1985 WL 25924, H.R. Rep. No. 300, 99TH Cong., 1ST Sess. 1985, 1986 U.S.C.C.A.N. 756, H.R. REP. 99-300 (Leg.Hist.)

****756** P.L. 99–272, COMPREHENSIVE OMNIBUS BUDGET RECONCILIATION ACT OF 1986

DATES OF CONSIDERATION AND PASSAGE
House: October 24, 31, December 5, 19, 20, 1985; March 6, 18, 20, 1986
Senate: November 14, December 19, 20, 1985; March 14, 18, 1986
House Report (Ways and Means Committee) No. 99–241(I),
July 31, 1985 [To accompany H.R. 3128]
House Report (Education and Labor Committee) No. 99–241(II),
Sept. 11, 1985 [To accompany H.R. 3128]
House Report (Judiciary Committee) No. 99–241(III),
Sept. 11, 1985 [To accompany H.R. 3128]
Senate Report (Budget Committee) No. 99–146,
Oct. 2, 1985 [To accompany S. 1730]
House Conference Report No. 99–453, Dec. 19, 1985
[To accompany H.R. 3128] (rejected by the House on Dec. 19, 1985)
Cong. Record Vol. 131 (1985)
Cong. Record Vol. 132 (1986)
Related Reports:
House Report (Budget Committee) No. 99–300,
Oct. 3, 1985 [To accompany H.R. 3500]

HOUSE REPORT NO. 99–300

October 3, 1985

The reconciliation recommendations of the House Committees on Armed Services; Banking, Finance and Urban Affairs; Education and Labor; Energy and Commerce; Interior and Insular Affairs; Merchant Marine and Fisheries; Post Office and Civil Service; Public Works and Transportation; Small Business; and Veterans' Affairs are set out in H.R. 3500. House Report No. 99–300 (Budget Committee), October 3, 1985, to accompany H.R. 3500, is set out.

***1** The Committee on the Budget, to whom was referred the bill (H.R. 3500) to provide for reconciliation pursuant to section 2 of the First Concurrent Resolution on the Budget for the fiscal year 1986, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

STATEMENT OF THE COMMITTEE ON THE BUDGET

The Committee on the Budget to whom reconciliation recommendations were submitted pursuant to section 2 of Senate Concurrent Resolution 32, the First Concurrent Resolution on the Budget for Fiscal Year 1986, having considered the same, reports a bill embodying those recommendations.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 3500 was ordered reported by the Committee on October 3, 1985, by a vote of 18 yeas to 10 nays, with a quorum being present.

****757 *2** BUDGET AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Committee provides that information furnished by the Congressional Budget Office on H.R. 3500, and required to be included therein, will appear in the explanation of the various titles contained in the bill.

The Committee on Energy and Commerce has achieved the savings assumed in the reconciliation instructions of S. Con. Res. 32, the First Concurrent Resolution on the Budget for Fiscal Year 1986. In addition to the measures contained in Title IV, the Energy and Commerce Committee also reported H.R. 3101 on September 11, 1985, which achieved savings in health programs within its jurisdiction pursuant to the reconciliation instructions. Additionally, H.R. 3290, introduced on September 12, 1985, represents the combined effort of the Committee on Energy and Commerce and the Committee on Ways and Means to achieve reconciliation savings in the Medicare and Medicaid areas. This measure is moving separately but concurrently through the House. Because these two Committees share jurisdiction over a portion of the Medicare program, the conference report on S. Con. Res. 32 assumed that savings achieved by both of those Committees would be credited to each Committee individually. The measures in Title IV, coupled with the two Committees' action on these health programs, fulfills the reconciliation instructions to the Energy and Commerce Committee.

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 3500 would not have an inflationary impact on prices and costs in the operation of the general economy.

Correspondence Regarding Reconciliation Legislation Not Included in H.R. 3500, as Reported

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, October 2, 1985.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to report to you the recommendations of the Committee on Agriculture with respect to the reconciliation bill for fiscal years 1986 through 1988, as required under section 2(a) of Senate Concurrent Resolution 32, the First Concurrent Resolution on the Budget for Fiscal Year 1986.

H.R. 2100, the Food Security Act of 1985, as reported by the Committee on Agriculture, contains provisions that effect changes in laws within the jurisdiction of the Committee sufficient to reduce outlays for fiscal years 1986 through 1988 by the amount required under section 2(m) of S. Con. Res. 32. In that regard, I deeply appreciate ****758 *3** your letter of September 13 commending the Committee for its success in achieving the needed spending reductions in H.R. 2100, as reported.

It is the recommendation of the Committee on Agriculture that the provisions of H.R. 2100 be used to achieve the savings required of the Committee under the reconciliation process.

