural gas prices are also falling rapidly, the Soviets face an unprecedented deterioration in their terms of trade.

The Soviet trade crisis is compounded by the sharp drop in the value of the dollar. That's because most Soviet exports are priced in dollars, while the prices of most Soviet imports are based on West European currencies that have risen sharply against the dollar in recent months. As of July 1986, for example, it took almost five times more Soviet oil to purchase a given piece of West German machinery than it did in early 1985, although the dollar price of Soviet oil has fallen by only 60 percent.

Moscow's trade crunch could get worse. That's because the Soviet Union's economic fallbacks—arms sales, exports of gold, diamonds and platinum, and hopes for better harvests and a reduction in food imports—are also in trouble.

The decline in Soviet arms sales is largely a side effect of the fall in oil prices. This has squeezed the finances of OPEC nations, including major buyers of Soviet arms such as Iraq, Libya, Syria, and Algeria. With arms accounting for about 20 percent of Soviet exports to the non-communist world, the sluggish arms market in the Middle East will further aggravate Soviet hard-currency problems.

Soviet arms sales to the Third World fell 25 percent last year, after three straight years of record sales. With few exceptions, the Soviets must now finance close to 100 percent of such sales over 10 to 15 years at concessionary terms. With arms sales yielding relatively little immediate cash flow, they must look less attractive to the Soviets.

Gold, platinum and diamonds won't help much either in solving the trade crisis. The Soviets are the world's second-largest supplier of these precious commodities, and they can't boost their own sales without further weakening the market. South Africa's growing political and economic problems have forced that regime to sell as much goal, platinum and diamonds as the world market can absorb. Heavy and steady South African gold sales are keeping the price of gold relatively low, in spite of the collapse of the dollar and falling interest rates, which normally should increase incentives to hold gold. (To be sure, if the Pretoria regime should fall and a prolonged period of political and economic instability take hold in South Africa, the Soviets would benefit significantly from panic buying of gold, diamonds, platinum, chromium and other related commodities by Western speculators.)

The Soviets had hoped that a good harvest this year would ease the trade crunch by permitting a reduction in grain and food imports. Less hard currency spent on agricultural imports (which accounted for 27 percent of Soviet non-communist imports last year) means more money available for imports of Western capital goods. But nature hasn't been kind to Gorbachev this year. The drought affecting key grain-growing areas of the Soviet Union will probably depress the Soviet crop to somewhere between 165 and 175 million metric tons (the latest USDA estimate puts it at 175 mmt). This would be far less than the estimated 1985 harvest of 190 mmt and 1986 output target of 150 mmt and would pressure the Soviets to increase grain imports correspondingly.

The obvious way out for the Soviets is increased borrowing from the West. I estimate that Soviet hard-currency exports this year will be more than $10 billion below the peak of $36.2 billion reached in 1983, without taking into account the impact of dollar depreciation and inflation. There will be some recovery over the next several years, but a large financing burden will remain.

My conclusion is that the Soviets will either have to borrow about $25 billion from the West over the next five years just to maintain "reasonable" levels of hard-currency imports or accept extreme cutbacks in imports, with a consequent adverse impact on Soviet economic performance. Soviet gross hard-currency debt to the West may nearly double by 1990, rising to about $53 billion, compared to an estimated $28.6 billion at the end of 1985. (The corresponding increase in net Soviet hard-currency debt during the same period should be somewhat smaller—about $19 billion.)

Even by borrowing the $25 billion, the Soviets won't be able to do much more than tread water, holding import spending, at best, at last year's level in real terms. Hopes for increased imports of machinery and equipment from the West to help in the Soviet modernization effort are probably doomed. To finance these more ambitious efforts, the Soviets would have to borrow far more—say $50 billion over the next five years—which they would regard as imprudent.

The Soviets should be able to borrow the $25 billion from the West without great difficulty. We expect them to remain a borrower favored by major Western banks over the next five years, reflecting the huge Soviet endowment of natural resources, the rise to power of a more competent economic management group, and strong foreign exchange reserve position. Moreover, Western commercial banks generally believe that the Soviet Union is under-represented in their

portfolios and are quite eager to take more Soviet paper.

Heavy Soviet borrowing needs will also stimulate a search for alternative means of securing capital inflows into the Soviet Union. We expect the Soviets to turn to Western investment banks to help them float bond issues. A test issue could be floated on the London market perhaps in the latter part of this year. We also regard recent hints of possible Soviet application to the IMF and World Bank as another component of that strategy.

Moscow probably doesn't have an Eastern European solution to its import shortfall. Even if the Soviets run modest trade deficits with most East European countries over the next five years, they cannot hope to compensate for the loss of machinery imports from the West by increasing the quantity of machinery imports from Eastern Europe. In fact, the fall in ruble energy export revenue from Eastern Europe means that they will at best be able to maintain the level of imports of East European machinery at their 1985 level over the next five years.

With the modernization options based on increased imports of Western and East European machinery, now closed, Gorbachev is down to his last choice. He must cut domestic production of defense machinery in favor of investment from the civilian sector of Eastern Europe.

To understand the modernization squeeze, it helps to look at the demand for capital goods. Although the Soviet Union is probably the largest machinery producer in the world, it is unable to satisfy its own demand for investment machinery.

The main reason for this is the huge scale of Soviet defense machinery output. A recent study by PlanEcon, Inc., estimated that the share of Soviet final machinery output allocated to defense increased from 18 percent in 1960 to a staggering 44 percent in 1985. During the same period, the share of final machinery output allocated for civilian investment declined from 58 percent to 39 percent and the share of consumer durables (passenger cars, refigerators, etc.) declined from 24 percent to 17 percent.

Gorbachev can salvage his modernization program only if he does two things. First, he must increase domestic machinery output by close to his five-year plan target of 7.5 percent growth per year. Second, he must slash the growth rate of defense machinery production to 4 percent per year for 1986-90, compared to an average of 8.5 percent during the past decade. This way, average annual growth of domestic investment machinery output could be pushed to about 9.5 percent per year during 1986-90, making it possible to supply enough investment machinery for the modernization program from domestic sources.

Whether Gorbachev can sell such a policy to the Soviet defense establishment is an open question. But sophisticated military men in the Soviet Union should understand economic realities, and they may be willing to accept fewer resources for a few years in order to help to strengthen the economy.

The arms-control implications of the Soviet trade crisis are clear. The Soviets, as their leaders have repeatedly stated, want an arms-control agreement that can hold the level of military spending low enough to allow for modernization of the civilian economy. This is presumably one factor behind increased Soviet flexibility in arms negotiations in recent months. An arms-control agreement that allows both sides to cut defense spending would benefit both. The Soviets could salvage their much needed modernization program and the United States could at last get its budget deficit under control.

□ 1850

MY CONCERNS ABOUT THE TAX BILL

The SPEAKER pro tempore (Mr. GRAY of Illinois). Under a previous order of the House, the gentleman from Georgia [Mr. RAY] is recognized for 5 minutes.

Mr. RAY. Mr. Speaker, I rise tonight to share with my colleagues my concerns about the tax bill and the concerns expressed to me by many of our constituents.

I am told that the tax bill is a reform movement on a locomotive which cannot be stopped. That may be true, but for the record, I believe I need to point out some problems which are already evident to the people of the Third District of Georgia, and from others who I have spoken with.

The news media and special interest groups have pulled out certain facts from the summary of the tax bill and as a result, the people are quite aware of what is going on with tax reform. And of the thousands of people who have written in to me about this bill, over 70 percent opposed actions taken to change the Tax Code. That is above the national average of 50 percent opposition according to a recent ABC News poll.

Now, I am not saying that "if it's not broke, that we should not fix it." There is a growing feeling across this country that the Tax Code is not fair. Recently, I received a letter from a young man from Perry, GA, Robert Stanley. He wrote me a straightforward letter. "My question, he wrote, is about taxes. I heard on the news and on the radio that the blue-collar workers pay more taxes than a rich person. I would like to know why workers have to pay taxes while the rich don't and why taxes can't be 10 percent for everyone." Robert, I, too, see inequities in the Tax Code that need to be fixed. It remains to be seen if this bill is indeed reform and if simplicity has been written into it.

I praise the committees for attempting such a comprehensive project, and I do not intend for my remarks to reflect badly on their efforts. I compliment them on several provisions which I see as a sign of their sincere intent toward true reform. Among those efforts are:

Retaining the child care credit; increasing the standard deductions and personal exemptions; weeding out loopholes for those who should pay; creating a livable alternative minimum tax for corporations; keeping the mortgage deduction on up to two homes; including some incentive for saving; lowering vesting standards for pensions; and continuing the employer-provided educational assistance through 1987, raising the amount excludable to $5,250 and there are others.

However, let me list for you some of the problems that I see coming if we pass this bill. Among these problems are:

Discouraging investments and capital improvements by heavy manufacturing and industry; maintaining some inequities for the truly rich. For example, couples earning $145,000 will pay an effective rate of 33 percent because of that hidden surcharge whereas couples earning $200,000 will pay only 28 percent; disallowing the increased spousal contribution to IRA's; losing the benefits of a broad-based charitable deduction for many tax-exempt organizations; chaning the rules for many workers without the means to plan their retirement finances the way they want; and changing the accounting and reporting rules for many companies.

But, it seems to me that the guidepost of this entire tax proposal has been to keep it revenue neutral—not the ultimate fairness of the reform.

I am in no way advocating an increase in taxes. My pledge to my constituents is not to vote for a tax increase until I am convinced that a majority of Americans are willing to pay to maintain the current level of government services rather than to do without them through Gramm-Rudman cuts.

The questions are: Has fairness been kept in this bill? Are there incentives to plan ahead for retirement? For health care costs? Is there simplification? Are there incentives for business? What will the loss of the investment tax credit do to business expansion?

Let's look at this bill. It weighs over 4 pounds. It is close to 1,000 pages long. It merely amends a code that is several volumes long when you count all the regulations. It still takes a CPA if not a lawyer, to give good tax advice. I am told that this legislation is being called the unemployed lawyers' relief act, and I am presently checking to see if H.R. Blocks' stock is up or down. I suspect it is up.

Some argue that reducing the number of brackets is simplification, and I agree that reducing the number of brackets from 14 to 3 in 1988 is encouraging. But, to me, simplification would be achieved when a person with an eighth grade education could made heads-or-tails of the form 1040. To me, simplification would be achieved when the average person could, without complicated formulas and hours with a calculator, simply compute his or her tax return within a short time.

My constituents complain about the retirement changes. Teachers and insurance annuity holders hoped for their tax-shelter annuities to remain the same. Factory workers relied on their 401(k) and 403(b) plans to continue with no changes. Federal employees counted on the current law which states that they would have a 3-year basis recovery on their employee contribution to their pension. All these people are having the game changed on them, but I must admit that civil servants are really bearing the brunt here. Not only is the method in which they receive their retirement threatened, but they have no way to recapture what they were promised if they are eligible to retire now. The conference committee included a retroactive date, July 1, 1986. For example, a 30-year Federal employee will begin his retirement by having a heavy tax levied from his first retirement check which is contrary to the Government's promise when he or she started.

There is concern that individualism may have been forgotten in the drafting of this bill. The tax-deferred individual retirement account is an effort by the Government to acknowledge that some people—through their individual choice—may want to contribute more toward their retirement years. The IRA is the mechanism by which the Government has encouraged people to make that choice. For a while, that whole concept was thrown out. In the conference agreement, there is a complicated tangle of rules surrounding exactly who may contribute to a completely tax-deferred IRA. It goes something like this. If you are not a part of an employer-provided pension plan, you may contribute the entire $2,000 and have the tax deferred on this money until you withdraw it upon retirement. If you are a part of a pension plan at work and if you made under $40,000 on a joint return, you may still contribute the full amount. However, if you are single, the salary cap for full deductibility is $25,000!

Many of my constituents are upset about the complicated new rules pertaining to charitable deducations. The conference agreement allows those who itemize their deductions to take a 100 percent charitable deduction for money given to their church, a hospital, a school, or other charitable foundation. But then those of us who do not itemize cannot get that same deduction as we have in the past. This is compounded by the fact that this bill is supposed to make paying taxes simpler by encourging people not to itemize.

Another concern that the businessmen and businesswomen of my district have is whether their businesses will survive. During the tax reform debate, we came a long way toward making those corporations that currently pay less taxes than you or I liable for their fair share of the tax burden of this country. But I cannot help but worry about the small business which cannot take the loss of both the investment tax credit and the capital gains treatment. In Georgia, 80 percent of timber owners are small landowners and not big corporations. Many are wondering if they are going to be able to make ends meet. And, I must say, the tax bill does not give them much encouragement. Real estate interests are having the rules changed on them in the middle of the game. There are manufacturing companies which were caught by yet another retroactive date—the loss of the investment tax credit back to January 1, 1986—even after they had made decisions to purchase and are now stuck with that decision.

The conference agreement would increase the overall corporate income tax burden by over $120 billion over 5 years. This revenue would be used to lower the taxes for many other groups. Many retail businesses and small computer growth firms would benefit from the lower corporate rates which are being cut from 46 percent on taxable income over $100,000 to 34 percent over $75,000 in 1988. The minimum tax provision contained in the conference agreement is a step ahead of the original House-passed provision. The minimum tax percentage is 20 percent as opposed to 25 percent in the House bill. I believe that the lower percentage and the surrounding provisions will encourage many more large corporations to play fair and pay their share. But I do worry that many companies could be surprised by the adverse effects of this provision resulting from a one-time accounting change or other adjustment for book purposes that has nothing to do with unreported economic income.

All the rules for applying these provisions have not yet been formulated. I am concerned that these provisions apply principally to large corporations and do not take the "fisherman's net" approach—ranking in small farmers who are already suffering the worst drought in many, many decades and homeowners who must itemize in order to take all possible deductions. Farmers, for instance, would be drastically affected by the loss of the income averaging deduction since their income fluctuates so dramatically from year to year.

Let me quote from the September 15, 1986 Industry Week article which was recently forwarded to me by my constituent, Dick Sargent of Thomaston, GA, who is an executive with Thomaston Mills. The magazine article takes two exceptionally hard hits at the tax bill by saying that the tax legislation will drastically deflate the economy and that it will slow the economy. "The initial economic effect * * * will be extremely deflationary. Removing tax subsidies on formerly advantaged investments * * * will expose the excess valuations placed on these assets * * * this will worsen the deflation problem we are already experiencing by flooding the market with unwanted assets." The article continues with more astounding facts: "Passage of the tax reform bill, as it now stands, is in fact a disguised tax increase for the first 6 months of 1987. This will have a dampening effect on the already sluggish economy * * * higher business taxes will pinch cash flow and depress investment activity * * * on the consumer side, although individual taxes will be reduced an average of $50 per family next year, that will not be enough to trigger any kind of consumer-spending boom * * * the disappearance of the investment tax credit * * * could prove to be the Achilles' heel of the bill, undermining the favorable effects of reduced rates in 1988 and beyond."

The sock-it-to-business approach in this bill seems to ignore the fact that if business doesn't do well and it is not profitable, its workers will not do well either. Then, America will not do well. To put it bluntly, all the lower individual tax rates in the world will not create any benefits if these people are not earning salaries from our Nation's businesses.

I thank you for your patience while I expressed for you just a few of my constituent's concerns. I believe it is important that their views are read into the RECORD of this tax reform debate. I would like to add, also for the record, comments made by Senator PETE DOMENICI as reported by Helen Dewar of the Washington Post. According to her article, which appeared in the September 12 edition of that newspaper, my colleague from the other body does not believe that we can make the fiscal year 1988 Gramm-Rudman-Holling target if we pass the tax bill as it is now written.

Let me quote from the article: "Moreover DOMENICI said, 'I think we are getting very close to abandoning the notion that we will ever get to a balanced budget.' DOMENICI said the tax revision bill, nearing enactment, provides an estimated initial revenue windfall of $11 billion, which would help Congress meet the real fiscal 1987 deficit target of $14 billion. But he said substantial revenue shortfalls are forecast for fiscal 1988 and 1989, making it harder to meet deficit-reduction targets in those years."

It seems that leading budget experts in Washington and my constituents at home seem to agree. The Government cannot push the economy on both ends and expect it to survive in the short term. I strongly believe that our first priority should be to balance the

budget. We should not be voting this year on anything that threatens the Gramm-Rudman-Hollings process of reducing our Federal deficit to zero.

We owe it to our constituents—who in record numbers are contacting their Representatives to say that the deficit is the top national concern—to be true to them and to be true to the effort to reduce the deficit.

Therefore, my colleagues, I would encourage that we all carefully review the contents of the tax bill. We should make every effort to debate our own concerns, and the questions raised by our constituents about this bill.

While it is true that we will not be able to amend the bill. We can do our best to identify inequities, which should be adjusted. I am already hearing from the chamber of commerce and others that the issue of taxes might be brought back to the floor as early as next year for another legislative adjustment.

There are several questions we should ask ourselves. Is it simple? Is it truly positive reform? Is it better than our present law? Will it shock the business community to the point of rupturing our fragile economy? Is it as fair to the unmarried as it is to the married? Will the poor and the middle income be better off or not?

My colleagues, unless we can agree that these questions have positive answers, I do not believe that this bill will best serve America.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. LEHMAN] is recognized for 5 minutes.

Mr. LEHMAN of Florida. Mr. Speaker because of longstanding commitments in the 17th Congressional District, I unfortunately was absent during House consideration of the Federal Insecticide, Fungicide, and Rodenticide Act amendments on September 19, 1986.

If I had been present, I would have voted in favor of final passage of H.R. 2482.

THE TAX REFORM BILL IS UNFAIR TO STATES DEPENDING ON SALES TAX REVENUES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington [Mr. LOWRY] is recognized for 5 minutes.

Mr. LOWRY of Washington. Mr. Speaker, I rise again against the so-called tax reform bill to come before the House tomorrow. I think it is a serious mistake. I am taking just these few minutes to talk about an extreme inequity within the bill.

When the tax bill left the House, all State and local taxes were 100 percent deductible, the same as present law. That includes the deduction of the sales tax. In the other body, when that body acted upon their tax bill going to conference, they made 60 percent of the sales tax deductible. So that we went to conference, the House position was 100 percent deductible, the other body was 60 percent deductible. What happened was, of course, the two leaders on the conference got together and announced, after we had left, their proposal that there was zero deductibility for sales tax.

Now, they were totally out of scope with the conference.

Then what happended was on the following Tuesday a member of the Committee on Ways and Means came over and got unanimous consent to waive points of order on the tax conference so that it could come to the floor without going to Rules. So those of you that were very concerned about that, about the item of retroactivity upon the Federal retirees to take away their option of retiring before the first of January and thereby singularly hurting them, about other provisions in the bill also, we did not have a chance to go the the Rules Committee and talk about the inequities that we thought were in the bill.

Now, I represent the State of Washington. In the State of Washington we have a constitutional prohibition against the State income tax.

In the last 10 years we have had two strong efforts by which to remove the constitutional prohibition. The voters of the State of Washington have turned it down by overwhelming proportions. In other words, we are not going to be able to get out of the situation we are in, agree or not agree in the State of Washington as is true of six other States of this Nation, I believe, about being very dependent upon the sales tax for funding our services in the State of Washington.

Now, in our State, like in most States, over half or approximately over half of the revenues of the costs that are paid by the State go to education, 60 percent of the revenue to the State of Washington comes from the sales tax. So what we have done by this unfair situation that moved us here is we have significantly increased the cost of education in the State of Washington because we have increased the cost of the sales tax because we have taken away the deductibility of the sales tax by this maneuver that was used.

