comparable State-by-State data. The most fundamental question we, as policy makers, will be asking is whether the number of uninsured children is going down. With an increasing percent of uninsured, a stable rate might be considered a success! This bill would provide additional funding to the Census Bureau for its Current Population Survey—a national data source of the uninsured—to improve upon the reliability of its State-by-State estimates of uninsured children.

In addition, the proposal would provide funding for another national survey to provide reliable State-by-State data on health care access and utilization for low-income children. Although this survey may also provide data on the number of uninsured, the CPS would be the primary source for such figures.

Also, to develop more efficient and centralized statistics, this bill would coordinate a Federal clearinghouse for all data bases and reports on children's health. Centralized and complete information is the key to sound policy and programs.

We need this information, not only to determine whether the States are properly instituting their CHIP programs, but to ensure that we continue our commitment to ensure that no children in this country are left without health care coverage.

I have included a summary of the bill prepared by Senator MOYNIHAN's staff to be included in the RECORD.

SUMMARY OF THE CHIP DATA AND EVALUATION IMPROVEMENT ACT OF 1999

PURPOSE

In 1997, 10.7 million children were uninsured. The new State Children's Health Insurance Program (CHIP) and existing state Medicaid programs are intended to provide coverage for low-income children. The crucial question is whether the number of uninsured children has been reduced. Improved state-specific data is needed to provide that information. In addition, the Federal government should evaluate the effectiveness of these programs in finding and enrolling children in health insurance.

PROPOSAL

State-by-state Uninsured Counts and Children's Health Care Access and Utilization. (1) Provide funds ($10 million annually) to the Census Bureau to make appropriate adjustments to the Current Population Survey (CPS) so that the CPS can provide reliable state-by-state data on uninsured children. (2) Provide funds ($9 million annually) to the National Center for Health Statistics to conduct the Children's Health portion of the State and Local Area Integrated Telephone Survey (SLAITS) in order to produce reliable state-by-state data on the health care access and utilization for low-income children covered by various insurance programs such as Medicaid and CHIP.

Federal Evaluation. With funding ($10 million), the Secretary of Health and Human Services would submit to Congress a Federal evaluation report that would include 10 states representing varying geographic, rural/urban, with various program designs. The evaluation would include more specific and comparable evaluation elements than are already included under Title XXI, such as including surveys of the target population (enrollees and other eligibles). The study would evaluate outreach and enrollment practices (for both CHIP and Medicaid), identify barriers to enrollment, assess states' Medicaid and CHIP program coordination, assess the effect of cost sharing on enrollment and coverage retention, and identify the reasons for disenrollment/retention.

Standardized Reporting. States would submit standardized data to the Secretary, including enrollee counts disaggregated by income (below 100%), race/ethnicity, and age. If income could not be submitted in a standard form, the state would submit a detailed description of eligibility methodologies that outline relevant income disregards. States would also submit percentages of individuals screened that are enrolled in CHIP and in Medicaid, and the percent screened eligible for Medicaid but not enrolled.

Administrative Spending Reports for Title XXI. States would submit standardized spending reports for the following administrative costs: data systems, outreach efforts and program operation (eligibility/enrollment, etc.).

Coordinate CHIP Data with Title V Data Requirements. Existing reporting requirements for the Maternal and Child Health Block Grant provide data based on children's health insurance, including Medicaid. This bill would include the CHIP program in its reporting. IG Audit and GAO Report. The Inspector General for the Department of Health and Human Services would audit CHIP enrollee data to identify children who are actually eligible for Medicaid. The General Accounting Office will report the results to Congress. Coordination of all Children Data and Reports. The Assistant Secretary of Planning and Evaluation in the Department of Health and Human Services would consolidate all federal data base information and reports on children's health in a clearinghouse.

THE INDEPENDENT CONTRACTOR CLARIFICATION ACT OF 1999

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 22, 1999

Mr. KLECZKA. Mr. Speaker, Congressman AMO HOUGHTON and I today are introducing the Independent Contractor Clarification Act of 1999. This bipartisan legislation attempts to solve one of the more troublesome aspects of the tax code—the proper classification of workers. I am pleased that Representatives STARK (CA), JOHNSON (CT), MATSUI (CA), ENGLISH (PA), LEVIN (MI), WELLER (IL), COYNE (PA), FOLEY (FL), MCDERMOTT (WA), LEWIS (GA), BOEHLERT (NY), EVANS (IL), KING (NY), BARRETT (WI), QUINN (NY), and FORBES (NY) are original cosponsors of the bill.