As you know, the House currently is debating H.R. 2100, and several more hours of debate will be necessary to complete the floor debate on it. Because I anticipate that H.R. 2100 will be passed by the House with the Committee savings intact, I believe that the provisions of H.R. 2100, as reported, should not be included in the reconciliation bill at this time. Instead, I believe it more appropriate that the Committee on the Budget use the provisions of H.R. 2100, as finally approved by the House, in proceeding further with this aspect of reconciliation.

Attached is a copy of the revised cost estimate on H.R. 2100 prepared by the Congressional Budget Office and submitted to me on September 19, 1985.

You may be assured that I will assist you however I can, over the coming weeks, in your efforts to achieve the budget deficit reductions called for in S. Con. Res. 32.

With every best wish,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sincerely,

E (KIKA) DE LA GARZA,
Chairman.

Enclosure.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 19, 1985.

Hon. E DE LA GARZA,
Chairman, Committee on Agriculture, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revision to our September 13, 1985, cost estimate of H.R. 2100, the Food Security Act of 1985, as ordered reported by the House Committee on Agriculture, September 11, 1985.

Commodity Credit Corporation (CCC) spending in Table 1 of the estimate and CCC outlay changes relative to the resolution baseline in Table 5 have been revised. The change results from a correction to the diversion payment rate that would apply to a portion of the 1986 wheat crop.

If you wish further details on this estimate, we would be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

TABLE 1.—ESTIMATED COSTS OF H.R. 2100, THE FOOD SECURITY ACT OF 1985, REVISED SEPTEMBER 19, 1985

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
DIRECT SPENDING AUTHORITY					
Commodity Credit Corporation programs:					
Without referendum passage:					
Function 350:					
Estimated budget authority	10,105	11,0 70	12,478	11,880	11,836
Estimated outlays	10,105	11,070	1 2,47 8	11,880	11,836
Function 900:					
Estimated budget authority	-1,452	-1,5 78	-1,688	-1,446	-1,613
Estimated outlays	-1,452	-1,578	- 1,68 8	-1,446	-1,613
With referendum passage:					
Function 350:					

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Estimated budget authority	11,391	12,1 15	11,070	10,507	9,250
Estimated outlays	11,391	12,115	1 1,07 0	10,507	9,250
Function 900:					
Estimated budget authority	-1,536	-1,6 72	-1,617	-1,328	-1,418
Estimated outlays	-1,536	-1,672	- 1,61 7	-1,328	-1,418
Agricultural credit[1]:					
Estimated budget authority	4,303	511	- 64	-1,779	-1,423
Estimated outlays	4,456	2,434	1,956	- 1,601	-1,653

AUTHORIZATIONS OF APPROPRIATIONS

Public Law 480:					
Function 150:					
Estimated authorization level		1, 752	1,810	1,864	1,917
Estimated outlays	764	1,669	1,803	1,85 7	1,910
Agricultural credit[1]:					
Estimated authorization level			200	9 9	241
Estimated outlays					
Food stamp and related provisions[2]:					
Function 600:					
Authorization ceiling	13,584	14,3 69	1 5,276	16,142	16,985
Estimated authorizationl level	12,822	13,615	14,311	14,873	15,424
Estimated outlays	12,819	13,606	1 4,30 2	14,864	15,415
Other[3]:					
Estimated authorization level	1,383	1, 411	1,422	1,465	1,501
Estimated outlays	1,090	1,334	1,417	1, 454	1,491

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Total bill cost:					
Total without referendum passage:					
Estimated budget authority/authoriz at ion level	27,161	26,781	28,469	26,956	2 7,883
Estimated outlays	27,782	28,535	30, 26 8	27,008	27,386
Total with referendum passage:					
Estimated budget authority/authoriz at ion level	28,363	27,732	27,132	25,701	2 5,492
Estimated outlays	28,984	29,486	28, 93 1	25,753	24,995

FN1 See table 2 for details.

FN2 See table 3 for details.

FN3 See table 4 for details.

TABLE 2.—ESTIMATED COSTS OF AGRICULTURAL CREDIT PROVISIONS OF H.R. 2100

[By fiscal year, in millions of dollars]

	1986	**1987**	**1988**	**1989**	**1990**
AGRICULTURAL CREDIT INSURANCE FUND					
On-budget:					
Function 350:					
Estimated authorization level			191	74	203
Estimated borrowing authority	191	74	12	124	
Estimated outlays	3	43	187	244	259
Function 800:					
Estimated budget authority		-6	-9	-12	-10
Estimated outlays		-6	-9	-12	-10
Function 900:					