Now, on this floor and in our caucuses before the bill ever left the House, everybody had a position, from income tax States, saying "we have got to have the deductibility of those local taxes." Why? Because if you do not have the deductibility of those local taxes, it puts the pressures on those services, primarily education.

That is exactly what this bill now does. It is extremely unfair to those of us, to the children in those States dependent upon sales taxes.

Now, why did this happen? Well, the Senate provision that was dropped out cost $2 billion, and I want to emphasize that, it cost $2 billion for the 60-percent deductibility of the sales tax. They said that cannot be afforded.

We have a bill before us that has $10 billion in transition rules, $10 billion of mostly special interest handling of special things for people that was affordable within this tax bill but $2 billion for the education of the children in the States that cannot get out of their dependence on the sales tax, that is not affordable in this bill. There was $1 billion in transition rules for chicken producers, large chicken producers, $1 billion in transition rules for large chicken producers but we could not have the sales tax deduction for the education of the children in the State of Washington that cost $2 billion.

Now, there are those that would say this is a chicken-plucking result. I myself do not like it. If you are going to vote for this bill, if you are going to say that moving a stadium someplace for a baseball team that you do not even know where it is going to be but you are going to give it a $250 million goodie, if you can take care of all those types of goodies around here but say, "This is against the education of the children in this country because of the immense inequity of what happened in this conference," I think you are wrong.

ORDER OF BUSINESS

Mrs. ROUKEMA. Mr. Speaker, I ask unanimous consent that my special order precede the special orders heretofore granted.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New Jersey?

There was no objection.

TRIBUTE TO JUSTICE DESIGNATE ANTONIN SCALIA

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New Jersey [Mrs. ROUKEMA] is recognized for 60 minutes.

GENERAL LEAVE

Mrs. ROUKEMA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New Jersey?

There was no objection.

Mrs. ROUKEMA. Mr. Speaker, I yield to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. I thank the gentlewoman for yielding.

Mr. Speaker, I want to join with the gentlewoman's special order welcom-

ing Antonin Scalia to the Supreme Court bench.

Mr. Speaker, it is my privilege today to pay tribute to a fellow Italian, Antonin Scalia, on the occasion of his confirmation as an Associate Justice of the U.S. Supreme Court. His new position represents two "firsts": He will be the first Justice of Italian origin and at 50, be the youngest member to join the Court.

Over the years, Judge Scalia has evidenced his philosophy of strict separation of powers and judicial restraint. He is a hard worker, a shrewd intellect, and a systematic advocate, but maintains an insurmountable humor and a warm personality. All these qualities will enable him to contribute to a cohesive and coherent court.

Judge Scalia is a unique individual. He is a man dedicated to bettering justice. His appointment to the Supreme Court will surely change the history of government for the better.

I ask my colleagues to join me in welcoming Antonin Scalia to the U.S. Supreme Court as an Associate Justice.

Mrs. ROUKEMA. Mr. Speaker, on June 17 of this year President Reagan made history by naming Judge Antonin Scalia as an Associate Justice of the U.S. Supreme Court.

Judge Scalia's professional qualities could not be of a higher order. The descriptions of him by his colleagues, by journalists, by attorneys, by others in government, by anyone who has dealt with him professionally are all variations of one dominent theme: a man of uncommon competence. "An intense intellectual. Personally charming. A consensus-builder. A writer of extraordinary clarity." These are the words used to describe the man who will be our newest member of the Nation's highest Court.

But there is also a personal quality which also ought to be highlighted. Judge Scalia is the first Italian-American to be named to the Supreme Court. This is a thrilling achievement which all of us of Italian ancestry share with the Justice-designate.

Judge Scalia, or "Nino" as his family and friends call him, is the son of immigrant parents. He was born on March 11, 1936, in Trenton, NJ and grew up in Queens. His mother was a grade-school teacher and his father a professor of Italian literature at Brooklyn College. It is not surprising that, coming from a family with a deep concern for learning, he had a brilliant academic career of his own. That began in a Jesuit school in New York and continued at Georgetown University and Harvard Law School. He graduated first in his class from Georgetown and made the Law Review at Harvard.

The man we honor today entered private practice with the nationally known firm of Jones, Day in Cleveland, where he stayed for 6 years. He then joined the faculty of one of this country's preeminent law schools: The University of Virginia. He became a prolific and influential writer. To this day he is known for his ability to write clearly and persuasively on complicated legal points.

Consumed by ideas and a desire for public service, Antonin Scalia joined the Nixon administration and later became the head of the Office of Legal Counsel in the Department of Justice during the Ford administration.

He then spent a year as a scholar at the American Enterprise Institute here in Washington before returning to the classroom as a professor at the University of Chicago Law School. There he served with distinction, often helping to give intellectual direction to this administration in its formative months.

With that impressive record in such a short time, no one was surprised when in 1982 President Reagan tapped Antonin Scalia for a position on the U.S. Court of Appeals for the District of Columbia Circuit. As an article in the Los Angeles Times recently pointed out:

> On the appellate bench, Scalia continued to make his mark and to exercise considerable influence. His law clerks went into the administration or on to clerk at the Supreme Court. He remained a prolific writer: almost two dozen articles and, in 4 years on the appellate court, more than 80 majority opinions and dozens of concurring and dissenting opinions.

The President could have done no better in selecting a Supreme Court nominee. Even those at the opposite end of the philosophical spectrum have little but praise for Nino Scalia. Judge Abnor Mikva a liberal colleague of Scalia's on the court of appeals and one who was one of the most liberal Members of this body for several years, has said that the appointment "is going to be good for the institution" of the Supreme Court.

All Americans can be proud that a man of such distinction is to become our next Associate Justice when he is sworn in this Friday. But those of us who are Italian-Americans will feel a special pride. We who are Italian-Americans will thank our own parents for helping to instill in us the love of family, devotion to country and commitment to education which Judge Scalia's parents instilled in him. After he is sworn in, we who are Italian-Americans will point to Supreme Court Justice Antonin Scalia and say to our children, "There is an example. There is a powerful intellect and a man dedicated to public service. There is one to be emulated." And, because at age 50, Judge Scalia will be the youngest member of the Court, most of us will probably have ample opportunity to hold him up to our grandchildren, as well.

Ours is a country of immigrants and a country of opportunity. Our highest Court should possess the intellectual prowess which Judge Scalia has demonstrated and the Court should reflect this country's diverse heritage. Judge Scalia will serve as an important symbol of that rich heritage. This is a wonderful moment for Judge Scalia, his wife Maureen and their nine children, and I send Judge Scalia my very best wishes for a long, successful, and satisfying tenure on the bench.

□ 1905

Mr. GALLO. Mr. Speaker, will the gentlewoman yield?

Mrs. ROUKEMA. I yield to the gentleman from New Jersey.

Mr. GALLO. Mr. Speaker, I thank the gentlewoman for yielding. The confirmation of the Honorable Antonin Scalia as an Associate Justice on the U.S. Supreme Court is a milestone for all of America.

Our tradition of a free and independent judiciary goes back to the founding of the Nation. Next year, we celebrate the Bicentennial of the U.S. Constitution, which is the foundation of our Government.

In spite of the fact that we are one of the youngest nations on Earth, we are the oldest continually operating democracy in the world. This dedication to democracy took time to develop. Its development occurred because generations of people who desired freedom built upon the accomplishments of their parents to reach for freedom.

In 5 years, we will celebrate the 500th anniversary of the discovery of America by Christopher Columbus.

As a Representative from the State of New Jersey whose grandfather came to this country from Italy 400 years after Columbus sailed, I appreciate the fact that important events are the result of years of hard work by many people.

We are here today to honor an individual who has attained the highest office in the judiciary. We share with Mr. Scalia a common heritage as Italian-Americans.

Our intense pride in Mr. Scalia's accomplishments is rooted in the understanding that we are all here today because our forefathers chose to come to America and committed themselves to the hard work required of them in the New World.

Our pride as Italian-Americans is based on the knowledge that opportunity goes hand in hand with hard work and that our common heritage was built brick by brick over the years as opportunity led to advancement in America.

I am pleased today to honor Mr. Scalia for his personal accomplishments as a jurist. I am particularly

proud that Mr. Scalia is a New Jersey native.

As you know, the New Jersey State Society will host a reception for Associate Justice-designate Scalia on Thursday, October 2 here in Washington.

As honorary chairman of the New Jersey State Society, I think that this reception is an appropriate way for us to recognize this Trenton native who is now assuming the responsibilities associated with appointment to the U.S. Supreme Court.

I am proud of our State's continuing contribution to the judicial process with a long tradition of high court appointments.

This reception will provide New Jerseyans now working in Washington with the opportunity to honor Mr. Scalia.

Mr. Scalia's reputation and his record speak for themselves.

The unanimous vote by the Senate to confirm Mr. Scalia is further evidence that he has proven himself to be worthy of the challenges that await him on the Court.

As the first Italian-American to be confirmed as a member of the court, Mr. Scalia is a pioneer.

As an American jurist, Mr. Scalia is the newest standard-bearer for a long tradition of justice through law in a proud democracy.

It is with great personal pride that I join with my colleagues today to mark this milestone for our Nation. We wish for Mr. Scalia all the best as he undertakes this new and challenging assignment.

Mr. VENTO. Mr. Speaker, will the gentlewoman yield?

Mrs. ROUKEMA. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I commend the gentlewoman for her special order and associate myself with her remarks in the statement concerning the newest Justice to be confirmed by the other body, Antonin Scalia.

Although I do not personally know him, I share an ancestry with him in terms of being an Italian-American. I am very proud to see him assume this, one of the first to assume this high honor.

Indeed, I think that the academic record he has established, the integrity that he has commended, and the unanimous vote of the other body is something that we can all take pride in, in terms of someone of quality and of substance who will uphold and help retain a strong judiciary in our system of government. I think today it is more important than ever.

I look forward to his work and the product that he produces. While philosophically we may not agree, I think that we can agree obviously on the competence and the jurist and the academic excellence that has been represented in this person, and certainly in the ancestry that has given rise to this and, frankly, the opportunity that is represented in this country to anyone and to all of us who have utilized this.

So I am pleased to note this and am especially glad to join the gentlewoman and commend her for this special order.

Mrs. ROUKEMA. Mr. Speaker, this is a statement of pride for all of us of ethnic heritage.

I am very pleased that the gentleman from Minnesota took the time to observe that the other body gave unanimous support to Judge Scalia's appointment.

Mr. ANNUNZIO. Mr. Speaker, I rise to join my colleagues in paying tribute to the Honorable Antonin Scalia, the first Italian-American to be nominated and confirmed as an Associate Justice of the U.S. Supreme Court.

Justice Scalia is eminently qualified to serve on the highest court in our country—the recent 98-0 confirmation vote by the Senate is a reflection of those superb qualities—and to join the illustrious ranks of the 106 Supreme Court Justices who have preceded him. His extraordinary legal knowledge and scholarship, as well as his commitment to the highest standards in the preservation of our country's legal institutions, are most worthy of recognition.

Scalia was born in Trenton, NJ, in 1936, the only child of S. Eugene Scalia, an Italian immigrant who was professor of Romance languages at Brooklyn College, and Catherine Panaro Scalia, a first-generation Italian-American who was an elementary school teacher. From his parents, who died within 3 weeks of each other this past winter, he inherited a tradition of scholarship, political acumen, and an interest in law. Scalia graduated first in his class in high school, as well as first in college from Georgetown University in 1957. He received his law degree from Harvard University in 1960, graduating magna cum laude.

From 1960 through 1966, Justice Scalia practiced law with the prestigious law firm which is now called Jones, Day, Reaves & Pogue, and he taught law at the University of Virginia Law School for 3 years from 1967 to 1970. He served as general counsel of the newly created Office of Telecommunications Policy in 1971, and the next year, he became chairman of the Administrative Conference of the United States.

In 1974, Justice Scalia served as Assistant Attorney General in the Office of Legal Counsel, and in 1977, he joined the faculty at the University of Chicago Law School, where he taught until his appointment by President Reagan in 1982 to the U.S. Circuit Court of Appeals for the District of Columbia.

As a leader in the Italian-American community, as a founder of the National Italian American Foundation, as a founder of the Joint Civic Committee of Italian Americans, an umbrella organization encompassing more than 40 Italo-American organizations in the Chicagoland area, I am extremely proud of my heritage as the son of immigrant Italian parents, as is Judge Scalia.

The appointment of Judge Scalia is convincing proof that in America there are no barriers to achieving one's fondest hopes and aspirations. To become a member of the highest court in the land, as Judge Scalia has done, could be accomplished only in a country where the doors of opportunity are open to everyone, regardless of national origin, religion, race or gender. In America there are no barriers for an individual who is willing to work in order to achieve the highest goals that he sets for himself. Judge Scalia is a living example and a monument to that great principle, enunciated this year at the Statue of Liberty centennial celebration, of a land of opportunity for all.

Mr. Speaker, Justice Scalia is a man of great integrity and compassion, and his deep commitment to the highest principles in our legal system is most commendable. I congratulate Justice Scalia and his family on his appointment as an Associate Justice to the U.S. Supreme Court, and I extend to him my best wishes as he continues his outstanding service to our Nation.

Mr. RODINO. Mr. Speaker, it is my great pleasure to join my House colleagues in taking out this special order to Antonin Scalia, our Nation's newest Associate Justice of the U.S. Supreme Court.

Justice Scalia is the embodiment of the American dream. The only son of a Sicilian immigrant father and a school teacher mother, he attended Georgetown University, becoming valedictorian, and graduated from Harvard Law School, where he served as editor of its prestigious law review.

As a young lawyer, Justice Scalia quickly earned a reputation as an outstanding scholar and an impeccable legal intellectual. He has taught law at the University of Virginia and the University of Chicago. During the Nixon and Ford administrations, Justice Scalia served as general counsel of the White House Office of Telecommunications Policy and head of the Justice Department Office of Legal Counsel. In 1982, President Reagan appointed him to the U.S. Court of Appeals for the District of Columbia Circuit, the second highest powerful court in the Nation.

On a more personal note, Justice Scalia is a man of warm good humor, a family man, devoted to his wife, Maureen, and their nine children. Known to family and friends as "Nino," he has a zest for oldfashioned "sing-alongs" and friendly poker games.

Mr. Speaker, even though some of us may disagree with Justice Scalia's conservative views, we respect his outstanding record as lawyer, teacher, and jurist. I am especially pleased to note that Justice Scalia is the first American of Italian heritage to be selected to serve on the highest court in the land. A few weeks ago, my colleagues in the Senate—both Democrats and Republicans—voted to confirm Justice Scalia, unanimously.

Mr. Speaker, the Constitution of the United States is the cherished foundation of our democracy, a guarantee of civil rights, freedom and liberty for all Americans. All Americans—black and white, young and old, rich and poor, conservative and liberal—depend on the Supreme Court to preserve the meaning of this wonderful document through history. I am sure that in the coming years, Justice Antonin Scalia will prove to be a jurist who inspires the pride and confidence of all Americans, a jurist

of extraordinary talents and unwavering devotion to the Constitution, who will help wisely guide the Supreme Court and the American people into the 21st century.

Mr. RINALDO. Mr. Speaker, the President's nomination and the confirmation by a unanimous vote of the Senate of Judge Antonin Scalia to the U.S. Supreme Court is a great source of pride to millions of Italian-Americans. As the first member of the Supreme Court of Italian heritage, Justice Scalia stands out as one of our Nation's most respected and distinguished legal scholars and a staunch defender of the Constitution. Even those Members of the Senate who disagreed with Justice Scalia's conservative views on the role of the judiciary expressed the deepest respect for his ability as a jurist and his legal scholarship.

The rise of Justice Scalia to the highest branch of the law demonstrates that the barriers that Italian-Americans once faced in our society have been rapidly coming down. While there can be no such thing as ethnic balance on the Supreme Court—it must be fair and impartial to every race, creed, and ethnic group—there is an undeniable sense of ethnic pride among Italian-Americans in having a judge of such great talent and experience on the Court. It can only help to further the respect that millions of Italian-Americans have for our laws and judicial system.

The appointment of Justice Scalia has fulfilled President Reagan's promise of selecting only the very best judges to serve on the Supreme Court. Just as the President achieved an historic breakthrough in nominating Sandra Day O'Connor as the first woman Justice on the Supreme Court, he has kept his faith with millions of Italian-Americans who waited for more than two centuries before an Italian-American joined our Nation's highest court.

Justice Scalia is dedicated to constitutional liberties and the preservation of our free institutions. During his distinguished career as a judge and legal scholar, he has broadened our understanding of the law and helped to educate new generations of lawyers. A summa cum laude graduate of Georgetown University, where he was first in his class, Judge Scalia later was editor of the Law Review at Harvard Law School and a Sheldon fellow at Harvard. He taught law at the University of Chicago, Stanford University, Georgetown, and the University of Virginia. Each of these universities is among our most prestigious centers of higher education and can take great pride in Justice Scalia's development as one of our Nation's most respected legal scholars.

In the Senate confirmation hearings, Justice Scalia also demonstrated the judicial temperament, human compassion, and pride in our American institutions that have made the Supreme Court of the United States the most honored legal body in the world. Justice Scalia will make all Americans proud, regardless of their ethnic background, to have so outstanding a judge and fellow American on the Supreme Court of the United States.

Mr. LAFALCE. Mr. Speaker, I join with many of my colleagues and millions of Americans, in celebrating the unanimous confirmation by the Senate of Antonin Scalia as an Associate Justice of the U.S. Supreme Court. I do this with particular pride, because I share with "Nino" Scalia a common heritage, membership in the Italian-American community.

However, we honor Judge Scalia today not because of his ethnic background, but for his brilliant achievements, which have been justly rewarded by his lifetime appointment to our Nation's highest court.

Judge Scalia graduated first in his class from Georgetown and achieved high honors at the Harvard Law School. He has distinguished himself in each endeavor he has undertaken. As a law school professor at the Universities of Virginia and Chicago, an attorney engaged in the private practice of law, as an assistant U.S. attorney general, and finally as a Federal judge, Mr. Scalia has impressed one and all with his intellect, his vigor and his personal integrity.

While generally classified as a conservative, Judge Scalia is not an ideologue. He has demonstrated in his legal opinions, not only great mental agility, but also the flexibility to consider the merits of each case, and apply the facts to the law, which is the mark of a fine jurist. Above all, Judge Scalia has demonstrated a respect for the Constitution as the supreme law of the land, which is perhaps the most important qualification for his new position.

Just as Justice Felix Frankfurter provided a moderating influence on the Court after his appointment by President Roosevelt, so, I believe can Judge Scalia fulfill that role on the Rehnquist Court.

He is a young, healthy man with a boundless enthusiasm for his work, and I therefore look forward to his brilliance on the Court, where we hope he will serve well into the next century.

As an Italian-American, but above all as an American, I join the voices being raised today in honor of the past and future achievements of Antonin Scalia. Congratulations, Justice Scalia.

Mr. RUSSO. Mr. Speaker, I join with my colleagues in paying tribute to the Honorable Antonin Scalia, unanimously confirmed by the Senate as an Associate Justice of the U.S. Supreme Court. As a citizen and Representative, I welcome the addition to the Court of a man who possesses formidable intelligence, tenacity, a brilliant legal mind, energy and commitment. As an Italian-American, I am proud to share a common heritage with Judge Scalia.