The bipartisan spirit of this legislation cannot be underestimated. Congress has struggled with this issue since 1978. Unfortunately, legislation introduced in recent years has tended to favor employers and only served to polarize the debate on this issue. Congressman HOUGHTON and I have worked with groups representing both employers and employees for most of the past year to develop the legislation we are introducing today.

The current 20 point test used to determine an individual's employment classification and the section 530 safe harbor are burdensome and unworkable. The 20 point test is a series of tests that provide employers with a general guideline as to how they are supposed to classify their workers. However, these tests do not provide employers with a clear definition of who is an independent contractor and who is an employee. This lack of clarity has led to countless workers being misclassified.

For example, one of the criteria used in the 20 point test is the level of training of the worker. Some have interpreted a level of training to be a college degree while others would argue it is a person's general work experience. Another criteria is furnishing significant tools and assets. For a computer programmer, significant equipment and assets might be an expensive computer system whereas in the case of a laborer an employer might deem a significant investment to be some basic tools.

With the increased enforcement of the employment tax laws beginning in the late 1960s, controversies developed between the IRS and businesses as to whether the businesses were properly classifying certain workers as independent contractors. As a result, Congress included section 530 in the 1978 tax bill, which created a safe harbor by which employers could treat a worker as an independent contractor for employment tax purposes regardless of the true employment status of the worker. To be eligible for the section 530 safe harbor, an employer simply had to have a ''reasonable basis'' such as a prior audit by the IRS, a private letter ruling from the IRS, or have relied on a long-standing recognized industry practice. Although it was intended to be a temporary solution, section 530 was permanently extended by Congress in 1982.

Furthermore, section 530 has prohibited the IRS from issuing regulations and guidance to employers to bring about the proper classification of workers. The inability of the IRS to issue rulings on employment status has prevented the IRS from clarifying the 20 point test.

As a result of the lack of clear direction, many businesses have misclassified their workers as independent contractors. Such misclassifications have resulted in workers being denied essential benefits such as health coverage, a retirement plan, or the employer's share of FICA taxes. Workers who are actual employees and who work at the direction of and under the supervision of a superior are entitled to these benefits as part of their employment.

The Independent Contractor Clarification Act would replace the current 20 point test with a simple, easy to understand 3 point test. An individual would be classified as an independent contractor if the employer does not control the manner in which the individual completes his or her assigned tasks; the individual is able to solicit and undertake other business opportunities; and the individual encounters entrepreneurial risk. The last point would include the ability of the independent contractor to generate a profit or bear the risk of financial loss.

However, any person that has a statutory exemption would maintain that exemption under this legislation. For example, current law says that real estate agents and direct sellers such as newspaper delivery persons are independent contractors, and they would maintain that status under the Independent Contractor Clarification Act.

The Independent Contractor Clarification Act would also repeal section 530 thereby allowing the Department of Treasury to issue guidance to employers so they can properly classify their workers.

However, businesses that are currently eligible for the Section 530 safe harbor will be covered by a transitional rule which would continue the current safe harbor protections until 2003 or until the IRS issues additional guidance. In addition, if the IRS requests a reclassification of any section 530 worker after

the date of bill's enactment but before 2003, the employer must make the change prospectively but will not be held liable for back taxes.

The single largest hurdle to employers reclassifying their workers as employees is the fear the IRS is going to take the reclassification as an admission of wrongdoing and, as a result, assess retroactive employment taxes. Under this legislation, the IRS would be prohibited from collecting back taxes if an employer meets the following criteria: The business had consistently treated the individual, and all other persons in similar positions, as an independent contractor; the tax returns filed by the employers are consistent with the treatment of the workers as independent contractors; and the employer has a reasonable basis for the classification of the worker such as a prior audit or a letter ruling from the IRS.

The effective date of this legislation is January 1, 2001. This is designed to give businesses a reasonable amount of time to implement the changes in the independent contractor statutes. Furthermore, any business that is told to reclassify its workers would have 60 days after final notification from the IRS to implement the change.

Mr. Speaker, this legislation is a bipartisan solution to a difficult and longstanding problem. The Independent Contractor Clarification Act attempts to balance the interests of employers and their workers. If enacted, this legislation will provide employers the guidance they need to properly classify their workers. It will also serve the interests of hard-working Americans and their families. It is for these reasons I urge the adoption of this legislation.