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Estimated budget authority	-4	-474	-760	-995	-872
Estimated outlays	-4	-474	-760	-995	-872
Off-budget:					
Function 350:					
Estimated budget authority	4,115	688	367	-1,147	-706
Estimated outlays	4,450	2,788	2,302	-1,207	-1,316
Subtotal—ACIF					
Estimated budget authority/authorization level	4,302	282	-199	-1,956	-1,385
Estimated outlays	4,449	2,351	1,720	-1,970	-1,939
RURAL DEVELOPMENT INSURANCE FUND					
On-budget:					
Function 450:					
Estimated authorization level			9	25	38
Estimated borrowing authority		169	125		-60
Estimated outlays	6	23	35	118	61
Function 800:					
Estimated budget authority		(1)	(1)	(1)	1
Estimated outlays		(1)	(1)	(1)	1
Function 900:					
Estimated budget authority	-8	-26	-43	-68	-100
Estimated outlays	-8	-26	-43	-68	-100
Off-budget:					
Function 450:					
Estimated budget authority	9	86	244	319	326

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Estimated outlays	9	86	244	319	326
Subtotal—RDIF:					
Estimated budget authority/authorization level	1	229	335	276	203
Estimated outlays	7	83	236	369	286
Total:					
Estimated budget authority/authorization level	4,303	511	136	-1,680	-1,182
Estimated outlays	4,456	2,434	1,956	-1,601	-1,653

FN1 Less than $500,000.

TABLE 3.—TITLE XV—FOOD STAMP AND RELATED PROVISIONs

[By fiscal year, in millions of dollars]

	1986	**1987**	**1988**	**1989**	**1990**
BUDGET RESOLUTION BASELINE (OUTLAYS)					
Food stamp	11,801	12,330	12,860	13,349	13,817
Nutrition assistance for Puerto Rico	863	902	940	979	1,019
SPENDING CHANGES UNDER TITLE XV					
Base maximum allotment on September thrifty food plan	115	198	180	184	194
Expand definition of disability	1	1	1	1	1
Deduct losses of the self-employed	6	10	10	11	11
Count JTPA earnings as income	-27	-28	-28	-29	-29
Increase earned income deduction to 20 percent	33	51	53	55	58
Exclud energy vendor payments from shelter deduction	-5	-7	-8	-8	-9
Separate and raise shelter/dependent care deductions	45	86	89	92	96
Change medical deduction	4	12	12	12	13

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Increase resource limitations		88	188	215	239
Expand Job Search Program	4	7	10	16	16
Permit States to conduct outreach activities	1	1	1	1	1
Encourage ADP in error rate reduction systems and speed up sanction collections	15	-6	35	28	32
Nutrition assistance block gran for Puerto Rico	-38	-40	-42	-43	-45
Provide information at Social Security offices	1	1	1	1	1
Total change from baseline	155	374	502	536	579
Title XV total outlays	12,819	13,606	14,302	14,864	15,415

TABLE 4.—ESTIMATED COST OF OTHER AUTHORIZATIONS FOR APPROPRIATION IN H.R. 2100

[By fiscal year, in millions of dollars]

	1986	**1987**	**1988**	**1989**	**1990**
Resource conservation (function 300):					
Estimated authorization level	32	17	17	17	17
Estimated outlays	29	18	17	17	17
Research extension and teaching (function 350):					
Estimated authorization level	1,294	1,336	1,395	1,438	1,482
Estimated outlays	1,015	1,258	1,380	1,427	1,471
Temporary Emergency Food Assistance Program (function 350):					
Authorization level	50	50			
Estimated outlays	40	50	10		
Nutrition programs (function 600):					
Estimated authorization level	7	8	10	10	2
Estimated outlays	6	8	10	10	3

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Total:					
Estimated authorization level	1,383	1,411	1,422	1,465	1,501
Estimated outlays	1,090	1,334	1,417	1,454	1,491

TABLE 5.—ESTIMATED OUTLAY CHANGES RELATIVE TO THE RESOLUTION BASELINE OF CERTAIN PROVISIONS OF H.R. 2100,[1] REVISED, SEPT. 19, 1985

[By fiscal year, in milions of dollars]

	1986	**1987**	**1988**	**1986–88**
Direct spending:				
Commodity Credit Corporation (function 350):				
Without referendum passage	-954	-2,162	-850	-3,966
With referendum passage	332	-1,117	-2,258	-3,043
Agricultural Credit Insurance Fund (function350)	-693	-1,699	-1,798	-4,190
Subtotal—direct spending:				
Without referendum passage	-1,647	-3,861	-2,648	-8,156
With referendum passage	-361	-2,816	-4,056	-7,233
Authorizations: food stamp and related provisions (function 600)	155	374	502	1,031
Total				
Without referendum passage	-1,492	-3,487	-2,146	-7,125
With referendum passage	-206	-2,442	-3,554	-6,202

FN1 This comparison is for the following provisions specified by the House Budget Committee: CCC programs; food stamp and related provisions; provisions eliminating farm ownership loans (beginning in 1987) and capping emergency disaster loans of ACIF.