Given the attention to the appointment of the first Italian-American to the Supreme Court, I am delighted that it is Judge Scalia who is this "representative." The only child of a Sicilian immigrant, he is a devout and courageous man. He's a hard worker. He also has the personal charm and sense of humor that serve you well, anywhere. I believe these traits in addition to his energetic scholarship are going to mean that Judge Scalia will prove to be not only a good and fair Justice, but a great one.

I commend the wisdom of the President in appointing and the Senate in confirming Judge Scalia. It is a proud day for Italian-Americans and a fortunate day for America to have gained such a fine man in our highest Court. I welcome this opportunity to pay tribute to Judge Scalia and to wish him well as he assumes his new responsibilities.

Mr. TRAFICANT. Mr. Speaker, as an Italian-American I am honored and proud to participate in this special order honoring Judge Antonin Scalia's confirmation as an Associate Justice on the U.S. Supreme Court.

Judge Scalia has an excellent record and is a man of high character. The appointment of an Italian-American to the highest Court in the land is yet another chapter in the ongoing saga of the Italian-American community. Having come here from Italy in the late 19th and early 20th centuries, Italians have made a lasting impact on the development of America. Italian-Americans continue to provide strategic leadership in so many areas of American life. Judge Scalia's confirmation serves to highlight and underscore the many contributions Italian-Americans have made to this great country.

I share the sense of pride and accomplishment felt by all Italian-Americans. I am proud of the ongoing contributions Italian-Americans continue to make on America's rich ethnic heritage. It is through its tradition of opening its arms to all peoples that America draws its strength. Italian-Americans serve in some of the most powerful and important positions in American government. The confirmation of Judge Scalia marks the first time an Italian-American has ascended to the highest Court in the land. I am confident that he will make all of us in the Italian-American community proud and that he will serve America in a distinguished and professional manner.

Italian-Americans have come a long way from their humble immigrant heritage. The confirmation of Judge Scalia as an Associate Justice on the Supreme Court is yet another indication of the long, successful road we have traveled. I want to congratulate Judge Scalia and his family and wish him the best of luck in his new position.

ORDER OF BUSINESS

Mr. LEVINE of California. Mr. Speaker, I ask unanimous consent that the special order which I have reserved be allowed to precede the others at this time and be taken out of order.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from California?

Mr. CRANE. Mr. Speaker, reserving the right to object, and I do not anticipate objecting, but will the gentleman tell me how long the special order is?

Mr. LEVINE of California. Mr. Speaker, I do not anticipate this special order will last more than 20 minutes. I think it will be a 15- or 20-minute special order.

Mr. CRANE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

TRIBUTE TO KEN EDWARDS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. LEVINE] is recognized for 60 minutes.

Mr. LEVINE of California. Mr. Speaker, a little more than a year ago, Ken Edwards, one of the finest public servants and individuals whom I have ever known passed away. I have asked for this time, along with my distinguished colleague, the gentleman from Oklahoma [Mr. EDWARDS], to pay tribute to Ken Edwards. It is fitting, and I am especially pleased that with us in Washington this evening are Ken's wife, Sue, and Ken's son, David, two people who have been very special in their own right and who obviously meant the world to Ken.

□ 1915

I think that it is fitting that this special order occur at this particular time. It is a tradition in the Jewish faith, in the Jewish religion, not to unveil the headstone at the grave of somebody who died for more than a year. After a year, when the headstone is unveiled, one has the opportunity, even a year later, to think about and reflect upon the accomplishments that that individual achieved during his or her lifetime.

The accomplishments that Ken Edwards achieved and the person that Ken Edwards was were truly remarkable whether one views them a year after his death or, I suspect, many, many years into the future.

I personally first met Ken almost 10 years ago when I was running for my first elective public office, a seat in the State Assembly in California. When I met Ken, he was actually campaigning for my opponent, but Ken in the way that those of us knew him had such an incredible warmth and sincerity and charm and effectiveness of style that, despite the fact that Ken Edwards, when I first met him, was campaigning for the person against whom I was running, was able to establish an immediate rapport with me and was somebody whom I immediately considered a person that I wanted to become friendly with and a person that I was able very quickly to become friendly with.

I think for those of us in this Chamber, all of whom were elected to this office in the U.S. House of Representatives in the crucible of a campaign, to understand that when you meet somebody for the very first time when that person is actually in the camp of your opponent, it is highly unusual that you become very close to and very friendly with that person. But that was the type of person Ken was.

Tonight's tribute is a tribute that was distinctly bipartisan and a tribute that clearly crosses philosophical and political lines. Ken was a person who was able to accomplish that in everything that he did.

Ken was such a remarkable man that it is hard to know where to begin in summarizing his accomplishments. I will do my best, however, to do some of that. As with most of us, Ken's early life played an important role in shaping his adult life. He said as an adult repeatedly that his childhood, during which he spent 10 years living at Vista del Mar, helped form his commitment to working on behalf of social services and troubled young people. Despite a childhood in which things were not always made easy for Ken, to say the least, Ken was able to earn degrees from Santa Monica College in pre-architecture and from California State College at Los Angeles in social work.

Following his graduation, Ken spent 2 years in Venezuela with the Peace Corps. That experience cemented Ken's commitment to helping people in need. That youthful commitment became the driving force in Ken's personal and professional life.

Among the organizations on whose board he served, and played an active role, were the Family Service of Santa Monica, the YWCA, Jewish Family Services, Family Planning of Los Angeles, Project Heavy West, the Santa Monica Community Coordinating Council, the Santa Monica School Attendance Review Board, Stepping Stone, and the Bay Area Drug Abuse Council.

As a professional, Ken worked as a juvenile placement officer for the county of Los Angeles. He worked day in and day out with some of the most troubled young people in Los Angeles. It is thanks to Ken Edwards that many of those young people are leading productive and happy lives.

During the time he worked as a probation officer, Ken also found time to complete a masters degree in social work at Pepperdine University.

His commitment to improving the quality of life in Santa Monica extended beyond the realm of his professional life and social work into the political arena.

In 1972, the Santa Monica City Council was considering a proposal to demolish the pier which has become a landmark for the city. In its place was to be a highrise hotel and other tourist facilities.

Ken became one of the key leaders in the effort to save the pier. He helped put together a broad coalition of community residents who were able to save the pier. He worked with business, political, and community leaders to win a victory for his cause.

That experience seemed to galvanize a belief in Ken that Government, and the political process, were key to helping the people, and advancing the causes, he cared so much about. He began to regularly attend city council meetings, and speak out on behalf of the needs of the poor and the dispossessed.

He became active in the local Democratic Party and his union. He was an active member in the American Federation of State, County, and Municiple Employees. He chaired their Political Action Committee. He was a founding member of Westside COPE.

In the Democratic Party, Ken was a member of the State Central Committee, the Los Angeles County Central Committee, the 44th Assembly District Democratic Council, and president of the Santa Monica Democratic Club.

Given all of Ken's commitments, it is hard to believe that he ever had time to marry and become a father. But, he did. And in this, like most everything else in his life, he was a success.

Never a man to rush into things, Ken took his time in proposing to his wife to be, Sue Tyler. Ken first met Sue in 1962 while she was a student at UCLA. It was 11 years before they were finally married.

Ken and Sue waited 6 years before they had their son David, who was born on April 11, 1979. It is ironic that David was born the same day that one of the causes about which Ken cared so much, rent control, became law in Santa Monica.

Sue and David meant the world to Ken. They both meant so much to him, it is hard for me to remember spending any significant amount of time with him without him singing the praises of his family.

David was especially important to Ken. Perhaps because of his own childhood, Ken was determined that David grow up in a loving and caring home. No two parents could have provided their child with a more loving a nurturing home than Ken and Sue.

I first saw David after the time that he was a very small child at a meeting in Santa Monica, where David, as I think as a 2- or 3-year-old, was irrepressable in going around the room saying, "Vote for my daddy, vote for my daddy," and it was all that Ken could do to get David to desist from saying "Vote for my daddy" the 18th or 20th time. But his infectious spirit which was clearly a part of the heredity which he obtained was the clear highlight of that meeting that I was at in Santa Monica.

Even though they shared him for such a relatively short time, only David and Sue know how lucky they were to share Ken's love and Ken's life.

Ken's restless desire to do more for his community, and help those most in need of help, continued to push him into politics. While he accomplished a great deal as a private citizen, he knew

he could do more if he held the reigns of power.

Finally, in 1977 Ken ran for the Santa Monica City Council. Once again, however, things were not to come easily to Ken. He was defeated by a handful of votes.

The election marked a watershed in Santa Monica City politics, however. It was the last victory of the old conservative establishment which had controlled the city for decades.

In the next election, Ken worked selflessly to help elect two progressive Democrats to the council. Not only were they successful, but the leader of that ticket received more votes than any candidate in Santa Monica's history. From that day on, things were never the same for the city of Santa Monica.

□ 1925

Two years later, Ken again ran for city council. This time he won, and led all candidates in votes received.

Two years later, Ken was elected mayor by his colleagues on the city council.

In 1985 he was reelected to the city council and broke every previous record for votes received.

By this time it was public knowledge that Ken was fighting, and losing, a battle with cancer. His reelection was more than an endorsement of his leadership as mayor. It was an outpouring of affection and support from the people of Santa Monica for Ken, and his years of service and commitment to the city and its residents.

The time Ken served on the city council, and in particular as mayor, were among the most difficult and tumultuous times in the history of Santa Monica's history. A change in power as sweeping and complete as Santa Monica's is never easy. In Santa Monica it broke apart political alliances and personal friendships, and made the city a focus of national attention and of community controversy.

City council meetings lasted well into the night. Many times they were characterized by heated exchanges among council members and between the council and the public.

During this time of chaos Ken was able, on all occasions, to retain his composure and his perspective. His commitment to working with every sector of the city, and his commitment to giving everyone their chance to be heard, helped make him a unique figure during this difficult time.

At a time of unprecedented divisiveness, Ken was a source for cooperation and reconciliation. At a time of confrontation, Ken was a source of moderation. At a time of fractuous struggle, Ken was a source of healing.

More than any other single council member, Ken worked to bring a divided city back together.

Ken Edwards will not be forgotten by the city to whom he gave so much. Soon, Santa Monica's first senior citizen multipurpose center will open and be named in his honor. It is fitting that this symbol of Santa Monica's social service network will be named in his honor.

As a council member, Ken never waivered in his commitment to the social service community in Santa Monica. He played the leading role in creating a predictable grants program for the city. Today, at a time of unprecedented reductions in funding for public programs, Santa Monica now budgets more than $1 million every year for social services, thanks very largely to the leadership that Ken Edwards gave to this issue.

Ken also was responsible for creating one of the most progressive and effective local anticrime programs in the Nation. His belief in, and commitment to, neighborhood based crime prevention, and his professional experience with the criminal justice system enabled him to create a model program for other cities to emulate.

Earlier this year, a plaque dedicated to Ken Edwards' work as a probation officer was placed on the probation department building in the group of county offices in Santa Monica. This was the very first time in the history of Los Angeles County that any county employee has been so honored.

My fondest memories of Ken are personal ones. Ken learned that he had cancer at a time when he had perhaps the most to live for. He had become a father, had been elected to the city council, and was enjoying a successful career. He had everything he could ask for, and everything to live for.

Any ordinary man would have been overcome by either self-pity or despair. Not Ken.

I will never forget his courage, his sense of humor, and his combative determination to win his battle with cancer. Just as he rose above adversity as a child, he rose above a fatal disease as an adult.

I last visited Ken only 2 days before he died. Even then, weakened as he was by his disease, his views remained strong and firm and his sense of humor altogether intact.

By any objective definition of the term, Ken Edwards was a great man. He was a dedicated and loving father and family man. He gave more to his community than he ever received. There is no question that Santa Monica is a better and more decent place in which to live because of his efforts.

He was a force for conciliation when his community faced the danger of being torn apart by confrontation. He was often a success in spite of his circumstances, not because of them.

A year after his death I still miss Ken. I miss his wise counsel on a variety of important issues, I miss his humor. I miss his energy and commitment. And, perhaps most of all, I miss his advocacy for the less fortunate, the poor, the elderly, and the dispossessed members of our society.

People like Ken Edwards are rare. They should serve as role models for our children. Although Ken is gone, he will never be forgotten by those who knew him or by our community.

I would like to mention that I had not intended for these remarks to go quite as long as they have, and I hope that my colleagues will beg my indulgence for a few moments. I appreciate the indulgence of my colleagues for remarks that were somewhat longer than I anticipated.

Mr. EDWARDS of Oklahoma. Mr. Speaker, will the gentleman yield?

Mr. LEVINE of California. I yield to the gentleman from Oklahoma.

Mr. EDWARDS of Oklahoma. Mr. Speaker, first, let me thank my colleague from California for arranging the time for this special tribute. MEL LEVINE and Ken Edwards were not only close politically, they were close friends, personally, and this is, indeed, a very special way MEL has chosen to honor his friend.

Ken Edwards was my cousin, and I was proud of him. When I speak to my own children about a life in public service, about the rare opportunity public life offers to help our people, I talk to them about their cousin, Ken.

We don't salute Ken today because of family, or friendship, or even because of our similarities. Ken's father and mine were brothers, in our childhood we lived together, but politically we set about on very different paths. I am a conservative Republican; the man whose life I am celebrating today was a liberal Democrat who was once honored by the Democratic Party in Los Angeles as its Man of the Year.

So what was it about Ken Edwards that sets him apart, that makes us want to stand here and put his life before our colleagues as something very special and very important.

For one thing, Ken Edwards devoted his life not to himself, but to others. He had the intelligence, the dedication, the capacity to make a substantial amount of money and live comfortably, without controversy. He chose instead to spend his life in social work and public service.

As Ken's wife, Sue, describes him: Ken was a social worker—a social worker who entered politics to continue his social work. And he did it well.

He worried about, and concerned himself with, the problems of the poor and elderly, though he was not poor and did not live to be elderly.

He concerned himself with the problems of renters, though he did not

rent. He entered politics not out of self-interest, but out of selfless interest and in so doing became one of southern California's most powerful, most respected and most popular political figures.

Ken Edwards understood that the most of good government is not confrontation but consensus. That sometimes there are winners and losers, but in the best of politics there are solutions and agreements—and, amazingly, Ken was often successful in finding those areas of agreement. He won when he had to, but his goal was not so much to win political battles as to avoid them.

The gentleman from California has reviewed the many things Ken Edwards did. And I was reminded again of the great social concern that motivated him because the organizations he chose to help were not the powerful boards but the hands-on-agencies that work most closely with the people of the community.

I did not work in politics with Ken. His politics and mine were far different. But how I loved his heart.

What I remember most about Kenny are two things: Kenny as a small boy in Oklahoma City with absolutely boundless energy and enthusiasm. And Kenny as a successful adult, sitting with me for hours on the night before he went back into the hospital for the last time—Kenny, sick with cancer, knowing his days were few, still full of boundless energy and enthusiasm.

I loved Ken Edwards but that's no big thing: everybody loved Ken Edwards. It's not a matter of wishing he was still here—I believe he still is. What it's a matter of, is wishing there were others like him.

□ 1935

Mr. LEVINE of California. Mr. Speaker, I thank the gentleman very sincerely for his eloquent and personal and moving remarks about his cousin, Ken. I join with my colleague from Oklahoma in thanking our colleagues for allowing us to precede them with this special order.

GENERAL LEAVE

Mr. LEVINE of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of this special order.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from California?

There was no objection.

STEEL MARKS THE TEST

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. MURTHA] is recognized for 60 minutes.

Mr. MURTHA. Mr. Speaker, the domestic steel industry continues to wage a war against an unremitting stream of imported steel. Despite the overall reduction in steel imports since the 1984 introduction of the steel VRA Program, steel imports from non-VRA countries continue to undermine the steel program and the recovery of the domestic steel industry.

Under the VRA Program, steel imports have declined from a record high of 31 percent in 1984 to approximately 23 percent today. Unfortunately, during the past 8 months steel import penetration has steadily increased to nearly 27 percent. The flip side of the coin is equally alarming—the second largest steel producer has filed bankruptcy under chapter 11, domestic steel shipments have continued to fall, the Nation's largest steel producer is not in operation, and steel employment has fallen to half of what it was in 1984.

Since 1980 the steel industry has lost over $8 billion and 15 steel companies have gone out of business since 1977. Despite this decline, since 1977 industry reinvestment and modernization has exceeded $14 billion, including $3 billion in the last 2 years. Unfortunately, since 1980, the industry's equity has declined from $15.4 billion to $6.8 billion.

Some economists will tell you that, so be it, economic survival goes to the strongest.

It is not that simple, America needs and must have a basic steel industry.

The erosion of the steel industry must be brought to a halt and here is why: National defense.

Current U.S. steel production is approximately 88 million tons annually. Eighty-eight million tons still provides enough steel production to meet current mobilization requirements. However, as domestic steel production continues to decline so too will our ability to meet future defense requirements. If it were only a question of economics, we could purchase the ships, planes, and tanks overseas. But Congress has made the decision that this country needs a strong, adequate defense industrial base. That decision applies to steel.

Steel represents only one aspect of a much larger problem.

Many people, including some Members of Congress, will tell you that the country no longer needs an integrated steel industry. They contend that Third World developing countries can better provide for our steel needs. Chiefly, the argument goes, it's because they have the newest technology and lower wages and can therefore produce steel cheaper.

Resounding evidence shows that developing countries follow the example of the post WWII reconstructed countries like Japan and Korea and Western Europe. They all begin by shipping steel into the U.S. market, followed in short order by exports of steel-using products such as automobiles and appliances.

The chairman of LTV Corp., Mr. Ray Hay, noted in testimony before the Steel Caucus, that 50 percent of the steel consumed annually in the United States comes from overseas. That's the result of direct and indirect steel imports.

Increased direct and indirect steel imports impact not only the domestic steel industry, but also our steel-using industries. Loss of our basic industries can only result in the loss of the Nation's industrial base, a lowering of our standard of living and economy, while posing as a threat to our national security.

There is sometimes criticism of what the steelworkers in this country are paid.

Since 1983, the steelworkers of this country have given back over $1.4 billion in wages and benefit concessions. Some people will tell you that it is simply economics, foreign producer's lower labor cost enable them to produce steel cheaper. If the United States gives up its raw steelmaking capacity, retaining only the rolling mills, the industry's contribution to the Nation's gross national product will be reduced by 40 percent. In addition, the impact on the country's workers will be devastating—lower wage jobs, and not just for steelworkers, but for all workers in manufacturing. As the country's manufacturing base declines so to will national income. Remember, as revenue declines, GNP declines, the Federal deficit grows and the Nation's economic growth vanishes.

Why do we need basic industries like steel? Because they are the core of this Nation's economy.

The steel industry has taken extreme measures to get back into the ball game—especially in the areas of reducing costs and meeting new quality standards. The result has been streamlined work practices and a reduction in man-hours per ton that keeps the American steel industry the most productive in the world.

In October 1984, the President implemented a steel policy that called for the negotiation of steel voluntary restraint agreements with our principal steel trading partners. Since the VRA Program was put into effect, agreements with 17 countries have been concluded covering 81 percent of all steel imports.

The members of the House Steel Caucus have been diligent in monitoring the progress of the steel program. In the past 18 months we have met repeatedly with members of the Cabinet, the steel companies and the United Steelworkers to ensure continued implementation of the VRA's and to identify potential problems areas as they arise. Our efforts have led us to identify two major threats to the continued success of the program and the steel industry—circumvention of the VRA's and rising steel imports from non-VRA countries. The most substantial increase in steal imports have come from Canada, Taiwan and Sweden.