H.R.—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Independent Contractor Clarification Act of 1999''.

SEC. 2. DETERMINATION OF EMPLOYEE AND EMPLOYER STATUS.

(a) IN GENERAL.—Subsection (c) of section 7701 of the Internal Revenue Code of 1986 is amended to read as follows:

''(c) EMPLOYEE AND EMPLOYER.—

''(1) IN GENERAL.—For purposes of this title, except as otherwise expressly provided in this title—

''(A) an individual (hereinafter in this subsection referred to as the 'service provider') performing services for another person (hereinafter in this subsection referred to as the 'service recipient') shall be treated as an employee of the service recipient, and

''(B) the service recipient shall be treated as the employer of such service provider, unless the requirements of each of the subparagraphs of paragraph (3) have been satisfied.

''(2) REPEAL OF COMMON LAW TESTS.—The rules of this subsection shall apply in lieu of any common law rules which would otherwise apply.

''(3) REQUIREMENTS.—

''(A) LACK OF CONTROL BY SERVICE RECIPIENT.—The requirements of this subparagraph are met only if the service provider has the right, to the exclusion of the service recipient, to control and direct the manner of, and the means used in, the service provider's performance of services for the service recipient.

''(B) AVAILABILITY OF SERVICE TO OTHERS.—The requirements of this subparagraph are met only if the service provider—

''(i) makes substantially similar services available to others, and

''(ii) is not precluded by the service recipient from soliciting business opportunities that involve providing substantially similar services for other persons during the period that the service provider is providing services for the service recipient.

''(C) ENTREPRENEURIAL RISK.—The requirements of this subparagraph are met only if—

''(i) in the service provider's overall business activities, the service provider has the potential to generate profit and bears risk of loss and the extent to which profit is generated or loss is sustained depends on the service provider's efforts and decisions other than as to the amount of work performed, and

''(ii) in the event the service provider fails to perform the work in accordance with the service recipient's requirements, the service provider is either subject to liability to the service recipient for damages arising from claims sounding in contract or would be subject to such liability but for a waiver by the service recipient.

''(4) PERSON.—For purposes of this subsection, the term 'person' includes any governmental unit (and any agency or instrumentality thereof).''

(b) REPEAL OF SECTION 530 OF REVENUE ACT OF 1978.—Section 530 of the Revenue Act of 1978 is hereby repealed.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 3121(d) of such Code is amended to read as follows:

''(2) any individual who is treated as an employee under section 7701(c); or''.

(2) Paragraph (2) of section 210(j) of the Social Security Act is amended to read as follows:

''(2) any individual who is treated as an employee under section 7701(c) of the Internal Revenue Code of 1986; or''.

(3) Subsection (a) of section 7701 of such Code is amended by inserting after paragraph (33) the following new paragraph:

''(34) INCLUDES AND INCLUDING.—The terms 'includes' and 'including' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.''

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to services performed after December 31, 2000.

(2) REPEAL OF LIMITATIONS ON REGULATIONS AND RULINGS.—The repeal made by subsection (b), insofar as it relates to section 530(b) of the Revenue Act of 1978, shall take effect on the date of the enactment of this Act; except that regulations and Revenue Rulings permitted to be issued by reason of such repeal may not apply to services performed before January 1, 2001.

SEC. 3. LIMITATIONS ON RETROACTIVE EMPLOYMENT TAX RECLASSIFICATIONS.

(a) GENERAL RULE.—Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions applicable to employment taxes) is amended by adding at the end the following new section:

''SEC. 3511. LIMITATIONS ON RETROACTIVE EMPLOYMENT TAX RECLASSIFICATIONS.

''(a) GENERAL RULE.—If—

''(1) for purposes of employment taxes, the taxpayer treats an individual as not being an employee for any period after December 31, 2000, and

''(2) for such period, the taxpayer meets—

''(A) the consistency requirements of subsection (b),

''(B) the return filing requirements of subsection (c), and

''(C) the safe harbor requirement of subsection (d),

for purposes of applying this subtitle for such period, the individual shall be deemed not to be an employee of the taxpayer for such period. The preceding sentence shall cease to apply to periods beginning more than 60 days after the date that the Secretary notifies the taxpayer in writing of a final administration determination that the taxpayer should treat such individual (or any individual holding a substantially similar position) as an employee.