****762 *7** HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, October 2, 1985.

Hon. WILLIAM H. GRAY III,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Chairman, Committee on the Budget, House of Representatives, Washington, DC.
DEAR BILL: I am writing to confirm our understanding of Superfund scoring. Yesterday, you indicated that the Committee on Ways and Means would be given credit for Superfund revenues but that credit could not be given now because the Committee has not yet reported a Superfund revenue bill. The reason the Committee on Ways and Means has not acted is that the other committees of jurisdiction have not completed Superfund legislation.

I expect the Committee on Ways and Means to report a Superfund Revenue title and this title will be added both to H.R. 3128 and the Superfund authorizing legislation. If this is done, I understand that the Budget Committee, for purposes of reconciliation, will score the Committee on Ways and Means for Superfund revenues above the CBO baseline by virtue of their inclusion in H.R. 3128. It is also my understanding that this scoring of Superfund revenues will not be affected by the inclusion of Superfund revenues as part of a Superfund authorization bill.

It is expected that Superfund revenues, plus H.R. 3128 plus H.R. 3452 will enable the Committee to meet its reconciliation target of $21.634 billion over three years. I also understand that the Budget Committee has scored H.R. 3128 at $19.479 billion over three years.

Please let me know at your earliest convenience if my understanding of this issue is correct.

With warm regards,

Sincerely,

DAN ROSTENKOWSKI, *Chairman*.

TITLE I—COMMITTEE ON ARMED SERVICES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, October 1, 1985.

Hon. WILLIAM H. GRAY,

Chairman, Committee on the Budget, House of Representatives, Washington, DC.
DEAR BILL: In response to the reconciliation direction contained in the First Concurrent Resolution on the Budget for fiscal year 1986, the House Armed Services Committee yesterday approved legislation to bill private insurers for the cost of care provided to non-active duty beneficiaries in Department of Defense medical facilities.

Attached herewith are bill language and accompanying report material for inclusion in the omnibus reconciliation bill to be reported by the Committee on the Budget. Also attached is the Congressional Budget Office cost estimate provided to the committee staff.

****763 *8** Please don't hesitate to let me know if I can be of further assistance in this matter.

Sincerely,

LES ASPIN, *Chairman*.

Enclosures.

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON ARMED SERVICES

COORDINATION OF BENEFITS: THIRD-PARTY REIMBURSEMENT FOR COST OF CARE PROVIDED IN MILITARY HOSPITALS

Purpose

The purpose of Title I is to provide authority for the Secretary of Defense to bill private insurers for the reasonable cost of medical and dental care provided in military medical facilities to nonactiveduty beneficiaries who are eligible for such care

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

and who are also covered by health insurance plans.

Summary of provisions

Many individuals eligible for care on a space-available basis in military medical facilities are also covered by a private health insurance policies. For example, upon completion of a full active-duty career of 20 or more years, few service members actually retire. They generally seek second-career employment and are often able to complete another full career prior to reaching actual retirement age. Many employers offer an attractive package of benefits for their workers, such as retirement plans, profit-sharing plans, and life and health insurance programs. Military retirees working a second career are, of couirse, eligible to partake to the benefits provided to all full-time employees of the company. Obviously, many military retirees prefer to seek medical care for themselves and their families from private physicians and hopitals under their new employer-sponsored health insurance. Others, however, continue to seek care from military medical facilities.

Despite the fact that many of their patients have private insurance coverage, military medical facilities do not seek reimbursement from the insurer for the cost of care provided to such covered individuals. Title I would remedy that situation by authorizing the United States, through the Secretary of Defense, to collect from a third-party payer the reasonable cost of care provided in the medical facilities of the uniformed services. 'Third-party payer' includes both insurance underwriters and private employers who offer self-insured or partially self-insured/partially underwritten health insurance plans. Such collection would be authorized only for nonactive-duty beneficiaries—in other words, dependents of active duty personnel, retirees, their dependents, and survivors.

The principal reason that military medical facilities do not presently attempt to collect for the cost of care is that many health insurance contracts contain exclusionary clauses. These exclusionary clauses relieve the insurance carrier of liability for payment where the policy holder has no legal obligation to pay or where the care is provided in a government facility, notwithstanding the fact that the insurance carrier would have provided reimbursement for the ****764 *9** cost of care for the same individual if that care were provided in a nongovernment hospital. Title I would assert the government's authority to collect for the cost of such care notwithstanding any exclusionary clauses that might be included in the policy.

The right to collect could be asserted only to the extent that the benefit were covered by the insurance plan and would be subject to the terms and conditions of the plan. Thus, if the insurance plan did not cover psychiatric care or covered only outpatient care, then the government would not have the authority to collect the expenses for an inpatient psychiatric admission. In addition, to the extent that insurance contracts have provisions that require, for example, pre-admission screening and second opinions before surgery, the Department of Defense would be expected to comply in order to collect under those contracts.