The legislation I am introducing today, and the companion bill that was introduced in the Senate last week, will directly resolve these problem areas by:

First, requiring that all steel entering the United States from non-VRA countries be allocated to the country where the steel was melted and poured, regardless of where the final finishing operation is performed.

Second, allows 90 days for concluding a separate VRA with Canada, Taiwan and Sweden.

Failure on the part of the countries to conclude a VRA will result in their steel imports

automatically being limited to 70 percent of the level of their steel imports during the 12 months preceding the implementation of the steel VRA Program on October 1, 1984.

This legislation will effectively stabilize all steel imports from Canada, Taiwan, and Sweden at 2.64 million tons annually. These restrictions will mean an additional 1.4 million tons of production for domestic steel producers and bring the level of steel import penetration closer in line with the 20.2-percent level established under the steel VRA Program.

Steel marks the test on which the future of American industry will be determined. Our basic industries are the foundation of the country's economy. It is our basic industries, our growth in manufacturing that has fueled the economic growth and prosperity that we have come to know and expect.

This country needs it basic industries. We need a strong steel industry.

If we maintain the foundation that our basic industries provide, then we will continue to have an economy as strong as steel.

TAX REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. CRANE] is recognized for 60 minutes.

Mr. CRANE. Mr. Speaker, tonight my distinguished colleague, the gentleman from Texas [Mr. ARCHER] and my distinguished colleague, the gentleman from Minnesota [Mr. FRENZEL] and I want to add further remarks on some of the problems that we perceive in this pending tax bill that will be up before us tomorrow morning.

The tax bill was originally the creation of many people who for years had commented on the Byzantine aspect of our existing code, a code so complicated that even average citizens were almost reduced to dependence upon professionals to fill out their tax forms and there was a crying need, obviously, for simplification of that code.

In addition to that, we read in newspaper accounts of the unfairness of the existing code. There was the classic illustration of GE making $6½ billion in profits a couple years back and getting a $283 million tax rebate, when little Mom and Pop operations were forced to pay taxes. Thus, there was a great attraction to trying to establish some degree of equity and fairness in the code.

In addition to that, we could see with some of our growth figures that there were additional incentives that might be provided in the code to guarantee that we would have more dynamic economic growth, that we could have increased job creation and the fringe benefit of that, of course, is more people employed, and thus a greater revenue base for the Government, not that increasing revenues in this town was the objective, but clearly this would be a desirable objective, too; so simplicity, fairness and growth, were kind of the code words that attended the President's legitimate call for a revision of the code that would address these three fundamental points.

Unfortunately, somewhere on the way to tax reform we made a detour. We made a detour not necessarily, I do not think, because Members consciously wanted to depart from the guidelines that the President had set forth to open up the parameters of the debate, but in the nitty-gritty of trying in a climate of intense pressure to produce a comprehensive sweeping reform of the entire code, inevitable political concessions ended up being made. In fact, that finally resulted in the conferees back in August of this year reporting out a document that they had never seen, a document in fact that did not exist, a document that I have been told is still in the process of technical revision right now on the eve of our having to vote on this tax bill tomorrow.

The document produced two volumes, weighty volumes here, the report of the managers, the interpretation of the managers and the bill itself coming to some 2,000-odd pages. That scarcely represents tax reform if you are talking about simplicity of the code.

As my distinguished colleague from Texas is prepared to comment, I would like in fact to invite the gentleman to tell all of our colleagues just exactly what he was told by the professionals who had work with the code, and I happily yield to the gentleman from Texas.

Mr. ARCHER. Mr. Speaker, if the gentleman will yield, many of the professionals who have helped put this together and have done I think a very good job considering the pressures that they have been under have serious misgivings about the workability of many of these provisions.

They in addition recognize the haste by which it was put together has left many ends untied and actually misstatements that will go into the law compared to what was intended.

The point I wanted to make, though, and I thank the gentleman for yielding, is that these 2,000 pages of this document will not be the new law. They will be added to the existing law and will not replace the existing law.

The existing law, as I mentioned the other night, is something like 3,837 pages; so this will be added to that to make a much more complex body of law, not to speak of the IRS regulations, the massive IRS regulations that will have to come in the aftermath of this and have to be digested for people to understand.

Now, let us quickly say yes, there is simplicity in this new reform bill for those people who are dropped from the rolls, those low-income people who already have the simplest return to file will not have to file a return at all; but you could say the same thing about the system today, that an individual who does not have to file a return has a simple return under the current code.

The question is, What is going to be the impact on those people who have to continue to file a return?

I thank the gentleman for yielding.

Mr. CRANE. Mr. Speaker, I thank the gentleman for his contribution. I would wholeheartedly concur that we met the criterion of simplification for 6 million who never should have been on the tax rolls anyway if we had had indexation of the Tax Code over the past 50 years. They are people who are workers in such low-income brackets that they should be encouraged, not discouraged, by application of the Tax Code and in part because of the deterioration of the purchasing power of the dollar and bracket creep these people ended up as taxpayers; but that is about the extent of tax simplification, because as my colleague from Texas notes, the truth of the matter is this has created an infinitely more complicated body of law.

I think something for folks to recognize is that back in 1984 we passed a relatively modest $50 billion tax increase over a 3-year period and I read recently where one paragraph of that 1984 law has already produced 126 pages of interpretations.

Now, I made the statement at the time we debated the House version of this so-called tax reform, if that is the case this Chamber will not accommodate over the next 25 years the body of interpretations that will be applied to what we are contemplating here tomorrow.

This is another disturbing aspect of engaging in something so sweeping and so complicated and so little understood as this is.

The truth of the matter is, there will not be a single Member of this body who will have read these documents when we are asked to vote on them tomorrow anymore than the conferees, the people responsible for reconciling House and Senate differences had anything to look at when they cast their vote last August. There was no document.

We have the document now and considering the time constraints, even if one were to sit up the remainder of tonight in anticipation of that debate tomorrow, there is not going to be any Member who has read it, and that is not as disturbing as it sounds, because we would not understand it if we read it anyway.

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

Mr. CRANE. I am happy to yield to the gentleman from Minnesota.

Mr. FRENZEL. On that matter, Mr. Speaker, I would like to state that it is no pleasure for the gentleman to come

here late at night and address empty chairs, but the gentleman is doing this body and the country a great service for letting our Members know, if they choose to watch or to read that which we say and do here tonight, some of the things that are wrong with this tax bill.

The bill has been promoted as being an unvarnished advantage, an unrestrained asset. There are some good things in it, but the gentleman has pointed out correctly that the preponderance of disadvantage far outweighs the advantage in the bill.

The people in the Congress, like the gentleman from Illinois who carry the burden of knowledge of what is in this bill, are willing to spend the time to inform empty chairs and others, we hope, of the things that are clearly wrong in this bill and are the reasons why it should not be supported.

I thank the gentleman for taking the time to do it.

Mr. CRANE. Mr. Speaker, I thank the gentleman for his contribution and for his hours of labor in behalf of trying to sift through to determine just exactly what it is we are going to be asked to render a judgment on tomorrow.

I think there are no individuals who have devoted more time trying to understand what is contained in these two documents more than my distinguished colleagues from Minnesota and Texas; yet for all of that, we will be years in learning what hidden little things may be in there.

There was the case in point of the article in the New Republic of a little provision in that code on like page 646 and it was paragraph 842, or whatever, subparagraph (H), subparagraph 4, dealing with the constriction of tax exempt municipal bonds and said that there would be this restriction, except for those communities that met the criteria contained in section 235, subsection (B), subsection 5, and so you jumped a hundred pages back in the bill and here it said the exception to this restriction would be communtites of 2½ million or more, and as the New Republic said, and they added an American baseball team facetiously, that they noted that brought us down to three cities. Now we are talking about New York City, Chicago, and Los Angeles.

Then there was another provision that said they must also conform to the guidelines contained in section 1022, subsection (G), subsubsection 4, and so you jump 175 pages forward in the bill and here it explained that these cities had to be in States that ratified a new constitution in the precise way that my home State of Illinois did.

As a result, even if you go through this bill, unless you are a Sherlock Holmes, you cannot necessarily know what all these references are alluding to. I do not know how much may be in there. I am sure tax sleuths will work their way through that bill at some future date and we may find all kinds of unrevealed goodies and dispensations for certain interests that found their way into the bill.

Maybe one might legitimately argue, well, that is politics, that is the way you develop a consensus. You have got to make concessions to this group and that. All I am suggesting is that there is more in this bill than meets the eye.

In fact, in making reference to more than meeting the eye, to reassure our colleagues that this is not a partisan issue, the Democratic Study Group prepared a document, a special report on the tax agreement, pluses and minuses. In going over some of the minuses in the bill, I have got to commend the research talent of the DSG for focusing on some of the things that we have been alluding to in previous debates on the subject.

The sales tax deduction, as we know and probably most of our colleagues are aware, this measure repeals the itemized deduction for State and local sales taxes. The unfortunate aspect of this is that not all States tax the same way. We have a State income tax in our home State of Illinois and that is deductible, the State income tax, but in States that have not resorted to income taxes, as our colleague from Washington who was in the well earlier made reference to, those States have relied instead on sales taxes and excise taxes. Because of the absence of a State income tax, they have been able to get constituent support for higher sales taxes than we have in my home State, but none of those taxes are going to be deductible.

In addition to that the consumer interest deduction is another thing that the DSG report focuses on. They noted that these consumer interest deductions will be eliminated under the provisions of this new code.

Now, stop and ask yourselves the question, who in our society is most inclined to be taking advantage of consumer interest deductions? I will argue and I think I can easily generate the proof of this point that people with lower incomes are the ones who tend to be those who buy on time.

□ 1950

The wealthy in our society do not have to, and the not so wealthy do not have to.

I was indoctrinated as a youngster to believe that it was improper to take on debt. My wife and I had to in the purchase of our house, but otherwise we delayed our gratifications, whether it was purchase of furniture, appliances, or even automobiles, until we had the cash. But we are living in a different society in the post-World War II era, and there are many people out there, working people in lower income levels, who are the beneficiaries primarily of the consumer-interest deduction. They are going to feel a great deal of pain as a result of losing that in this code.

We made mention before, but it bears repeating, of another provision in this tax change, that dealing with apartment housing and renters. Once more, who tend to be the renters in our society? People in lower-income brackets, that tend to rent. By changing the treatment of passive losses and the encouragement of investment in the construction of multifamily housing, the projections are that there will be a halving of the construction of multifamily housing next year, which will impact on the building and constructions trades, but aside from that, it is going to create a smaller pool of available rental space, and the demand will continue to go on as it has, and this can only have the consequence that Martin Feldstein referred to in an article which he did on this subject of pushing the rents of these apartments up.

He is projecting a 10- to 15-percent increase in rents next year alone. He noted in his article that the couple making $25,000 a year and paying $500 in monthly rent may enjoy a $20-a-month reduction in their taxes, but they can anticipate a $50- to $75-a-month increase in their rents. So once more, how have we provided for the low-income in our society, or middle-income, not to mention the ability to use your Visa card and put your house up as collateral if you are a homeowner and get a line of consumer credit that is deductible? Again, that opportunity is denied to that individual who rents.

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

Mr. CRANE. I yield to the gentleman from Texas.

Mr. ARCHER. I thank the gentleman from Illinois for taking this time tonight and giving us an opportunity to further explain some of the aspects of this bill.

The gentleman touched on two, in the denial of consumer interest and the increase that can be expected in the cost of rents for those who live in apartments.

The chairman of our committee, the gentleman from Illinois [Mr. ROSTENKOWSKI], said on national television during an interview with Peter Jennings at halftime on the football game on Sunday, in answer to a question, that yes, rents could go up under this bill. So it is not just those of us who have the great concerns about the bill who are saying this, even those who are proponents of the bill talk about increased rents.

It is an interesting thing. There is an interrelationship between the consumer interest in increased rents that is a terrific disadvantage and discrimi-

nation against the individual who has to rent and does not own his own home, because if you own your own home, as the gentleman mentioned, he has the opportunity under some of the new creative financing that is already being planned to go down and take a second mortgage on your home and be issued a special credit card. You can then take that credit card and buy any consumer item that you wish, and deduct the interest on your purchase. But the individual who is renting an apartment does not have that opportunity. So the apartment renter is caught on the first hand of having his rents increased beyond the amount of his reduction, and in addition not being able to take advantage of the deductibility of consumer interest.

I thank the gentleman for giving me an opportunity to add that on.

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

Mr. CRANE. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, I think that this is a very important point. At the beginning of this discourse those of us who oppose the tax bill, represented by the gentleman from Illinois [Mr. CRANE], indicated that one of the advantages of the tax bill is that it takes lower income people off the Tax Code who probably never should have been on there in the first place, and we like that from a standpoint of social justice. From the standpoint of administering the Tax Code it probably is not efficient to collect taxes from many of them anyway.

The kicker is the Martin Feldstein statement that the gentleman from Illinois mentioned. That is, your rate of increase in rent is likely to be twice the rate of reduction of your taxes, and the hard-dollar increase in rent in the case noted is probably an average case. So the consumer—the renter, in this case—is going to find that his rental increase is twice as many dollars as his tax cut. Therefore, while we concede the fact that it is good to get lower income people off the tax schedule, we would argue very strongly that it is not a very good idea to take them off the tax schedule by means of raising their rent by twice as much as they saved in taxes.

Mr. CRANE. I thank the gentleman for that contribution.

Mr. Speaker, let me touch upon another aspect of this bill that certainly affects many interests. I attended graduate school after I got out of the Army, and got married at about the same time. My wife and I were Johnson poverty cases by definition.

I was fortunate in that beyond my GI bill I also was able to secure a scholarship. That scholarship went very far in those days toward putting food on the table and helping to pay the rent and commuting expenses. But under the provisions of this bill, scholarships now can be taxed above and beyond what is strictly confined to tuition and fees. This seems to me once more to be counterproductive. Obviously these scholarships are awarded to assist people in need, and here we have taken another backward step.

There is yet another provision in this code affecting education, and I was discussing it with some alumni of my alma mater, Hillsdale College up in Michigan. It has to do with the treatment of the contributions of people to support their alma maters. Under the provisions of this code, if, for example, you bought stock at $50 a share, and that stock is now worth $1,000 a share, and you want to contribute that to your local university or your alma mater, you can only deduct it on the basis of what you originally paid for the stock, $50 a share, even though the current value may be $1,000 a share.

Some of the folks who were present said, "Well, what can you do?"

I said, "Well, what you can do is sell the stock at today's value, $1,000 a share. Unfortunately, most of those people will take a 33-percent capital-gains whack. In other words, Uncle Sugar is going to take a third of your contribution to your alma mater or to your local university or college.

Again, with all of the efforts that we have made to pour money into the promotion of education, it seems that this is a backward movement in terms of arriving at the objectives that we all believe in, and it is certainly not what I think the overwhelming majority of the Members intended to do in once more pursuing those goals of fairness and simplification and growth.

In addition to that is the marriage-penalty deduction. That special deduction was designed to help offset the marriage penalty for the two-earner couples. That has been repealed in this legislation. That has been a hot issue that we have debated about for years, about the fundamental inequity of penalizing people for marriage. Once more we are taking a backward step in a counterproductive, unfair way.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. CRANE. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, I want to go back to gifts of appreciated property to charities, and indicate that an association of colleges and universities hired a study group to determine how much this feature would cost them in assets which might be otherwise given to them. Over the 5-year period the amount was $600 million.

□ 2000

That is peanuts in the total scope of this multibillion dollar bill. But to your local college, or the one you attended, or your land grant college which will be denied the gift of appreciated stock, of the business, of the farmer, or friends of those institutions who may want to contribute, this will be a real death blow to take $600 million out of the function that most societies consider to be the highest and most noble within that society. Why in heaven's name would we hurt higher education for the tiny revenue costs of a few hundred million dollars, which is absolutely inconsequential in the total scheme of this bill?

The answer is that this feature is simply mean-spirited, and really does nothing to help lower the rates. All it does is spread some of the suffering around and retards the function of higher education.

Mr. CRANE. I thank the gentleman for his contribution again.

Yet another area of losses for ordinary taxpayers spelled out by the Democratic Study Group's report on this tax bill is the medical expense deduction. Medical expenses are a terrible thing and no one likes to contemplate ever being confronted with them. But we had the misfortune of having a daughter involved in a terrible auto accident a couple of years ago and larger than usual medical expenses, something that every family at one time or another is probably confronted with. We allocate huge sums of money to provide for health care, and we have all noted that the deductions under Medicare have increased through the years, and as a consequence it has made it increasingly difficult for individuals to take care of their health care needs.

Once more, this bill moves in the wrong direction. Under existing law taxpayers can take an itemized deduction for medical expenses in excess of 5 percent of their adjusted gross income. This conference agreement moves that up 50 percent, to 7½ percent of adjusted gross income. I think, again, with the best of intentions, I am sure, this tax bill, in its zeal to achieve at any and all costs the goal of revenue neutrality, neglected in the process consideration of fairness or sound social policy.

In addition to this, there is another inadvertent provision in here. Under existing code we have an extra personal exemption for the elderly, and this measure repeals the additional personal exemption for the elderly and the blind. How consistent is this with sound social policy? Once more, I would argue in the determination to achieve revenue neutrality they lost sight of proper social values that we have recognized through other aspects of legislation.

Yet another one that the Democratic Study Group focuses on as losses for ordinary taxpayers is income averaging. Income averaging may not be that

defensible for people in a lot of professions, or maybe if you win the Illinois lottery or something like that. But, on the other hand, you take the plight of the American farmer today. The American farmer, we all know, has been suffering enormously because of world prices for his products. We have seen a fall off in markets worldwide for our agricultural produce. We witnessed this year the horrible droughts in our Southeastern States where those farmers had to plow under the corn that they planted early in the spring. In my home State of Illinois, by contrast, we had adequate rain and sunshine, which blessed our farmers, and they came in with the most enormous bumper crop in the history of our State. Sad to say, their bumper crop production did not help them. That has the tragic consequence of depressing farm prices.

That farmer is one who more than any other in our society may suffer through a number of lean years and then suddenly get a good year. Under existing law, he can average out his good years against the bad years, and thus reduce his total tax consequence. And if anyone is deserving of preservation of income averaging, it has to be the American farmer, and yet that was stricken from the legislation at a time when, as I say, our farmers are hurting to perhaps an unprecedented degree since the Great Depression.

If that were not enough to hit the farmer with, there is repeal of the investment tax credit. Farming is an extensive enterprise today, and to compete successfully you have to make major investments in heavy equipment. The farmer also lost that.

The capital gains treatment to take the maximum capital gains rate from 20 to 33 percent, as this legislation does, once more works to the disadvantage of the farmer as well as his loss of his consumer interest deduction, because farmers, like others, do purchase on time.

Mr. BROWN of Colorado. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I am happy to yield to my colleague from Colorado.

Mr. BROWN of Colorado. Mr. Speaker, I thank the gentleman for yielding and want to commend him for taking this special order to discuss the tax bill. I would like to address some inquiries to him, if I may, if the gentleman is willing.

Mr. CRANE. Certainly.

Mr. BROWN of Colorado. I understand the bill does away with different treatment of capital gains. Under the old law, of course, capital gains were treated with a different tax rate, a better treatment than ordinary income. My understanding is if you have capital gains now that they are treated just as ordinary income.