''(b) CONSISTENCY REQUIREMENTS.—A taxpayer meets the consistency requirements of this subsection with respect to any individual for any period if the taxpayer treats such individual (and all other individuals holding substantially similar positions) as not being an employee for purposes of the employment taxes for such period and all prior periods after December 31, 1978.

''(c) RETURN FILING REQUIREMENTS.—The taxpayer meets the return filing requirements of this subsection with respect to any individual for any period if all Federal tax returns (including information returns) required to be filed by the taxpayer for such period with respect to such individual are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee.

''(d) SAFE HARBORS.—

''(1) IN GENERAL.—The taxpayer meets the safe harbor requirement of this subsection with respect to any individual for any period if the taxpayer establishes that it treatment of such individual as not being an employee for such period was—

''(A) in reasonable reliance on a written determination (as defined in section 6110(b)(1)) issued to the taxpayer that addressed the employment status of the individual or an individual holding a substantially similar position with the taxpayer;

''(B) in reasonable reliance on a concluded Internal Revenue Service audit of the taxpayer in which the employment status of the individual or any individual holding a substantially similar position with the taxpayer was examined and the taxpayer was notified in writing that no change would be made to such individual's employment status; or

''(C) supported by substantial authority.

For purposes of subparagraph (C), the term 'substantial authority' has the same meaning as when used in section 6662(d)(2)(B)(i); except that such term shall not include (i) any private letter ruling issued to a person other than the taxpayer, and (ii) any authority that does not address the employment status of individuals holding positions substantially similar to that of the individual.

''(2) SPECIAL RULES.—

''(A) APPLICATIONS TO PRE-2001 DETERMINATIONS, ETC.— Paragraph (1) shall apply without regard to whether the determination, audit, or the authority referred to therein was before January 1, 2001.

''(B) SUBSEQUENT AUTHORITY—The taxpayer shall not be considered to meet the safe harbor requirement of paragraph (1) with respect to any individual for any period if the treatment of such individual as not being an employee is inconsistent with any regulation, Revenue Ruling, Revenue Procedure, or other authority—

''(i) which is published by the Secretary at least 60 days before the beginning of such period and after the date of the determination, the conclusion of the audit, or the substantial authority referred to in paragraph (1), and

''(ii) which applies to the type of services performed by such individual or the industry or business in which such services are preformed.

''(3) TRANSITIONAL RULE.—Except as provided in paragraph (2)(B), the taxpayer shall be considered to meet the safe harbor requirement of paragraph (1) with respect to services performed by an individual during

2001 or 2002 if the taxpayer would be treated under section 530 of the Revenue Act of 1978 (as in effect on the day before the date of the enactment of this section) as having a reasonable basis for not treating such individual as an employee.

''(e) OTHER SPECIAL RULES.—

''(1) NOTICE.—An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

''(2) AVAILABILITY OF SAFE HARBORS.—Nothing in this section shall be construed to provide that this section only applies where the individual involved is otherwise an employee of the taxpayer.

''(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) EMPLOYMENT TAX.—The term 'employment tax' means any tax imposed by this subtitle.

''(2) EMPLOYMENT STATUS.—The term 'employment status' means the status of an individual as an employee or as an independent contractor (or other individual who is not an employee).

''(3) TAXPAYER.—The term 'taxpayer' includes any person or entity (including a governmental entity) which is (or would be but for this section) liable for any employment tax. Such term includes any predecessor or successor to the taxpayer.

''(4) SUBSTANTIALLY SIMILAR POSITION.—The determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section.''

(b) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end the following new item:

''Sec. 3511. Limitations on retroactive employment tax reclassifications.''

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

SEC. 4. STATUTE OF LIMITATIONS ON ASSESSMENT OF EMPLOYMENT TAXES TO RUN BEGINNING ON DATE CERTAIN INFORMATION RETURNS FILED.

(a) IN GENERAL.—Subsection (b) of section 6501 of the Internal Revenue Code of 1986 (relating to limitations on assessment and collection) is amended by adding at the end the following new paragraph:

''(5) CERTAIN INFORMATION RETURNS TO BEGIN LIMITATION PERIODS ON EMPLOYMENT TAXES.—For purposes of this section, if—

''(A) a return is filed under section 6041 or 6041A which specifies an amount of payments made to any individual for services performed by such individual, and

''(B) such payments are not taken into account in determining the taxes imposed by chapters 21 and 24,

then, notwithstanding the last sentence of subsection (a), such return shall be treated as the return referred to in subsection (a) for purposes of determining the period of limitations with respect to such taxes on such services.''

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