A growing number of medical and insurance plans do not provide reimbursement for medical expenses incurred until a specific minimum level of expenditure or deductible has been met by the beneficiary. Additionally, many plans reimburse only a percentage of the expenses incurred in excess of the deductible. Under the Federal Employees Health Benefits Program, for example, the Blue Cross/Blue Shield high option plan provides reimbursement for 80 percent of the customary and reasonable charges for doctors' fees, prescriptions, and other items delineated in the policy once a deductible of $200 per person has been met. Title I would permit collection from insurers only of amonts in excess of the required deductible and coinsurance. The covered beneficiaries would have no obligation to reimburse the government for the deductible or coinsurance and would be liable only for the subsistence charge currently required for inpatient care in military medical facilities (dependents pay $7.10 per day; retired officers, $3.80 per day; and retired enlisted, nothing).

The reasonable cost of medical and dental care would be determined in accordance with regulations prescribed by the Secretary of Defense. In such regulations, the Secretary of Defense may utilize the per diem charges currently used for collections under the Medical Care Recovery Act (42 U.S.C. 2651 *et seq.*). These rates are approved by the Office of Management and Budget and reflect the average cost of care for both inpatients and outpatients in the military medical care system. The per diem rate is $452 per inpatient day and $56 per outpatient visit for fiscal year 1985; fiscal year 1986 rates are expected to be $441 and $58, respectively.

Other methods of determining reasonable cost are equally appropriate. Reimbursement may be based on the average rate—usual and customary fee for service, fee schedule, or other fee mechanism—that the third-party payer can demonstrate

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

it would pay under valid contractual arrangements with other facilities or providers within the same geographic area for similar service or services. The use of prospective payment or diagnostic related groups (DRG's) is becoming widespread as a method of reimbursement within the civilian medical community. In view of the work already underway within the Department of Defense on the potential utilization of DRG's as an internal budgetary tool, the Department of Defense should carefully consider DRG's as a means of reimbursement for third-party payers under this title. To facilitate claims ****765 *10** processing, Department of Defense medical facilities may wish to negotiate reasonable cost through contractual arrangements with third-party payers within their geographic areas.

The private sector has made great strides in recent years in the area of medical care cost containment and been in the forefront of innovative ways to moderate the rapidly escalating cost of medical care. As a part of that cost containment effort, third-party payers routinely audit provider records for appropriateness of care, length of stay, and similar utilization indicators. Third-party payers would, therefore, be afforded a similar opportunity to inspect and review military medical treatment facility records for those cases for which collection is sought.

Health maintenance organizations are prepaid direct health care delivery systems that provide for the delivery of services through their own facilities and staff or through contractual arrangements with other health care providers. As a result, health maintenance organizations do not reimburse for care provided at facilities or by providers other than their own, except in the case of emergencies.

Under Title I, private insurers would not be liable for services that are not covered by their policies. Similarly, in recognition of the unique nature of health maintenance organizations, collection from a health maintenance organization of the reasonable cost of care provided at military medical facilities would be undertaken only when the care is covered emergency care as defined in the health maintenance organization's contract.

Title I would not assert a right of collection against either medicare or medicaid. Similarly, Title I does not envision any attempt at collection from the CHAMPUS or medicare supplemental policies that are purchased by many retirees and dependents to offset the cost sharing elements of medicare and CHAMPUS, including those CHAMPUS supplemental policies that pay the daily subsistence charge for care in military medical facilities.

Collection would be applicable only to insurance, medical service, or health plan agreements entered into, amend, or renewed on or after the date of enactment.

Discussion

Title I expands on the precedent for Federal collection from third-party payers established in 1962 by Public Law 87–693, the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.). The Federal Medical Care Recovery Act grants the Federal government an independent right of action to recover the reasonable value of hospital, medical, surgical, or dental care and treatment when the government is required or authorized to provide such care and treatment to a person injured under circumstances giving rise to third-party liability. For example, if a service member or dependent is injured in an automobile accident caused by an insured motorist's negligence, the government can generally recover from the motorist's insurance company the cost of medical care provided to the injured party in a military medical facility.

Title I hinges not on notions of liability based on fault but, rather, on the premise that the United States incurs on behalf of nonactive-duty beneficiaries of the military health care system the ****766 *11** reasonable costs of their care and treatment in or through facilities of the uniformed services.

Collection from third-party payers has been endorsed in three recent studies of Federal hospital programs. In its Task Force Report on Federal Hospital Management, the President's Private Sector Survey on Cost Control, commonly known as the Grace Commission, endorsed the idea of collecting from third-party payers the cost of care provided in government medical facilities, asserting that private insurers were receiving a windfall. Such collection efforts have subsequently been endorsed by the Congressional Budget Office in its March 1984 report, entitled 'Options for Change in Military Medical Care,' and by the General Accounting Office in its February 1985 report, entitled 'Legislation To Authorize VA Recoveries From Private Health Insurance Would Result in Substantial Savings.'