Would the gentleman tell me what happens with capital losses? Would they, under this treatment, be accorded as a deduction against ordinary income just as gains are added toward ordinary income?

Mr. CRANE. To the best of my knowledge, and I will stand corrected by either of my two colleagues on the committee, capital losses are still deductible.

Mr. ARCHER. If the gentleman will yield, capital losses will be treated differently than capital gains. Capital gains are treated exactly like ordinary income under this tax reform bill, but capital losses have neither fish nor fowl characteristics. They will not be deductible against ordinary income, even though capital gains are treated as ordinary income, only to the extent that they exceed $3,000 a year. So if you have a capital loss and no capital gain, you can deduct that loss up to $3,000 as your ordinary income. If you have capital gains, obviously you can offset a capital gain by a capital loss, dollar for dollar. But if you have a year where you take a significant amount of capital losses, the most you can take against your other ordinary income is $3,000.

Mr. BROWN of Colorado. If I understand what the gentleman is saying, it is that if you have a gain, the Government wins with taxable income, and if you have a loss, the Government wins because it limits the amount you can offset from your income?

Mr. ARCHER. That is absolutely correct.

Mr. CRANE. The Government wins; you lose.

Mr. BROWN of Colorado. So you could, in effect, have a real loss, not a paper loss, but a real loss on capital gains and only be able to deduct $3,000 of it during the year, and not the other parts of your real loss?

Mr. ARCHER. In fairness, I must say that you are entitled to carry that loss over at $3,000 a year. If you live long enough, you can ultimately perhaps take advantage of it. But at the time value of money, it shrinks in what it is worth to you.

Mr. BROWN of Colorado. It is really kind of a heads-they-win, tails-you-lose kind of situation.

Mr. FRENZEL. Will the gentleman yield to me?

Mr. CRANE. Yes, indeed.

Mr. FRENZEL. I think the flower of our Tax Code or the crown jewel in our tiara has been the capital gains tax. We have been able to stimulate investment and entrepreneurial spirit in the United States through that.

As far as I am concerned, the best tax bills I ever voted for were in 1978 and 1981 when we lowered the capital gains tax and made it a greater differential. Now, in this bill, the gentleman from Colorado has pointed out there is no more capital gains tax. The only problem is you lose twice if you have a capital loss.

I would like to make the further point that most capital gains in our inflationary society are inflationary and not real gains, and therefore, what used to be a capital gains tax was really a tax on capital. Now our tax on capital has become a regular income tax with no differential. So you lose three times in the new scheme of things, and the ultimate losers are the people of the United States because they are the ones that are going to see less capital accumulation, less savings, less economic activity, less jobs as a result of this assault on the capital gains provision.

Mr. CRANE. If I could add a further point to this, and it is one that I think all of our colleagues ought to take to heart and consider addressing in that first improvement or corrections bill that this body considers, in this measure we fail to index capital gains.

□ 2010

And they are treated as regular income. I saw a report the other day that if you had put $10,000, in 1966, into the Dow Jones averages today that would be worth $24,000; but if it were to be comparable in value to the $10,000 you initially invested, it would have to be $36,000.

As a result, this failure to index capital gains while simultaneously treating them as regular income is one of the major immediate deficiencies that hopefully this body in its infinite wisdom will see fit to remedy as quickly as we can reconvene a tax panel, to try and apply any correctives if, perish the thought, this legislation passes tomorrow.

Mr. BROWN of Colorado. If I understand the example the gentleman just gave, in that circumstance in real dollars the taxpayer would have had a real loss of $12,000 but he would be taxed as if he had had a gain of $14,000.

Mr. CRANE. Of $14,000; yes, indeed.

Mr. BROWN of Colorado. One other question, if I may, Mr. Speaker.

I understand that this bill speaks to the problem of offsetting earned income with passive losses, and prevents—one of the good things it does is it prevents or stops the incentive to invest in investments that will lose money on the paper basis as a tax gimmick to offset earned income.

Let me ask the gentleman: What about passive investments that have a real loss? Which were not simply entered in for tax reasons but the investment unfortunately turns out to not do well, and there is a genuine loss. How are those treated?

Mr. CRANE. That taxpayer cannot deduct that loss from earned income, from wages, salaries, dividends, interest, and so forth. As a result, he is going to suffer, and in fact there are

ramifications of this that go beyond just his personal suffering.

A lot of those investments, some of them as the gentleman from Colorado [Mr. BROWN] has already indicated, may have been entered into not necessarily with the expectation of getting a return, hopefully maybe some years out, and I am thinking of investments, say, in office construction and certainly in the early years you do not anticipate having a 65-percent occupancy rate.

That taxpayer currently enjoyed depreciation of the property; he enjoyed his losses, the deductibility of his losses from regular income; it was a sheltered investment.

The truth of the matter is, I have never thought highly of that provision of the code, but on the other hand, what is so incredibly offensive in this particular tax bill we have under consideration, that man is going to be hammered retroactively—it is not a case of saying, come January 1, 1987, we are going to eliminate those opportunities, and taxpayers henceforward cannot get into them. That is a retroactive application of the code in a way where it may have been a legitimate investment and a loss was sustained, as you indicated; but on the other hand even if it were not it is inconscionable to apply new rules today that have a retroactive application.

For goodness sakes, I certainly have tried to teach my kids to keep their word, and I think that we have enough of a credibility problem in this town and more specifically in this body without suddenly telling folks that, "You abided by the rules, you did the honest thing, we created those ground rules to encourage you to do that sort of thing, but now, sucker, you fell for it and you believed us, and we got ya!"

The fact of the matter is that what many are anticipating, in a number of these investments, is that those individuals, still faced with a prospect of losses on into the future will default.

Now, who gets hammered if that occurs? It is our financial institutions. Chairman Edwin Gray noted that they anticipate over the next 18 months, and this was in the paper just yesterday, over the next 18 months, 250 S&L's going belly up in this country, and that will require $26 billion in Federal savings and loan insurance to cover the losses to depositors, and they do not have that kind of money.

That is before they may get stuck holding a piece of property that someone invested in and walked away from. In addition to that, if you look at the banks, the Chairman of the Federal Deposit Insurance Corporation noted just recently that the number of troubled banks has gone from 1,150 in January of this year to over 1,400.

The banks are going to be left holding some of those investments, too; but if they are over $500 million in assets they are also going to get hammered by losing their bad debt reserve deduction.

This so troubled Chairman Volcker and even the President, who communicated through Secretary of the Treasury Jim Baker to our distinguished chairman of the Ways and Means Committee that "You must provide a special exemption for 20 of these banks scheduled to lose their bad debt reserve deduction because of their fear that they were on the verge of going belly up themselves."

Imagine what kind of consternation that might create when the FDIC has exhausted half of its reserves just to nationalize Continental Bank in Chicago, and they only have the capability with their existing reserves, of taking over one more bank of that size.

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

Mr. CRANE. I will happily yield to the gentleman from Texas.

Mr. ARCHER. Mr. Speaker, the irony of the so-called troubled bank exception which you mention, that supposedly will help 20 banks who have 75 percent or more of their loans nonperforming is like trying to go after the horse after he is out of the barn.

To be able to say, "Now you don't have to pay taxes" is no real benefit, because they are not in a taxable mode anyhow; they are in a loss mode. It might very well be better for them to recapture their reserves, since they would pay no taxes, since they have losses only. It is of no benefit to them to say "Now you can deduct for loan loss reserves" when they have nothing to deduct it against.

The time you have got to do this is when the bank is still viable and still has taxable earnings, in order to be a protection for the future.

So I do not really understand why the so-called troubled bank exemption is going to really be that helpful.

Mr. BROWN of Colorado. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I yield to the gentleman from Colorado.

Mr. BROWN of Colorado. Mr. Speaker, I know this body has expressed its strong belief in IRA's as one of the most viable and important portions of the tax law to encourage savings; I wonder if the gentleman could advise me how the conference committee acted on our request, from this body, to have the IRA left alone and continued as it had been?

Mr. CRANE. Well, Mr. Speaker, I think there was a lot of sentiment on behalf of trying to preserve existing IRA's. The conviction from the outset was that we probably could not go along with the President's—I should not say "we;" I am using the editorial we. We were in favor of adding spousal IRA's for nonworking spouses; what the President had originally called for.

IRA's, I think the President clearly recognized, were one of the best things we have done in recent changes in our Tax Code. The fact is, 28 million families were into IRA's last year, to the tune of $250 billion.

Now we arbitrarily defined what is middle income, and in our arbitrary definitions in conference, we said that is $20,000 to $50,000. And yet, under the provisions of this bill on a joint return, when you get to $40,000 the IRA's start phasing out, and they are totally gone by $50,000.

Well, $40,000, if you have got a husband and wife working, is $20,000 each. So once more, in terms of addressing the concerns that the committee members ostensibly had for the middle class, they just barely made the first rung of the ladder going into what they defined as middle income in their treatment of IRA's, and they also drastically reduced 401(k) programs.

Mr. ARCHER. Mr. Speaker, if the gentleman will yield before we move off the IRA's, the example that you mentioned of a couple, each making $20,000, or $22,000, and beginning to lose their IRA's, is very apt, because over 50 percent of the benefits currently enjoyed from IRA's today will be eliminated by the restrictions in this bill.

So less than 50 percent of the benefits will remain in the new tax reform Code if it is adopted.

Mr. CRANE. If I may add one further point, Mr. Speaker, our colleague in this body from Virginia [Mr. SLAUGHTER] has introduced legislation which I am a cosponsor of and could not embrace more wholeheartedly, and that would provide a medical IRA so that people could anticipate providing for themselves in those later years of life when they are most prone to absorb huge medical expenses.

It was another good, positive step; just like the creation of the original IRA's, and I have had my staff working, before this tax bill came up, on an educational IRA that you could take out for your youngster at birth, and when he reaches 18 or college age, he could start drawing from his IRA and pay taxes at that rate at that time and, if he saw fit not to go to college, simply convert that into a medical IRA for him for the rest of his life.

□ 2020

These were sound principles encouraging savings. This certainly is a component of that third criterion the President set forth that he wanted to achieve, namely growth. Yet how can you argue that you are promoting growth when you hammer IRA's? You hammer 401(k)'s, you take maximum capital gains rates from 20 percent up

to 33 percent and you eliminate the dividend exclusion? It is working directly at cross-purposes with what were the initial objectives that we all agreed upon, Democrats and Republicans alike. This was not a partisan issue. I think Chairman ROSTENKOWSKI made it clear after the President announced his original intention to go for these objectives in sweeping comprehensive tax reform, and the chairman, speaking as a Democrat, acknowledged that those were objectives that his side of the aisle could embrace with as much enthusiasm as our side.

Mr. BROWN of Colorado. I thank the gentleman for his comments.

Mr. CRANE. I thank the gentleman from Colorado for his questions.

Let me comment on just a couple of other provisions contained in the minuses for ordinary citizens contained in the Democratic Study Group's publication and analysis on this subject. This has to do with unemployment compensation. Unemployment compensation payments are presently nontaxable for persons with relatively low income. The conference agreement makes such payments fully taxable. If you are going to acknowledge that a person is hurting and suffering to begin with, and that is what unemployment compensation was designed to address, then why do you come in and hammer him with this kind of a change in the code when the man is already suffering from a reduced income and may yet still have all of his family obligations in front of him?

In addition to this, Government pensions; the fact of the matter is that the treatment of Government pensions by not permitting a person to withdraw what he initially put into the program in terms of nontaxable dollars in the early years, and it is up to 3, and instead to combine that with his Government contribution and make it taxable and spread it out over a period of time almost strikes one as cynical, that with any kind of luck you are not going to live long enough to get the money out of there, the tax-free money that you contributed. This is not just Federal employees. This applies to Federal employees back in our home States, policemen, firemen, schoolteachers. I think once more this is a gross violation of equity because it was made retroactively effective as of July 1 of this year. I would not make it effective as of January 1, 1987, but at the very least it should be for those people who are going on the payroll and who can now anticipate that the groundrules have changed. "If you still want to get on the team under those circumstances, fine." But for people who are making plans in anticipation of retirement, this is a profound dislocation.

I yield to the gentleman from Texas.

Mr. ARCHER. It is even broader than Federal employees, Federal policemen, firemen and teachers; it is any employee who has made a personal after-tax contribution to his own retirement plan, a contributory retirement plan. So it will pick up some people in the private sector that have been a part of that type of plan and it will cause all of these people to be double taxed on at least a major portion of their contributions into that retirement program. To me that is grossly unfair.

Mr. CRANE. Again, if one looks at the criteria set forth, this measure does not live up to the charge that was given us by the President at the beginning of this whole debate.

I know that there are components that the President has embraced for years, and I think many of us have, trying to move in the direction of a so-called proportional or flat tax. Certainly with the advertised two-tier rate level of 15 and 28 percent—which is misleading because there is actually yet one more level—this is the closest we have come toward moving in that direction.

I would hope that this debate would continue and that we could anticipate a time before this century is out when we do establish the principle of proportional or flat-rate taxation.

But on the other hand, to achieve those seemingly desirable objectives in this document, there was just much too much that was sacrificed.

I think in trying to summarize and put into some context the consequences of a failure to embrace this tax reform tomorrow, one must recognize that the tax debate will not go away. Even if this is passed, we are going to be at the books every year doing revisions to that tax bill for the next several years and maybe each year for the remainder of this century.

That being the case, in the event this measure is not adopted tomorrow, it does not mean the end of the quest for simplicity in the code, for fairness in the Code, and the progrowth aspects in the Code.

These are all objectives that we will continue to pursue and in fact now that we have generated this much national attention and focus on the issue, I think the clamor will increase on the part of the individuals to achieve those objectives.

But the things that had touched off the debate initially, that had people so exercised really were the illustrations, as I noted before, of injustices where some people paid taxes and others did not, and trying to achieve that kind of free field where everyone pays a fair share which can be accomplished through a proportional or flat tax on gross income, to achieve the desired objective of encouraging Americans to save and invest.

I was in Japan in 1981 with the American Productivity Center. Japan at that time had a 20- to 25-percent rate of personal income going into savings. Ours was down about 3 percent at the time. We have the lowest rate of savings in this country of any of the industrial nations of the world.

The Japanese asked us, "Why do you tax interest, dividends and capital gains?" They said, "That would certainly provide an incentive for people to save, and invest." They said, "We learned these incentives in your country from economists at the University of Chicago who said it is counterproductive to tax interest, dividends and capital gains. So why do you do it?" Well, we did not have appropriate answers for that any more than we did for some of the other questions they asked us about our conduct of business in this country, when the things that they were doing and doing very effectively they were very up-front to acknowledge they had learned from us in the first instance.

So I would hope that looking to the future because of the generation of responsible dialog on this subject of the need for tax reform, that we could go back to the drawing board maybe next year and analyze the advisability if we really want to promote growth, encouraging Americans to save and to invest by the elimination of taxation of interest, dividends and capital gains.

That antiquity in our code really goes back to the New Deal when our tax laws were designed to provide disincentive for saving because the economists reasoned if you get people into savings, you are not going to have an economic recovery from the Depression.

So instead they provided encouragement for people to go into debt and punished you for saving.

If you stop and think about it, if you take an after-tax dollar and you invest it in a public corporation, when that public corporation makes a profit, that dollar gets taxed twice. Then when it makes a dividend distribution, that dollar gets taxed a third-time. If you sell your stock and enjoy a capital gain, it gets taxed a fourth time. And the ultimate obscenity is when you die and they are so outraged, Treasury, over losing you as an ongoing productive taxpayer, they come in and zap your bereaved spouse and loved ones with an estate tax. Stop and think about it: five hits on that same dollar. And we wonder why we have disincentives in this country to savings and investment.

Well, these are subjects, as I say, for an ongoing debate on tax reform. Certainly this, as I noted, is not the end of the road as far as our desired objectives. I am confident that if the American people are as irate on some of these provisions as I am convinced

they are, and if they are not yet, they certainly will be once they realize all of the negative impacts of this tax bill, our colleagues will be back here at the drawing boards issuing the call for comprehensive tax reform.

I yield to my colleague for Texas.

Mr. ARCHER. I thank my colleague for yielding.

In the short time that is left on the special order of the gentleman, I would like to mention what the rate schedules are for individuals. There seems to be a lot of confusion about that.

In this new so-called tax reform bill the proponents continue to say day after day that it is a 2-tier rate system with a top marginal rate of 28 percent. They compare that to the top marginal rate of 50 percent in the Code today. I wish it were so. It does not happen to be true.

I have communicated with the tax-writing experts, the staff that put this bill together and have been assured that the top marginal rate is 33 percent, not 28, and for a single individual that top marginal rate of 33 percent will begin on every item of taxable income above $43,500. It will continue until roughly $150,000 and then the dollars earned over and above that will be taxed once again only at a marginal rate of 28 percent.

So there are 4 tiers when this is fully implemented, if in fact it ever does become fully implemented—and I would like to speak to that—there are 4 tiers, 15, 28, 33, and back to 28 again.

Now, that is in the year 1988 and years beyond if in fact it survives that long.

Many of my colleagues are telling me in private as I go around and speak to them that they do not think that rate will ever take effect because the rate schedules for individuals in 1987, next year, are going to be maximum of 38½ percent top marginal rate with 5 tiers of rates on income leading up to that. There are many in this body who today believe that that rate system will be frozen in place and will never be permitted to go in 1988 to the ultimate 15, 28, 33, and then back to 28.

But let us make no mistake about it, middle-income Americans if they are lucky because 25 percent in 1988 will be getting a tax increase and 75 percent will get a tax decrease, and you do not know until you look at your return where you are going to be for sure; it will be a much bigger percentage in 1987 under this higher five-tier rate system which they call temporary. But the return, the reduction will be so small that it will be a matter of a dollar or $2 or $3 a week. That will be eaten up in their paychecks by Social Security tax increases. And perhaps more importantly, in those States that have income taxes, the increased State income tax that will occur as a result of this tax reform bill broadening all of the base on which the States levy their income taxes, will most likely eat up the other part of their so-called tax reduction.

So there is a booby trap in here for the individual taxpayer that has not been talked about very much. Ultimately they look at their net paycheck after withholding and when their State income tax is withheld in a higher amount and when Social Security is held in a higher amount, the small, small reduction that they might get if they are one of the lucky ones under this bill will not be noticeable.

So I think it is important for people to understand precisely how they will be impacted by this bill.

I thank the gentleman for yielding.

Mr. CRANE. I want to thank my distinguished colleague from Texas for his contribution and especially for his communications with our fellow colleagues, not just here through special orders, through explaining at various meetings we have held for the edification of many who are not as conversant as he is on the tax bill, and I want to thank my distinguished colleague from Minnesota for all of the hard work that he has put into this educational effort.

I would hope that our colleagues, while not present in the Chamber, some of them may have listened to some of the arguments that have been advanced here by the miracle of television. In the process I think they can develop at least the arguments that are valid arguments, that if they feel any political pressure to do a bad economic thing that defies the fundamental call for tax reform based on simplicity, fairness and growth, that they will be well armed as a result of the contributions my distinguished colleagues have made.

Mr. Speaker, I yield back the balance of my time.

□ 2035

TAX REFORM

The SPEAKER pro tempore (Mr. GRAY of Illinois). Under a previous order of the House, the gentleman from Texas [Mr. ARCHER] is recognized for 60 minutes.