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

CBO COST ESTIMATES

SEPTEMBER 26, 1985.

To: Karen Heath, House Armed Services Committee; Ann Sauer, Senate Armed Services Committee.
From: Mike McCord, Congressional Budget Office.
Subject: Collecting Costs from Private Health Insurers.

Enclosed is an updated copy of the cost estimate prepared by the CBO concerning a proposal to allow DoD to collect insurance coverage from private insurance companies when active duty dependents, retirees or dependents of retirees who had such coverage received treatment in military medical facilities.

This estimate differs from that in the earlier memo in that it uses slightly lower inlation rates and lower increases in inpatient days and outpatient visits, based on information provided to me by Joel Slackman of our National Security Division. Also, half year implementation during FY86 is assumed.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

[In millions of current dollars]

	1986	**1987**	**1988**	**1989**	**1990**
BA	-125	-266	-284	-306	-330
OL	-75	-257	-281	-301	-324

TITLE II—COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, DC, October 1, 1985.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR CHAIRMAN GRAY: The Banking Committee is submitting a proposal to the House Budget Committee which complies with the ****767 *12** requirements of the First Concurrent Resolution on the Budget for Fiscal Year 1986 as it affects the budget authority and outlays for Fiscal Year 1986 covering programs under the jurisdiction of this Committee. According to information provided to this Committee by the Budget Committee and the Congressional Budget Office, the total assumed for Fiscal Year 1986 for the housing and community development programs under our authorizing jurisdiction is $20.565 billion in budget authority and $21.5 billion in outlays. Since H.R. 1 as originally reported by this Committee on July 24, 1985, authorized or retained programs totalling $23,284 billion in budget authority and $22.059 billion in outlays, this proposal incorporates reductions sufficient to meet the budget targets.

The Section 302(a) allocation of totals for the Banking Committee assumed legislative action to reduce the total below the baseline by $2.082 billion in budget authority and by $2.672 billion in outlays for Fiscal Year 1986. These assumptions included forgiveness of outstanding public housing debt, reducing public housing operating subsidies, changing the system for financing FmHA loans, as well as reducing the aggregate amount of loans that may be insured or guaranteed by 30 percent, and eliminating the CDBG Section 108 loan guarantee program. H.R. 1, as reported, already included changes in the FmHA financing system and the public housing debt forgiveness. This proposal now also includes the reductions in both the public housing operating subsidy funds and the FmHA loan and grant programs. In order to achieve the reductions assumed by the termination of the CDBG loan guarantee program, however, this Committee has imposed a one-year moratorium but has not repealed the program. The CDBG loan guarantee program has been an invaluable tool for communities to use to leverage private investment to stimulate revitalization. While this Committee accepts the premise that present budgetary

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

restraints may demand a temporary moratorium, we reject the Budget Conference assumptions that the only way to achieve those savings is through eliminating the program.

While agreeing to recommend authorizing legislation necessary to comply with the budget targets established for Fiscal Year 1986, the Banking Committee has not made any recommendations regarding Fiscal Years 1987 and 1988. Since 1968, this Committee has reviewed our national housing needs on on annual basis and (except for the 1983 housing bill which authorized such sums as may be necessary for Fiscal Year 1985) has made single year authorizations for the housing programs of HUD and FmHA. Not even the mammoth Omnibus Reconciliation Act of 1981 required authorization levels covering three years. None of the testimony received by the Banking Committee between February 21 and March 14, 1985, nor any discussions in the Subcommittee or Full Committee markups addressed the appropriate program levels for Fiscal Years 1987 and 1988. Nothing in the Budget and Impoundment Control Act of 1974 requires authorizing committees to establish authorization levels for more than one year. Particularly since none of the actions of the Banking Committee in authorizing additional funds for Fiscal Years 1987 and 1988 would result in actual spending absent a new law actually appropriating funds, this Committee ****768 *13** is not willing at this time to establish authorizing levels for Fiscal Years 1987 and 1988.

The Banking Committee is proposing the incorporation of all of the substantive amendments included in H.R. 1, as reported by the Committee, as well as the changes in authorized budget authority required by the Budget Reconciliation instructions. As a matter of legislative strategy, we do not believe it is wise to separate substantive program amendments from authorized budget authority particularly since H.R. 1 contains within the totals assumed by the budget important new initiatives such as the Nehemiah Homeownership Plan, the Multifamily Preservation Grant Program, and the Fair Housing Initiatives.

Sincerely,

FERNAND J. ST GERMAIN,
Chairman, Committee on Banking, Finance and Urban Affairs.
HENRY B. GONZALEZ,
Chairman, Subcommittee on Housing and Community Development.