Mr. ARCHER. Mr. Speaker, I would like to continue with the colloquy and the presentation that my distinguished colleagues, Mr. CRANE of Illinois and Mr. FRENZEL of Minnesota, have been participating in over the last hour, to talk about a few more of the aspects of this new broad-base tax reform bill.

This, as the gentleman from Illinois has shown, is the 2,000-page document that will be voted on tomorrow.

Some of the areas which have not been widely heralded are how the income of minor children will be taxed under this bill.

If you have a minor child who has been given property by any relative or by any friend or comes as a bequest from a particular uncle, the income off of that property is rightfully that child's. It cannot in any way be used legally by the parents. And frequently there comes to minor children that is income producing so that moneys can be laid aside for their educational expenses.

Under the current law, that property is taxed under a separate schedule by an individual taxpayer, namely the minor child. Under this new tax reform bill, irrespective of who gave the property to the child, the income on that property above $1,000 is going to be taxed at the rate of the parent, and that to me is grossly unfair. It prevents this minor child who has no say in the matter whatsosever from being able to have this money accumulate at his or her own individual tax rate, which would perhaps be a 15-percent rate. This, I believe, is a major change in the current law and is one that has not been spoken to before, to my knowledge.

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

Mr. ARCHER. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, this is an important point.

Trusts are not an important point of the tax reform bill. They did not bring in a lot of revenue that could be used to lower rates. There were no hearings on this radical change in trust taxation. The Trust Bar and others should certainly be heard on this subject.

Nevertheless, for no reason that I can determine, we accepted a change in the taxation of trust income in the way that the gentleman has described, and suddenly the whole world of trusts is turned upside down.

Now, if there had been a bonanza to be reaped out there so that we could lower taxes, maybe it would make some sense. If there had been a showing of abuse, that people were shifting income and avoiding taxation, maybe it would have made sense. There was no such showing at any time within our committee. Nevertheless, the committee went ahead and simply integrated this into the tax reform bill, although it could be excised without costing more than a few cents of additional revenue.

Mr. ARCHER. I thank the gentleman for his comments.

Mr. Speaker, I yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, I have been informed by staff, and I would like for the gentleman if he can answer this question to do so, if you claim any children as dependents now, you must get a Social Security or taxpayer identification number for any

children who are 5 years of age or older and include that number on your tax return; is that correct?

Mr. ARCHER. The gentleman is correct, to my knowledge.

Again, this is an additional complexity that many people today have not had to cope with. Obviously, a 5-year-old child is not going to be entering the work force, and people are not going through all of the redtape of going down to the Social Security office and getting a number for that 5-year-old child.

This bill will require it if they are to be taken as a dependent on the tax return.

Mr. CRANE. If the gentleman will yield further, currently if a child earns under $3,560, he or she does not need to file a return. However, under this bill, if the child earns over $500 and has $1 or more of interest, he or she must now file a return.

Mr. ARCHER. That is my understanding to be part of the new code.

Mr. CRANE. I thank the gentleman for yielding.

Mr. ARCHER. Or the proposed new code, I should say.

I would also like to talk about another area that particularly concerns me. That is for those people who are active in operating or developing real estate.

For some strange reason, in this tax reform bill, those people who actively pursue this as a business are treated differently than any other business operation in the United States. Those people who are farmers, those people who operate oil wells, those people who operate retail stores, those people who conduct any other type of business can take their business losses against their business income. But the individual who operates and owns an apartment house cannot take the losses on anything other than the rental income from that apartment house.

If that individual has working capital, has money in the bank drawing interest that is needed for the purpose of operating that venture that is an integral part of that business operation, he or she cannot deduct the losses against that income unless, of course, it is under $25,000 a year, and then that is phased out at a higher income level.

This is highly discriminatory against those who happen to be gainfully making their living out of rental property. They will not be able, if they happen to be developing real estate on one hand and making a profit on it and, on the other hand, renting property and taking a loss, be able to deduct their rental losses against the profit on their development projects. This is clearly discriminatory, for what reason I do not know, againts one particular type of operation, while everybody else operates under different rules.

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

Mr. ARCHER. I yield to the gentleman from Minnesota.

Mr. FRENZEL. The source of the discrimination, I think, is quite simple. When the Senate was fishing for a very low rate, it looked around as to where it might find it. It thought it found it in the so-called passive losses in real estate investments, but found they could not get enough money that way. So they merely defined active management as being passive management. It was very simple, a stroke of the pen, totally unfair, inconsistent with any kind of rational tax policy, and it was an exercise in money grubbing, disadvantaging a certain class of American investor and manager for the simple reason that they needed more money.

They had already prohibited short form filers, the poor people of the world, from taking charitable deductions. They had already hurt education. They had already begun to tax the appreciated value of charitable contributions of itemizers. So what they did was simply invent a new definition which was an undefinition or a counterdefinition. Certainly that is one of the things that is going to contribute to the raising of rents in the United States and the shortage of supply in housing.

I thank the gentleman for bringing it up.

Mr. ARCHER. The gentleman has made an excellent point, and I thank him.

I must say that this, as well as other provisions in this bill, seems to be patterned after the type of Tax Code that has been used in Mexico for the last 30 years. I am sure this country really wants to adopt that type of approach to taxation, because in Mexico all of the various types of endeavors are segmented off and compartmentalized independent of one another, and losses from one cannot be taken against income from another. The results in Mexico, I must say, have been less than sterling over the last 30 years.

I do not believe that this is in the best interests of the long-term progress in improving the standard of living of the people of the United States of America.

As a result of this and many other things that we have talked about over last week, I will tomorrow at the end of debate offer a motion to recommit to send this tax bill back to the conference committee so that it can be improved, so that it can be a true tax reform document, so that most of these major and grievous flaws that are in it will have an opportunity to be corrected.

□ 2045

It will not be the end of tax reform if my motion to recommit passes. It will be perhaps the beginning of an accomplishment that the President and I and most Americans really would like to see occur. True tax reform that does present a fair document, that does present a code which will be simpler than the current code; not more complex. One that takes more of the risk out relative to the economy and to the jobs of people. One which will not disimprove our competitiveness in the world marketplace, and one which gives us an opportunity, truly, to eliminate the risk of negative impact on our economy in the short term. Because the risk of loss in this bill, in my opinion, is not overcome by the chance of gain.

So it is that tomorrow we will debate and we will vote on this bill. The impact on millions of Americans is at stake. It is not all bad. If it passes, it will not be the end of the world for the United States. But if it can be improved, now is the time to improve it.

Some say, "Oh, but there is so little time left in this session. To send it back to the conference committee would be the death knell of tax reform." Nothing could be farther from the truth. We have 3 months left; over 3 months left in this session. Changing the current code in an improved way is an important priority. Overwhelmed only by one other in my opinion and that is the deficits. That brings me to my last point.

This bill, at the best, according to the estimators, will exacerbate the deficits by a revenue shortfall in 1988 of $28 billion. Americans have spoken out over the last several years as to their view that we should move toward a balanced budget. They have spoken overwhelmingly. Gramm-Rudman was adopted.

If this bill is embraced as it currently is revenue estimated, it will most certainly be the death knell for Gramm-Rudman's effort to move this country to a balanced budget in 1988.

I thank the gentleman for participating with me. I thank Mr. FRENZEL and Mr. CRANE.

Mr. Speaker, I yield to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. I thank the gentleman.

Mr. Speaker, I want to take up on the point the gentleman made about the extraordinary shortfall, the notch between 1987 and 1988 where the bill theoretically goes from a plus $11 billion to a minus $17 billion. In that year, according to the best revenue estimates that we can get at this time, while I will concede they are the best we can get, I am not sure how good they are.

The question I would ask is the gentleman has followed economic testimo-

ny on this bill for 3 years. Most recently, we have heard from the Joint Economic Committee. My understanding of the most recent testimony of many economists is that not only is the notch there but probably we are not going to realize in the outyears the amount of money that our estimators suggest we are.

Can the gentleman comment on that, please?

Mr. ARCHER. Yes; I had referred only to the official estimates that have accompanied this bill.

Outside economists, five of which testified before the Joint Economic Committee last week, said that it was their projection that the estimates were $40 to $50 billion too high. In other words, that over the 5-year period, there would be a revenue shortfall of $40 to $50 billion. If that went equally across the years, that would be roughly $8 to $10 billion a year shortfall and would further exacerbate these estimates which I mentioned.

One economist by the name of Brenner from Data Resources Institute, said specifically that his revenue estimates showed a $21 billion shortfall in 1987, a $25 billion shortfall in 1988 for a total of $46 billion. That was the worst scenario that was presented to the Joint Economic Committee. Of course, $46 billion is much worse than $28 billion.

Mr. FRENZEL. If the gentleman will yield further, I do agree with him and I think that not only do we have the notch which threatens to upset Gramm-Rudman and all of the targets which we have set, but we have a suspicion that the case could be much worse than that. Neither of those estimates are provable at this time. But we have to use the best estimates that are available.

If the gentleman would yield further, I have a point or two that I might make on the gentleman's time about that bill.

We talked earlier, rather the gentleman from Illinois [Mr. CRANE] talked earlier about problems for higher education. At the time I pointed out that represntatives of associations representing higher educational groups have suggested that the tax bill is the worst catastrophe for higher education in 25 years. Mr. CRANE mentioned that gifts of appreciated property will now be taxable under our minimum tax system, and he mentioned further that certain scholarship stipends that formerly nurtured insipient professors through their graduate years would become taxable, therefore discouraging a few more of our potential teachers for the future.

I would like to talk about a couple of other things that wreak carnage in higher education. The first one is the question of student loan bonds. These are tax-exempt bonds issued by States and the proceeds of these bonds are used to supplement student loans which come from the Federal Government. These loans in my State are absolutely essential if we are going to give any hope of achieving the American dream to thousands of students who are willing to work for their education but need a little borrowing power provided from outside.

This bill puts limits on these student loan funds which are going to restrict their availability in my State and probably in many others as well. So that we will have fewer students who are able to take advantage of the hope and the promise of higher education.

One other feature that sticks out in my mind is the ceiling that is also placed on private institutions in issuing tax-exempt bonds, usually dormitory bonds or facilities bonds. The bill provides that these may still be issued and then sets on such restrictive caps that they probably will not be issued.

So education gets nailed four times in a row, that is, higher education. I would remind those who might be watching, those insomniacs who may still be alive, that the gentleman from Washington [Mr. LOWRY] has already pointed out that education, that is, elementary and secondary education in his State, because of the nondeductibility of sales taxes, is already going to suffer grievously. Not only in his State, but every State that relies on sales tax to furnish education to the young people of those States.

I want to get back to pensions a little bit because I think that is extremely important. It fits into the category that I call savings and capital accumulation. It is an important source of capital for this country, and it is also an important bulwark of our Social Security System, which, because of its very existence, the pension system, it prevents undo pressure on a precariously financed Social Security System to develop more and more money to take care of retired persons. A good pension and a Social Security System working together can provide reasonable comfort in old age for all of us we hope.

Now, we know on the savings side that we have killed the capital gains rate. Perhaps the most serious single flaw in the bill and the most serious blow to capital accumulation.

□ 2055

We know that we have gotten rid of the ITC, the most important corporate savings incentive. We know we have stretched appreciation, the next largest capital accumulation incentive. We have talked about IRA's; we have talked about 401(k)'s; we have talked about 403(b)'s.

We have not dealt very much on pensions. But this bill not only reduces the amounts that can be set aside to provide guaranteed benefit pensions and guaranteed contributions pension, but worse of all, it establishes a whole new set of rules for pension programs.

I would like to suggest that in the last 5 years, we have made major modifications in pension programs in the United States 4 years out of 5. The net result has been a termination of pension programs throughout the United States.

I submit that in my State, small businesses are turning to their lawyers and actuaries and saying, "For my 5 or 10 or 100 employees, I cannot afford the overhead to rewrite my pension plan. Therefore, I am going to kill my pension plan. I am going to put the money in the pay envelopes and everybody will get more that way."

Everybody will, but they probably will not save it. As these pension plans go out of business for no good reason, some new antidiscrimination rules which are totally unneeded—we have plenty of antidiscrimination rules and top-heavy rules and the rest in our pension laws, our ERISA bills—but because we have sought in this bill to adorn them, to augment them, it will mean that every pension system in the United States, almost, will have to be rewritten.

More will go out of business meaning less savings for American industry, for investment to put American jobs back in motion. It means less security for American workers, people of all kinds. Worst of all, it means more pressure on Social Security; more pressure on Social Security means more contribution and, again, a disincentive to work because of the higher cut that the Government takes out in the most regressive tax we have for our Social Security payment.

I do not know how we could make so many mistakes in one bill without really exercising the combined ingenuity of all the 200 IQ geniuses in the United States. One would think that we had tried to shipwreck America intentionally. I do not believe that, of course, but it looks to me like that is the result of the bill.

Yet, we hear these wonderful payings of praise for tax reform. Why? Because tax reform is a good buzzword. Why? Because the President is for it and the President is popular and he is a good man. Or because some editorialist, who has never opened the pages, those 2,000 pages that the gentleman from Texas [Mr. ARCHER] has decided that he or she is bored with the current Tax Code and that reform would be a nice thing.

For those of us who have had the unfortunate duty to have to read this the results are very painful. It means that we have to swim upstream against the tide of public opinion, against the editorialists, against the academicians. We are the ones who have to cry out the warning.

This bill is a problem. It is antigrowth; it is antimanufacturing; it is antisavings; it is anticapital accumulation; it is antieducation; it is anticharities; it is antiexport; it is anticompetitive.

Can we stand all these things? Yes, we can stand a few of them, or we could stand all of them if they were only modestly anti. The trouble is, the bill is fairly aggressively anti and it covers the whole range of American activities.

It is not just a tax bill; it is a housing bill; it is an education bill; it is a charities bill; it is an oil-drilling bill; it is a manufacturing bill; it is an exporting bill; it is an industrial policy bill.

Every time we make a tax decision, we effect a very vital dynamic function in American society. In this bill, we have effected too many of them in too disruptive a manner and the net result is going to be difficulty for the United States of America.

Is it overwhelming difficulty? No; I do not think so. The people in the economy have been able to take insults in the past and I do not think this will sink it.

But I do think it will make our life more uncomfortable needlessly. Therefore, it is my hope that when the gentleman from Texas offers his motion tomorrow to recommit the bill to committee, that this House will demonstrate the good sense that it sometimes shows and recommit the bill so that the committee can do what the gentleman from Texas [Mr. ARCHER] wants it to do; that is, to repair the bill. Not kill it, because everybody in this country, including us, wants tax reform. We just do not want tax reform at a cost that inflicts too much pain and too much suffering on our economy.

Again, I thank the gentleman for his contribution and for allowing me to participate.

Mr. ARCHER. Mr. Speaker, the gentleman has made some very, very outstanding comments and hopefully we will have a result that will benefit this Nation tomorrow.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. YOUNG of Florida (at the request of Mr. MICHEL), for today, on account of attendance at a funeral.

Mr. BOLAND (at the request of Mr. WRIGHT), for today, on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WALKER) to revise and extend their remarks and include extraneous material:)

Mr. PARRIS, for 5 minutes, on September 26.

Mr. MYERS of Indiana, for 60 minutes, on October 1.

Mr. DIOGUARDI, for 5 minutes, today.

Mr. CRANE, for 60 minutes, on October 2.

(The following Members (at the request of Mr. SEIBERLING) to revise and extend their remarks and include extraneous material:)

Mr. RAY, for 5 minutes, today.

Mr. LAFALCE, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. LEHMAN of Florida, for 5 minutes, today.

Mr. LOWRY of Washington, for 5 minutes, today.

Mr. SEIBERLING, for 30 minutes, on September 25 and 26.

Mr. BEDELL, for 60 minutes, on September 26.

Mr. STOKES, for 60 minutes, on October 7.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. DINGELL, during consideration of H.R. 5300, in the Committee of the Whole, today.

Mr. MCCANDLESS, prior to vote on passage of H.R. 5300, in the Committee of the Whole, today.

(The following Members (at the request of Mr. WALKER) and to include extraneous matter:)

Mr. KEMP.
Mr. PACKARD.
Mr. CLINGER.
Mr. GREEN.
Mr. HENRY.
Mr. CONTE.
Mr. GOODLING.
Mr. LIVINGSTON.
Mr. HORTON in two instances.
Mr. LAGOMARSINO in two instances.
Mr. SCHULZE.
Ms. SNOWE.
Mrs. JOHNSON.
Mr. DAUB in three instances.

(The following Members (at the request of Mr. SEIBERLING) and to include extraneous matter:)

Mr. COLEMAN of Texas.
Mr. FAUNTROY.
Mr. DORGAN of North Dakota in two instances.
Mr. ST GERMAIN.
Mr. EDWARDS of California.
Mr. FRANK.
Mr. KILDEE.
Mr. SMITH of Florida.
Mr. ACKERMAN.
Mr. TORRES.
Mr. ROYBAL.
Mr. BORSKI.
Mr. HAMILTON in two instances.
Mr. HOYER in two instances.
Mr. HERTEL of Michigan.
Mr. DELLUMS.
Mr. CLAY in two instances.
Mr. BRYANT.
Mr. MILLER of California.
Mr. WEISS in two instances.

ADJOURNMENT

Mr. FRENZEL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 1 minute p.m.), the House adjourned until tomorrow, Thursday, September 25, 1986, at 10 a.m.

OATH OF OFFICE, MEMBERS, RESIDENT COMMISSIONER, AND DELEGATES

The oath of office required by the sixth article of the Constitution of the United States, and as provided by section 2 of the act of May 13, 1884 (23 Stat. 22), to be administered to Members, Resident Commissioner, and Delegates of the House of Representatives, the text of which is carried in 5 U.S.C. 3331:

> "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

has been subscribed to in person and filed in duplicate with the Clerk of the House of Representatives by the following Member of the 99th Congress, pursuant to the provisions of 2 U.S.C. 25:

NEIL ABERCROMBIE, First Hawaii.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4258. A letter from the Deputy Assistant Secretary of Defense, transmitting notification that the Department of the Navy intends to exclude the clause concerning examination of records by the Comptroller General from three contracts, pursuant to 10 U.S.C. 2313(c); to the Committee on Armed Services.

4259. A letter from the Secretary of Health and Human Services, transmitting the status and accomplishments of runaway centers receiving grants under the Runaway and Homeless Youth Act for fiscal year 1985, pursuant to 42 U.S.C. 5715; to the Committee on Education and Labor.

4260. A letter from the Secretary of Health and Human Services, transmitting a report entitled "Toward a National Plan to Combat Alcohol Abuse and Alcoholism", pursuant to Public Law 98-509, section 208

(98 Stat. 2363); to the Committee on Energy and Commerce.

4261. A letter from the Director, Bureau of Educational and Cultural Affairs, U.S. Information Agency, transmitting notification of a proposed waiver of limitation on foreign travel by a citizen who is financed by grants from the Private Sector Program, pursuant to 22 U.S.C. 2460 nt.; to the Committee on Foreign Affairs.

4262. A letter from the Secretary of Health and Human Services, transmitting a report entitled "Impact of Medicare Prospective Payment System on Admissions; Need for Volume Adjusters and/or Pre-Admission Certification," pursuant to 42 U.S.C. 1395ww (Pub. L. 98-21, sec. 603(a)(2)(A)); to the Committee on Ways and Means.