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

Title II—Committee on Banking, Finance and Urban Affairs

The Committee on Banking, Finance and Urban Affairs, to whom was referred the bill (H.R. 1) to amend and extend certain laws relating to housing, and for other purposes, having considered the same, reported favorably thereon with an amendment on July 26, 1985.

The recommendations of the Committee on Banking, Finance and Urban Affairs, submitted pursuant to subsections (a) and (o) of section 2 of the first concurrent resolution on the budget for the fiscal year 1986 (S. Con. Res. 32, 99th Congress), consist of H.R. 1, as reported by the Committee on Banking, Finance and Urban Affairs on July 26, 1985 (H. Rept. 99–230, pts. 1 and 2), with certain revisions. References to H.R. 1 in this title of the report generally refer to the provisions included in these recommendations.

INTRODUCTION

The Committee bill reauthorizes the important housing assistance programs administered by the Department of Housing and Urban Development, the rural housing programs administered by the Farmers Home Administration; extends the FHA mortgage insurance authorities; extends the Federal Flood and Crime Insurance Programs; makes a number of changes in the Urban Development Action Grant selection criteria; authorizes the Federal Emergency Management Agency's Emergency Shelter Assistance Program and provides for a new Homeless Shelter Grant Program and for a new homeownership assistance program entitled the Nehemiah Housing Opportunity Grants; provides a Multifamily Housing ****769 *14** Preservation Loan Program; and authorizes the HUD secretary to designate 75 Enterprise Zones.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Housing and Urban-Rural Recovery Act of 1983 provided for a two-year extension of HUD authorities and reauthorization for the assisted housing programs. In order to continue this commitment of providing housing assistance for lower income people, it is essential that the Congress enact H.R. 1 that the Committee has reported to the House.

The Committee reiterates its statement contained in the report on the 1983 housing legislation that the recommendations contained in this bill are modest in comparison with the housing needs of our nation and are necessary to assure the survival of essential elements of a reasonable national housing policy.

The Administration's budget submitted to the Congress earlier this year recommended a two-year moratorium for all of the assisted housing programs administered by HUD and the FmHA. The Committee has decisively rejected this proposal and reaffirms its longstanding commitment to continue at a minimal level the housing programs for low and moderate income people. At no point during the Committee's consideration of this year's housing legislation was the administration's proposal for a two-year moratorium on housing assistance considered. The Committee observes that the lack of any support for this Administration recommendation affirms our belief that the Congress continues the 50-year commitment of providing housing assistance for low income people.

Too often, authorizing legislation is causally dismissed as being unnecessary, especially during periods of budgetary restraint. The belief that authorizing bills are only open doors to continued profligate spending fails to understand that the authorization process in the Congress is not one that sets only the spending limits for programs, but establishes the policy framework within which programs are established and spending limits are set. Housing authorization bills establish programs, make changes in the way the programs are administered, change standards and criteria by which programs are administered, and set forth the objectives that the Congress believes must be addressed. It is not surprising that in the past five years the Administration has opposed Congressional action on housing authorization bills. The Administration objects to Congress making policy decisions regarding housing programs that attempt to assist low and moderate income people. As Members of Congress, we know our constitutents' needs and observe at first hand the housing problems of our people. We remain committed to the continuation of the federal government's efforts to meet these housing needs.

The Subcommittee on Housing and Community Development conducted the most wide ranging and lengthy set of hearings on housing legislation in the past 20 years. Two field visits to housing projects in Washington, D.C. and in Alexandria, Virginia, began this year's legislative activity. The Subcommittee conducted hearings on February 21, 26, 27, 28, and March 5, 6, 7, 11, 12, 13, and 14, 1985, hearing from a wide range of public and private witnesses concluding on March 14 with the Administration testimony presented by HUD Secretary, Samuel R. Pierce, Jr. The Subcommittee conducted markup on May 14, 15, and June 4, 11, 19, and 20, 1985, ****770 *15** and considered 91 amendments, 58 of which were adopted. The full Committee met on July 10, 1985, and considered 34 amendments adopting 28 of them and reported the bill to the House by voice vote. During the consideration of this bill the Committee noted the lack of political rancor that has accompanied our efforts at housing legislation since 1981 and believes that this new spirit of cooperative endeavor bodes well for final enactment of this proposed legislation. The Committee believes that the time and effort that went into this legislation and the cooperative spirit exhibited by both the Democrats and the Republicans on the Subcommittee and the full Committee demonstrate that this legislative proposal is a carefully balanced and responsive effort at setting forth Congressional commitment to retaining federal housing programs that benefit low and moderate income people.