4263. A letter from the Secretary of Energy, transmitting the 24th quarterly report on general biomass energy development, pursuant to Public Law 96-294, section 218(a); jointly, to the Committees on Agriculture, Energy and Commerce, and Science and Technology.

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:

Mr. WHITTEN: Committee on Appropriations. A report on revised allocations of subdivision of budget totals for fiscal year 1987 (Rept. 99-872). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 1542. A bill to amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System. (Rept. 99-873). Referred to the Committee of the Whole House on the State of the Union.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5570. A bill to designate the U.S. courthouse and customhouse at 601 West Broadway, Louisville, KY, as the Gene Snyder United States Courthouse and Customhouse. (Rept. 99-874). Referred to the House Calendar.

Mr. BEILENSON: Committee on Rules. H. Res. 559. A resolution providing for the consideration on H.R. 3810, a bill to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes. (Rept. 99-875). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5180. A bill to designate the Federal building at 111 W. Huron Street, Buffalo, NY, as the "Thaddeus J. Dulski Federal Building" (Rept. 99-876). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 4156. A bill to designate the Federal building and U.S. courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse" (Rept. 99-877). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5446. A bill to designate the Federal building and U.S. Post Office located at 315 West Allegan Street in Lansing, MI, as the "Charles E. Chamberlain Federal Building and United States Post Office" (Rept. 99-878). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5470. A bill to designate the Federal courthouse for the Eastern District of Virginia in Alexandria, VA, as the "Albert V. Bryan Federal Courthouse"; with amendments (Rept. 99-879). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5181. A bill to designate the U.S. courthouse at 68 Court Street, Buffalo, NY, as the "Michael J. Dillon Memorial United States Courthouse". Rept. 99-880. Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 4118. A bill to designate the building commonly known as the Old Post Office in Worcester, MA, as the "Harold D. Donohue Federal Building" (Rept. 99-881). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 3951. A bill to designate the building which will house the Federal Court for the Eastern District of Texas in Lufkin, TX as the "Ward R. Burke Federal Court Building"; with amendments (Rept. 99-882). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5020. A bill to expand the U.S. Secret Service Uniformed Division protective jurisdiction; with an amendment (Rept. 99-883). Referred to the Committee of the Whole House on the State of the Union.

Mr. DERRICK: Committee on Rules. H. Res. 560. A resolution providing for the consideration of H.J. Res 738, a joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes. (Rept. 99-884). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. MICA (for himself and Ms. SNOWE):

H.R. 5584. A bill to prohibit further construction on the U.S. Embassy in Moscow; to the Committee on Foreign Affairs.

By Mr. LEWIS of Florida:

H.R. 5585. A bill to require the Administrator of Veterans' Affairs to establish a pilot program to contract for veterans' health care in the areas which will be served upon the completion of the West Palm Beach Veterans' Administration Medical Center; to the Committee on Veterans' Affairs.

By Mrs. SCHROEDER:

H.R. 5586. A bill to amend title 11 of the United States Code to except from discharge under chapter 13 claims for certain willful and malicious injuries and for debts arising from the debtor's operation of a motor vehicle while intoxicated; to the Committee on the Judiciary.

By Mr. FLORIO (for himself, Mr. DASCHLE, Mr. EDGAR, Mr. GUARINI, Mr. HOWARD, Mr. SIKORSKI, Mr. WALGREN, Mr. WAXMAN, and Mr. WYDEN):

H.R. 5587. A bill to amend title XI of the Social Security Act to require hospitals participating in the Medicare and Medicaid Programs to establish protocols for organ procurement, to establish standards for organ procurement agencies, and for other purposes; jointly, to the Committees on Ways and Means, and Energy and Commerce.

By Mr. GEPHARDT (for himself, Mr. DASCHLE, Mr. CHAPMAN, Mr. HUBBARD, Mr. PENNY, Mr. MOODY, Mr. WATKINS, Mr. BRYANT, Mr. KASTENMEIER, Mr. SIKORSKI, Mr. EVANS of Illinois, Mr. DELLUMS, Mr. OBEY, Mr. WILLIAMS, Mr. ANTHONY, Mr. ALEXANDER, Mr. SABO, Mr. ENGLISH, Ms. KAPTUR, Mr. CONYERS, Mr. TOWNS, Mr. BEDELL, Mr. OBERSTAR, Mr. WEAVER, Mr. LELAND, and Mr. VOLKMER):

H.R. 5588. A bill to provide price and income protection to family farmers through the management of the supply of the 1987 through 1999 crops of certain agricultural commodities, and for other purposes; to the Committee on Agriculture.

By Mr. HOYER:

H.R. 5589. A bill to amend title 5, United States Code, to provide that the Government's health insurance program for Federal employees include benefits relating to cleft lip and cleft palate; to the Committee on Post Office and Civil Service.

By Mr. HUGHES:

H.R. 5590. A bill to amend title 28, United States Code, to encourage alternative dispute resolution; to the Committee on the Judiciary.

By Mr. MURTHA (for himself, Mr. REGULA, Mr. GAYDOS, Mr. APPLEGATE, Mr. RITTER, Mrs. BENTLEY, Mr. SCHULZE, Mr. KINDNESS, Mr. OBERSTAR, Mr. SHELBY, Mr. MURPHY, Mr. RIDGE, Mr. KOLTER, Mr. VISCLOSKY, Mr. WALGREN, Mr. BEVILL, Mr. LIPINSKI, Mr. CLINGER, Mr. YATRON, Mr. RAHALL, Mrs. COLLINS, Mr. STRANG, Mr. ERDREICH, and Mr. DINGELL):

H.R. 5591. A bill to amend the Steel Import Stabilization Act; to the Committee on Ways and Means.

By Mr. SHAW:

H.R. 5592. A bill to amend the Rehabilitation Act of 1973 to provide that a drug abuser shall not be considered a handicapped individual for purposes of that act, and for other purposes; to the Committee on Education and Labor.

By Mr. WHITTEN:

H.J. Res. 738. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes; to the Committee on Appropriations.

By Mr. LIVINGSTON:

H.J. Res. 739. Joint resolution to proclaim December 7, 1986, as "My Nationality American Day"; to the Committee on Post Office and Civil Service.

By Ms. SNOWE (for herself, Mr. GUNDERSON, Mr. LAGOMARSINO, Mr. FRENZEL, Mr. FUSTER, Mr. WOLF, Mr. STOKES, Mr. CHAPPIE, Mr. EVANS of Iowa, Mr. FAZIO, Mr. CROCKETT, Mr. SMITH of Florida, Mr. BONER of Tennessee, Mr. LIPINSKI, Mr. KASICH, Mr. WORTLEY, Mr. HORTON, Mrs. BURTON of California, Mr. FUQUA, Mr. CONYERS, Mr. DE LUGO, Mr. CONTE, Mr. FEIGHAN, Mr. MATSUI, Mr. LUNGREN, Mr. RANGEL, Mr. JENKINS, Mrs. BENTLEY, Mr. DYMALLY, Mr. MORRISON of Connecticut, Mr. TAUKE, Mr. OWENS, Mr. WALGREN, Mr. WYDEN, Mr. BOSCO, Mr. AKAKA, Mr. ROE, Mrs. BOXER, Mr. KOLTER, Mr. DE LA GARZA, Mr. BLAZ, Mr.

FROST, Mr. FOGLIETTA, Mr. HUGHES, Mr. LANTOS, Mr. LEHMAN of Florida, Mr. LEACH of Iowa, and Mr. MARTINEZ):

H.J. Res. 740. Joint resolution to designate February 4, 1987, as "National Women in Sports Day"; to the Committee on Post Office and Civil Service.

By Mr. FORD of Michigan:

H. Con. Res. 394. Concurrent resolution to correct technical errors in the enrollment of the bill, S. 1965; considered and passed.

By Mr. DORGAN of North Dakota:

H. Res. 561. Resolution expressing the sense of the House of Representatives that the U.S. Government should negotiate a multilateral wheat production agreement with the other wheat exporting countries; jointly, to the Committees on Foreign Affairs, and Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. FAUNTROY:

H.R. 5593. A bill for the relief of Joseph A. Bosco and Carol B. Bosco; to the Committee on the Judiciary.

By Mr. KEMP:

H.R. 5594. A bill to direct the Administrator of Veterans' Affairs to release a reverter interest of the United States in certain real property in Canandaigua, NY, previously conveyed by the United States to Sonnenberg Gardens, a nonprofit education institution of the State of New York; to the Committee on Veterans' Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1086: Mr. BURTON of Indiana.

H.R. 1436: Mr. WIRTH.

H.R. 1575: Mr. SIKORSKI.

H.R. 2320: Ms. MIKULSKI.

H.R. 2761: Mr. FAUNTROY, Mr. FEIGHAN, Mr. GARCIA, Mr. KASTENMEIER, and Mr. LIPINSKI.

H.R. 3436: Mr. WORTLEY.

H.R. 3663: Mr. NELSON of Florida, Mr. VENTO, and Mr. TOWNS.

H.R. 3800: Mr. MACKAY and Mr. GEJDENSON.

H.R. 3865: Mr. DUNCAN and Mrs. ROUKEMA.

H.R. 4057: Mr. LOEFFLER, Mr. LEWIS of Florida, and Mr. MARLENEE.

H.R. 4183: Mrs. MEYERS of Kansas and Mr. HOPKINS.

H.R. 4499: Mr. MARTINEZ.

H.R. 4500: Mr. MARTINEZ.

H.R. 4534: Mr. EVANS of Iowa, Mr. SKELTON, Mr. EMERSON, Mrs. MARTIN of Illinois, and Mr. GUNDERSON.

H.R. 4633: Mr. SHELBY and Mr. DAVIS.

H.R. 4715: Mr. SCHUETTE, Mr. JONES of Oklahoma, Mr. EMERSON, and Mr. DURBIN.

H.R. 4717: Mr. LIGHTFOOT.

H.R. 4766: Mr. BARTLETT.

H.R. 5053: Mr. SCHUETTE.

H.R. 5180: Mr. KEMP.

H.R. 5181: Mr. KEMP.

H.R. 5274: Mr. BILIRAKIS and Mr. FEIGHAN.

H.R. 5284: Mr. DOWNEY of New York.

H.R. 5350: Mr. PETRI, Mr. ROBINSON, Mr. FUQUA, Mr. DANIEL, Mr. ROSE, Mr. LEATH of Texas, Mr. FAUNTROY, Mr. EDWARDS of California, Mr. WATKINS, Mr. MARTIN of New York, Mr. KRAMER, Mr. DORGAN of North Dakota, Mr. DYMALLY, Mr. WHITLEY and Mr. BARTON of Texas.

H.R. 5376: Mr. DAVIS and Mr. NIELSON of Utah.

H.R. 5425: Mr. KOLTER and Mr. FISH.

H.R. 5456: Mr. WRIGHT.

H.R. 5488: Mr. ROGERS.

H.R. 5499: Mr. TRAXLER, Mr. FRANKLIN, and Mr. DERRICK.

H.R. 5538: Mr. MORRISON of Connecticut and Mr. TOWNS.

H.J. Res. 524: Mr. GEKAS, Mr. HOPKINS, Mr. MORRISON of Connecticut, Mr. JENKINS, Mr. FAZIO, Mr. HEFNER, Mr. SMITH of Florida, Mr. MANTON, Mr. DORNAN of California, Mr. KOLTER, Mr. JEFFORDS, Mr. EARLY, Mr. FUQUA, and Mr. REGULA.

H.J. Res. 535: Mr. HERTEL of Michigan, Mr. GUARINI, and Mr. FAZIO.

H.J. Res. 550: Mr. LUNGREN, Mr. LEHMAN of Florida, Mr. MANTON, Mr. GREEN, Mr. LEWIS of California, Mr. BLILEY, Mr. LELAND, Mr. FEIGHAN, Mr. ORTIZ, Mr. GUARINI, Mr. LEVINE of California, Mr. LUKEN, Mr. BONIOR of Michigan, Mr. YOUNG of Missouri, Ms. MIKULSKI, Mr. DELLUMS, Mr. FISH, Mr. DANNEMEYER, Mr. DORNAN of California, and Mr. MRAZEK.

H.J. Res. 602: Mrs. MARTIN of Illinois, Mr. BATEMAN, and Mr. SIKORSKI.

H.J. Res. 620: Mrs. MARTIN of Illinois, Mr. GRAY of Illinois, Mr. HOPKINS, Mr. KOLTER, Mr. KILDEE, Mr. JONES of North Carolina, Mr. AKAKA, Mr. BLAZ, Mr. CONYERS, Mr. DIXON, Mr. DONNELLY, Mr. LUNGREN, Mr. MARKEY, Mr. MAVROULES, Mr. MURPHY, Mr. SAVAGE, Mr. DENNY SMITH, Mr. SPRATT, Mr. TALLON, Mr. TORRICELLI, Mr. WAXMAN, Mr. YOUNG of Alaska, Mr. ANTHONY, Mr. BOSCO, Mr. DASCHLE, Mr. CROCKETT, Mr. ROTH, Mr. SISISKY, Mr. BRYANT, Mr. ECKERT of New York, Mr. PEPPER, and Mr. KEMP.

H.J. Res. 638: Mr. DYMALLY, Mr. MCCOLLUM, Mr. HYDE, Mr. KOSTMAYER, Mr. HOWARD, Mr. LEVIN of Michigan, Mrs. MEYERS of Kansas, Mr. LUNGREN, Mr. OLIN, Mr. SOLARZ, Mr. LAGOMARSINO, Mr. BEDELL, Mr. VALENTINE, Mr. BRYANT, Mr. SAVAGE, Mr. WORTLEY, Mr. ROE, Mr. HEFNER, Mr. DAUB, Mr. MRAZEK, Mr. DELLUMS, Mr. NIELSON of Utah, and Mr. FISH.

H.J. Res. 655: Mr. BARNARD, Mr. BLILEY, Mr. BONIOR of Michigan, Mr. COURTER, Mr. EDGAR, Mr. FLORIO, Mr. FORD of Tennessee, Mr. MANTON, Mr. MONSON, Mrs. ROUKEMA, Mr. THOMAS of Georgia, Mr. WIRTH, and Mr. LIVINGSTON.

H.J. Res. 656: Mrs. VUCANOVICH, Mr. MARLENEE, and Mr. CHAPPELL.

H.J. Res. 671: Mr. FROST, Mr. HORTON, Mr. GRAY of Pennsylvania, Mr. LEHMAN of California, Mr. LIPINSKI, Mr. BEVILL, Mr. ATKINS, Mrs. BURTON of California, Mr. DARDEN, Mr. SABO, Mr. DONNELLY, Mr. DORGAN of North Dakota, Mr. BUSTAMANTE, Mrs. LLOYD, Mr. RANGEL, Mr. WYDEN, Mr. VANDER JAGT, Mr. TALLON, Mr. FEIGHAN, Mr. KOLTER, and Mr. RITTER.

H.J. Res. 693: Mr. YOUNG of Florida, Mr. RANGEL, Mr. MINETA, Ms. KAPTUR, Mr. HUGHES, Mr. SKELTON, Mr. MOAKLEY, Mr. RAHALL, Mr. STRANG, Mr. COYNE, Mr. DOWDY of Mississippi, Mr. DE LUGO, Mr. FROST, Mr. CROCKETT, Mr. PASHAYAN, Mrs. BYRON, Mr. BROWN of California, Mrs. BOXER, Mr. STOKES, Mr. LAFALCE, Ms. OAKAR, Mr. JONES of North Carolina, Mr. HENRY, Mr. LEVIN of Michigan, Mr. TOWNS, Mr. SOLARZ, Mr. WYLIE, Mrs. LONG, Mr. TALLON, Mr. SCHUMER, Mr. CONTE, Mr. KOSTMAYER, Mr. FEIGHAN, Mr. LOWERY of California, Mr. RUSSO, Mr. BIAGGI, Mr. WALGREN, Mr. TAUKE, and Mr. HAMILTON.

H.J. Res. 704: Mr. HENDON, Mr. WIRTH, Mr. PANETTA, Mr. WHEAT, Mr. FRANK, Mr. KILDEE, Mr. DYMALLY, Ms. OAKAR, Mr. DAUB, Mr. VALENTINE, Mr. LEVIN of Michigan, Mr. OWENS, Mr. STOKES, Mr. WYLIE, Mr. BERMAN, Mr. LAGOMARSINO, Mr. ROE, Mr. MONSON, Mr. BROWN of California, Mrs. BOXER, Mr. FISH, Mr. BEVILL, Mr. FEIGHAN, and Mr. BOLAND.

H.J. Res. 709: Mr. FOLEY, Mr. KOLTER, Mr. GRAY of Pennsylvania, Mr. ROE, Mrs. BOXER, Mr. HAMMERSCHMIDT, Mr. SMITH of Florida, Mr. FEIGHAN, Mr. CHAPPIE, Mr. LIVINGSTON, Mr. LOWRY of Washington, Mr. FRANK, Mr. YOUNG of Alaska, Mr. YATRON, Mr. ROYBAL, Mr. YOUNG of Missouri, Mr. MRAZEK, Mr. LOWERY of California, Mr. RINALDO, Mr. MARTIN of New York, Mr. MARTINEZ, Mr. SABO, Mr. WEISS, and Mr. ANDERSON.

H.J. Res. 733: Mr. MRAZEK, Mr. HERTEL of Michigan, Mr. LEHMAN of Florida, Mr. LUNDINE, Mr. LEACH of Iowa, Mr. MCDADE, Mr. LIGHTFOOT, Mr. LUNGREN, and Mr. MCMILLAN.

H. Con. Res. 225: Mr. MCGRATH, Mr. NELSON of Florida, Mr. FISH, Mr. COOPER, Mr. LEHMAN of California, and Mr. TOWNS.

H. Con. Res. 388: Mr. MARTINEZ, Mr. WHITTAKER, Mr. BEVILL, Mr. BERMAN, and Mr. RITTER.

H. Res. 469: Mr. ATKINS, Mr. GLICKMAN, Mr. HOYER, Mr. MACK, Ms. MIKULSKI, Mr. RICHARDSON, and Mr. TAUKE.

H. Res. 522: Mr. WALGREN.

H. Res. 540: Mr. LAGOMARSINO, Mr. MARLENEE, Mr. RITTER, Mr. NIELSON of Utah, and Mr. ERDREICH.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3810

By Mr. LUNGREN:

—Strike out sections 302 through 305 and insert in lieu thereof the following (and conform the table of contents accordingly):

SEC. 302. SEASONAL AGRICULTURAL WORKER PROGRAM.

(a) PROVIDING NEW "N" NONIMMIGRANT CLASSIFICATION FOR SEASONAL AGRICULTURAL WORKERS.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by this Act, is further amended—

(1) by inserting "(other than seasonal agricultural services in perishable commodities described in section 217(h)(1))" in subparagraph (H)(ii)(a) after "agricultural labor or services";

(2) by striking out "or" at the end of subparagraph (L);

(3) by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or"; and

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

"(N) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States to perform seasonal agricultural services in perishable commodities (as defined in section 217(h)(1)).".

(b) ADMISSION OF SEASONAL AGRICULTURAL WORKERS.—Chapter 2 of title II is amended by adding after section 216, as added by section 301(c) of this title, the following new section:

"ADMISSION OF SEASONAL AGRICULTURAL WORKERS

"SEC. 217. (a) ESTABLISHMENT OF SEASONAL AGRICULTURAL WORKER PROGRAM.—The Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall by regulation establish a program (hereafter in this section referred to as 'the program') for the admission into the United States of seasonal agricultural workers (as defined in subsection (h)(2)).

"(b) ADMISSION OF SEASONAL AGRICULTURAL WORKERS.—A petition to import an alien as a seasonal agricultural worker (as defined in subsection (h)(2)) may not be approved by the Attorney General unless the petitioner certifies to the Attorney General the following:

"(1) SEASONAL AGRICULTURAL EMPLOYER IN PERISHABLE COMMODITIES.—

"(A) NATURE OF PETITIONER.—The petitioner employs (or contracts for the employment of) individuals in seasonal agricultural services in perishable commodities, or is an association representing such employers or contractors.

"(B) REQUIREMENTS OF PETITIONS.—For each month concerned and for each agricultural employment region (designated under subsection (i)(1)) in which the petitioner is operating, the petition must specify—

"(i) the total number and qualifications of individuals in seasonal agricultural services in perishable commodities required in each month, and

"(ii) the type of agricultural work required to be performed by these workers.

"(2) WILL MAKE RECRUITING EFFORT.—The petitioner will make a good faith effort to recruit (as required by the Attorney General in regulations) in the area of intended employment, including the listing of employment opportunities with the appropriate office of a governmental employment service, and will accept for employment able, willing, and qualified workers referred by such office to perform seasonal agricultural services in perishable commodities until the commencement of the seasonal agricultural services for which the petitioner has recruited.

"(3) REPORT ON RECRUITMENT.—In the case of a petitioner that has employed seasonal agricultural workers during the previous 12 months, the petitioner will provide a summary of his efforts to recruit domestic workers to perform seasonal agricultural services in perishable commodities during that period.

"(4) ADEQUATE WORKING CONDITIONS.—The petitioner will provide such wages and working conditions as will not adversely affect the wages and working conditions of United States workers similarly employed.

"(5) HOUSING.—The petitioner will furnish housing for seasonal agricultural workers or, at the petitioner's option and instead of arranging for suitable housing accommodations, will substitute payment of a reasonable housing allowance to the provider of the housing, but only if the housing is otherwise available within the approximate area of employment.

"(6) NOTICE TO ATTORNEY GENERAL OF EMPLOYMENT.—The petitioner will notify the Attorney General of the entering into, or termination, of an employment relationship with a seasonal agricultural worker not later than 72 hours of the time the relationship is entered into or terminated.

"(7) EMPLOYMENT ONLY IN SEASONAL AGRICULTURAL EMPLOYMENT IN PERISHABLE COMMODITIES.—The petitioner will not employ a seasonal agricultural worker for services other than seasonal agricultural employment in perishable commodities.

"(8) LIMITATION ON THE USE OF "N" WORKERS IN PERISHABLE COMMODITIES.—The petitioner will not employ (or petition for the employment of) a seasonal agricultural worker in any job opportunity when an application for employment in that job opportunity under section 101(a)(15)(H)(ii)(a) is pending or approved.

"(9) JOB INFORMATION DISCLOSURE TO "N" WORKERS.—The petitioner shall, upon request, disclose in writing to seasonal agricultural workers when an offer of employment is made, the place of employment, the wage rates, the employee benefits to be provided, and any costs to be charged for each of them, the crops and kinds of activities for which the worker may be employed, and the anticipated period of employment.

"(c) SUSPENSION OF CERTIFICATION.—The Attorney General shall suspend a petitioner's certification under subsection (b) if any of the following conditions exist:

"(1) LABOR DISPUTE.—There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

"(2) VIOLATION OF TERM OF PREVIOUS CERTIFICATION.—

"(A) IN GENERAL.—The employer at any time during the previous two-year period employed seasonal agricultural workers and the Attorney General has determined, after notice and opportunity for a hearing, that the employer at any time during that period—

"(i) substantially violated an essential term or condition of the labor certification under subsection (b) with respect to the employment of domestic or nonimmigrant workers, or

"(ii) has not paid any penalty for such violations which have been assessed by the Attorney General.

"(B) DISQUALIFICATION LIMITED TO ONE YEAR.—No employer may have its certification suspended under clause (A) for more than one year for any violation described in that clause.

"(3) NOT PROVIDING FOR WORKERS' COMPENSATION.—The employer has not provided the Attorney General with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a seasonal agricultural worker, and a labor certification with respect to such worker, may be filed by an association representing seasonal agricultural employers which use agricultural services.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If such association is a joint or sole employer of seasonal agricultural workers, the certifications obtained under this section by the association may be used for the job opportunities of any of its members requiring such workers to perform agricultural services of a seasonal nature for which the certifications were obtained.

"(3) TREATMENT OF VIOLATIONS.—

"(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual member of such an association is determined to have committed an act that under subsection (c)(2) results in the suspension of certification with respect to the member, the suspension shall apply only to that member and does not apply to the association unless the Attorney General determines that the association or other member participated in, or had knowledge of and derived benefit from, the violation.

"(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—If an association representing agricultural employers as an agent, joint employer, or employer is determined to have committed an act that under subsection (c)(2) results in the suspension of certification with respect to the association, the suspension shall apply only to the association and does not apply to any individual member of the association unless the Attorney General determines that the member participated in, or had knowledge of and derived benefit from, the violation.

"(e) EXPEDITED ADMINISTRATIVE APPEAL OF SUSPENSION OF CERTIFICATION UNDER SUBSECTION (c)(2).—

"(1) EXPEDITED PROCEDURES.—The Attorney General shall provide for an expedited procedure for the review of a suspension of certification under subsection (c)(2) or, at the applicant's request, for a de novo administrative hearing respecting the suspension. In the case of a request for such a review or hearing, the Attorney General shall provide that the review or hearing take place not later than 72 hours after the time the request is submitted.

"(f) HEARING DE NOVO BEFORE THE UNITED STATES DISTRICT COURT.—

"(1) JURISDICTION.—On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in the District of Columbia, has jurisdiction to enjoin the Attorney General from suspending the complainant's certification under the program and to order the reinstatement of complainant's certification if it is improperly suspended. In such a case, the court shall determine the matter de novo and the burden is on the Attorney General to sustain his suspension.

"(2) PRECEDENCE OF CASES.—Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

"(g) MISCELLANEOUS PROVISIONS.—

"(1) AUTHORITY.—The Attorney General is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

"(2) APPROPRIATE DOCUMENTATION.—The Attorney General shall provide for such endorsement of entry and exit documents of seasonal agricultural workers as may be necessary to carry out this section and to provide notice for purposes of section 274A.

"(3) PREEMPTION.—The provisions of this section preempt any State or local law regulating admissibility of special agricultural workers.

"(h) DEFINITIONS.—For purposes of this section:

"(1) SEASONAL AGRICULTURAL SERVICES IN PERISHABLE COMMODITIES.—The term 'season-

al agricultural services in perishable commodities' means services in agricultural employment including planting, cultural practices, production, cultivation, growing, and harvesting involving perishable commodities (as defined by regulations of the Secretary of Agriculture).

"(2) SEASONAL ARGICULTURAL WORKER.—The term 'seasonal agricultural worker' means a nonimmigrant described in section 101(a)(15)(N).

"(3) CARIBBEAN BASIN.—The terms 'Caribbean Basin' and Caribbean Basin Countries' include those countries eligible to be designated by the President as 'beneficiary countries' under section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)).

"(i) ESTABLISHMENT OF NUMERICAL LIMITATIONS BY AGRICULTURAL EMPLOYMENT REGION.—

"(1) ESTABLISHMENT OF AGRICULTURAL EMPLOYMENT REGION.—For purposes of the administration of the program the Attorney General shall designate not more than 10 agricultural employment regions within the United States. The entire United States shall be encompassed by the area of all such regions.

"(2) NUMERICAL LIMITATIONS.—After considering the factors described in paragraph (3), if the Attorney General determines that seasonal agricultural workers are required for a month for an agricultural employment region, the Attorney General shall establish a numerical limitation on the number of nonimmigrant visas that may be issued for such workers for that month for that region, except until the end of the third year after the effective date of this Act, the Attorney General may not establish a numerical limitation on the number of such visas that may be issued at any given time in excess of 350,000.

"(3) FACTORS IN DETERMINATION.—In making the determination and establishing numerical limitations under paragraph (2), the Attorney General shall—

"(A) base the determinations and limitations on petitions filed under subsection (b)(1),

"(B) take into consideration the historical employment needs of agricultural employers and the availability of able, willing, and qualified domestic labor,

"(C) take into consideration the recruitment efforts understaken by the Secretary of Labor under section 303(c)(1) of the Immigration Control and Legalization Amendments Act of 1986, and

"(D) consult with the Secretary of Agriculture.

"(4) NUMERICAL LIMITATIONS AFTER THREE YEARS.—The Attorney General shall establish at the end of the third year after the effective date of this Act, a numerical limit on the total number of seasonal agricultural workers to be admitted into all employment regions in the United States under the program at any given time. In establishing a numerical limit under this paragraph, the Attorney General shall—

"(A) consider petitions filed under subsection (b)(1) during the preceding years of the program,

"(B) take into consideration the historical employment needs of agricultural employers and the availability of able, willing, and qualified domestic labor,

"(C) take into consideration the recruitment efforts undertaken by the Secretary of Labor under section 303(c)(1) of the Immigration Control and Legalization Amendments Act of 1986, and

"(D) consult with the Secretary of Agriculture.

"(5) CHANGES IN NUMERICAL LIMITATIONS IN EXTRAORDINARY CIRCUMSTANCES.—

"(A) INADEQUATE MONTHLY AND REGIONAL LIMITATIONS.—If—

"(i) a numerical limitation has been established under paragraph (2) or (4) for a region for a month, and

"(ii) a petitioner described in subsection (b)(1) establishes that extraordinary and unusual circumstances have resulted in a significant change in the petitioner's need for seasonal agricultural workers specified in the petition or in the availability of domestic workers who are able, willing, and qualified to perform seasonal agricultural employment, the petitioner may apply to the Attorney General (in such form and manner as the Attorney General shall provide) for an increase in the numerical limitations otherwise established under paragraphs (2) and (4) to accommodate the circumstances.

"(B) DETERMINATION.—The Attorney General shall make a determination on such an application within 72 hours of the date the application is completed. To the extent the application is approved, the Attorney General shall provide for an appropriate increase in the appropriate monthly and regional numerical limitation. The Attorney General may expand the number of workers admitted into the region for which the application is approved by transferring seasonal agricultural workers from another region with a lesser need or by admitting additional workers from foreign countries. In the event the limit on the admission of seasonal agricultural workers for all regions in the United States established under paragraph (4) has been reached at the time the application alleging extraordinary and unusual circumstances is filed, the Attorney General shall follow the procedures in subparagraph (C).

"(C) INCREASE IN THE NUMERICAL LIMITATION ESTABLISHED BY THE ATTORNEY GENERAL.—If—

"(i) a numerical limitation on the admission of seasonal agricultural workers into all employment regions has been established by the Attorney General under paragraph (4) and

"(ii) a petitioner described in subsection (b)(1) establishes under the provisions of subparagraph (A) and (B) that extraordinary and unusual circumstances require an increase in the numerical limitation, the Attorney General may provide for an increase in the appropriate numerical limitation in an amount not to exceed 20 percent of the total number authorized for admission into all regions. Any such increase authorized by the Attorney General shall terminate upon the end of circumstances requiring it and shall not result in a permanent expansion of the numerical limit established by the Attorney General under paragraph (4).

"(j) ENTRY OF SEASONAL AGRICULTURAL WORKERS.—

"(1) ANNUAL TIME LIMITATION.—An alien may not be admitted to the United States as a seasonal agricultural worker under section 101(a)(15)(N) for a period of more than nine months in any calendar year. An alien admitted under section 101(a)(15)(N) during any calendar year will not be eligible for readmission into the United States until he has returned to his country of origin for a period of 3 months.

"(2) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a seasonal agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

"(k) WAGES AND WORKING CONDITIONS.—The Attorney General, in consultation with the Secretaries of Agriculture and Labor, shall establish through regulation appropriate wages and working conditions as will not adversely affect the wages and working conditions of United States workers similarly employed in the area of intended employment.

"(1) ALLOCATION AND USE OF VISAS UNDER THE PROGRAM.—

"(1) IN GENERAL.—Nonimmigrant visas for seasonal agricultural workers, within the numerical limitations established under subsection (i)(2), shall be made available as follows:

"(A) PREVIOUS WORKERS.—Visas shall first be made available to qualified nonimmigrants who have previously been admitted as seasonal agricultural workers and who have fully complied with the terms and conditions of any such previous admission, providing priority in consideration among such aliens in the order of the length of time in which they were so employed.

"(B) OTHERS.—Any remaining visas shall be made available to other qualified nonimmigrants.

"(C) TREATMENT OF SPOUSES AND CHILDREN.—A spouse or child of a seasonal agricultural worker is not entitled to a nonimmigrant visa as such a worker by virture of such relationship, whether or not accompanying or following to join the nonimmigrant, but may be provided a nonimmigrant visa as such a worker if the spouse or child also is qualified as such a worker.

"(D) NO INDIVIDUAL EMPLOYER VISA PETITION REQUIRED.—An alien admitted pursuant to section 101(a)(15)(N) shall not be required to obtain any petition from any prospective employer within the United States in order to obtain a nonimmigrant visa under the program.

"(E) NO LIMITATION TO PARTICULAR EMPLOYER OR CROP.—A nonimmigrant visa issued under the program shall not limit the geographical area (other than by agricultural employment region) within which a seasonal agricultural worker may be employed or limit the type of seasonal agricultural employment services, in perishable commodities, the worker may perform.

"(F) DISQUALIFICATION FROM FEDERAL ASSISTANCE.—A seasonal agricultural worker under the program is not eligible for any program of financial assistance under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government.

"(G) ALLOCATION OF VISAS TO CARIBBEAN BASIN COUNTRIES.—The Attorney General, in consultation with the Secretaries of State and Agriculture, shall establish through regulations the allocation of visas to workers in specific countries under this section. A percentage of the visas issued shall be allocated to qualified workers in countries located in the Caribbean Basin.

"(m) TRUST FUND FOR PROGRAM ADMINISTRATION.—

"(1) ESTABLISHMENT.—The Attorney General shall establish by regulation a trust fund the purpose of which to provide funds for the administration of the program and to provide a monetary incentive for seasonal

agricultural workers in the program to return to their country of origin upon expiration of their visas under the program. The Attorney General shall promulgate such other regulations as may be necessary to carry out this subsection.

"(2) PAYMENTS INTO TRUST FUND.—In the case of employment of a seasonal agricultural worker under the program—

"(A) EMPLOYER PAYMENT.—The employer shall provide for payment into the trust fund established under this subsection of an amount equivalent to 11 percent of the wages of the worker.

"(B) WORKERS PAYMENT.—There shall be deducted from the wages of the nonimmigrant and paid into such trust fund an amount eqivalent to 20 percent of the wages of the worker.

"(C) WAGES DEFINED.—For purposes of this paragraph, the term 'wages' has the meaning given such term in section 3121(a) of the Internal Revenue Code of 1954, except that for these purposes paragraph (1) of that section shall not apply.

"(3) USE OF AMOUNTS IN TRUST FUND.—

"(A) EMPLOYER PAYMENTS AND INTEREST.—Except as provided in paragraph (B), amounts paid into the trust fund, and interest thereon, shall be used for the purpose of administering the program.

"(B) WORKERS PAYMENT.—Amounts described in paragraph (B) paid into the trust fund with respect to a worker and interest thereon shall be paid to the worker if—

"(i) the worker applies for payment within 30 days of the last day of employment under the program (as verified by the Attorney General) at the United States consulate nearest the worker's residence in the country of origin, and

"(ii) the worker complies with the terms and conditions of the program, including the obligation to be continuously employed (or actively seeking employment) in seasonal agricultural employment in perishable commodities.

"(4) EXPANSION OF CONSULATES.—The Secretary of State is authorized to take such steps as may be necessary in order to expand and establish consulates in foreign countries in which aliens are likely to apply for nonimmigrant status under the program.".

(c) AUTHORIZATIONS OF APPROPRIATIONS FOR SECRETARY OF LABOR.—There are authorized to be appropriated to the Secretary of Labor for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(1) of recruiting domestic workers for temporary services which might otherwise be performed by seasonal agricultural workers described in section 217 of the Immigration and Nationality Act, and

(2) of monitoring terms and conditions under which such temporary and seasonal agricultural workers (and domestic workers employed by the same employers) are employed in the United States.

(d) AUTHORIZATION OF APPROPRIATIONS FOR SECRETARY OF AGRICULTURE.—There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under section 217 of the Immigration and Nationality Act.

(e) PROHIBITING ADJUSTMENT OF STATUS OF SEASONAL AGRICULTURAL WORKERS.—(1) Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: "; or (4) an alien (other than an immediate relative as defined in section 201(b)) who entered the United States classified as a nonimmigrant under section 101(a)(15)(N).".

(2) Section 248(1) (8 U.S.C. 1258(1)) is amended by striking out "or (K)" and inserting in lieu thereof "(K), or (N).".

(f) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a), (b), (c), and (e) of this section apply to petitions and applications filed under section 217 of the Immigration and Nationality Act on or after the first day of the twelfth month beginning after the date of the enactment of this Act (hereafter in this section referred to as the "effective date").

(2) No alien may be admitted as a nonimmigrant described in section 101(a)(15)(N) of the Immigration and Nationality Act for any month after the end of the 46-month period beginning on the effective date.

(g) REGULATIONS.—the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(N) and 217 of the Immigration and Nationality Act. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.

(h) DEPORTATION OF SEASONAL AGRICULTURAL WORKERS FOR FAILURE TO BE EMPLOYED OR SEEK EMPLOYMENT.—Section 241(a) (8 U.S.C. 1251(a)) is amended—

(1) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or"; and

(2) by adding at the end the following new paragraph:

"(20) entered the United States as nonimmigrants under section 101(a)(15)(N) and failed to be continuously employed or actively seeking employment in seasonal agricultural employment in perishable commodities (as defined in section 217(h)(1)) in accordance with the usual and customary employment patterns and practices.".

(i) SENSE OF CONGRESS RESPECTING ADVISORY COMMISSION.—It is the sense of Congress that the President should establish an advisory commission which shall consult with the Government of Mexico and the governments of other appropriate countries and advise the Attorney General regarding the operation of the seasonal agricultural worker program established under section 217 of the Immigration and Nationality Act.

(j) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 216, as inserted by section 301(f) of this title, the following new item:

"Sec. 217. Seasonal agricultural worker program.".

In the heading to section 403, insert "AND SEASONAL AGRICULTURAL PROGRAM" after "PROGRAM", and conform the table of contents accordingly.

In section 403(a), insert "and the seasonal agricultural worker program (under section 217 of the Immigration and Nationality Act)" after "(H-2A) program".

In section 403(a)(1), strike out "the" and insert in lieu thereof "each such program".

In section 403(a)(2), insert "respective" before "program".

In sections 403(a)(3) and (4) (other than subparagraph (D)), strike out "program" and insert in lieu thereof "programs".

In section 403(a)(4)(C), strike out "and" at the end.

In section 403(a)(4)(D) insert "H-2A" before "program" and strike out the period and insert in lieu thereof ", and".

At the end of section 403(a)(4), insert the following new subparagraph:

(E) on the need to continue, improve, or eliminate the seasonal agricultural worker program.

In section 403(b), insert "and on the seasonal agricultural worker program" after "program".