The funding for the federally-assisted housing programs administered by HUD and the Farmers Home Administration have been major budget issues before the Committee and the Congress since 1981. The Committee observes that since 1980, the level of funding for the HUD-assisted housing programs have been cut by 60 percent and this year the Administration is recommending the termination of all of the housing programs administered by the Farmers Home Administration. Members of this Committee are very concerned over the increasingly large budget deficits, but believe that it is an affront to the low income people in this country and an affront to this Committee's efforts to reduce drastically what remains of our federal housing programs.

As reported by the House Banking Committee on July 26, 1985, H.R. 1 included authorization of budget authority for fiscal year 1986 that were within the targets established by the House of Representatives when it passed H. Con. Res. 152. H.R. 1 as originally reported authorized or retained programs totalling $23.284 billion in budget authority and $22.059 billion in outlays for fiscal year 1986. As a result of the conference between the House and the Senate additional reductions were required in order to comply with the assumptions contained in the First Concurrent Budget Resolution for fiscal year 1986.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The amendment recommended by the Banking Committee reduces the total amount authorized for HUD and FmHA to $20.565 billion in budget authority and $21.5 billion in outlays.

In order to achieve these reductions, while preserving some new desperately needed housing initiatives, the Banking Committee recommends adopting a number of changes that were assumed in the First Concurrent Budget Resolution. These changes include: reducing the CDBG program to $2.980 billion; reducing the UDAG program to $352 million; forgiving the outstanding public housing debt; reducing the new budget authority for public housing operating subsidies to $1.279 billion; changing the system for financing FmHA loans, as well as reducing the total authorized for those loans by an additional 30 percent. Instead of terminating the CDBG Section 108 loan guarantee program, however, the Banking Committee has imposed a one year moratorium but has not repealed the program. The CDBG loan guarantee program has been an invaluable tool for communities to use in order to leverage private investment that stimulates revitalization. While the Committee ****771 *16** accepts the premise that present budgetary constraints may demand a temporary moratorium, it does not accept the assumption that the only way to achieve those savings is through eliminating the program.

H.R. 1 provides for a number of financing reforms that make the assisted housing programs more efficient and less costly in the manner in which they are financed. The movement towards a capital grant approach for public housing development and moderization save a large amount of budget authority, and the financing change involving the Farmers Home Administration's rural housing programs permitting the sale of Farmers Home loans directly to the public will save a large amount in off-budget outlay costs to the Federal Government. This bill represents an effort by the Committee in belt-tightening and budget restraint, yet provides efficient mechanisms that meet the housing needs of low income people.

The Committee bill addresses two areas of controversy that the Committee has had with the Office of Budget and Management over the last two years; one involves the writing of program regulations by OMB and the other involves the restrictions by OMB on the collection of racial and ethnic data. OMB has become deeply involved in the writing of regulations that govern the HUD and FmHA housing programs. Statutory provisions that govern these programs require the HUD Secretary and the Administrator of the Farmers Home Administration to write regulations, not the Director of the Office of Management and Budget. The Committee bill attempts to address this issue. In addition OMB has attempted to interfere in the manner in which data gathering by the Secretary of HUD and the Administrator of the Farmers Home Administration occurs under the laws to assure nondiscrimination in these housing programs. The Committee directs the HUD Secretary and the Administrator of the Farmers Home Administration to continue to collect appropriate racial and ethnic data on applications for assisted housing and other programs under the jurisdiction of these two agencies.

The Committee notes that there are a number of initiatives contained in H.R. 1 proposed by the Administration and Republican Members of the Committee. The Fair Housing Initiatives Program proposed by HUD Secretary Samuel Pierce and supported by the White House is contained in this bill. The bill also contains that portion of the Administration's Urban Enterprise Zone legislation referred to the Committee on Banking, Finance and Urban Affairs which authorizes the HUD Secretary to designate these Enterprise Zones and set forth the criteria on how these Zones will be designated. Title I of the bill contains major changes in the Performance Funding System that governs the public housing operating subsidy program and in the public housing Comprehensive Improvement Assistance Program. Both of these initiatives are authorized by Republican Members of the Committee. Finally, a new program of Farmers Home Administration guaranteed loans for moderate income people living in rural areas without adequate private credit resources was authorized by a Republican Member of the Committee and is contained in this bill.

****772 *17** H.R. 1 attempts to respond to the housing needs of low income people; it responds to criticisms in the way the programs have been administered and financed in the past; it responds to budget restraints in a careful yet responsive manner and attempts to meet the criticisms that many past programs are unworkable by providing a demonstration of new program techniques that seek to use greater local initatives; and seeks to preserve the low-income housing stock with programs that provide new rehabilitation assistance. This bill is a bipartisan attempt to provide for the great need for low and moderate income housing in our nation while at the same time be responsive to the budgetary constraints of the time.

SHORT SUMMARY OF H.R. 1, THE HOUSING ACT OF 1985

H.R. 1, the proposed Housing Act of 1985, contains a findings and purpose section, a regulatory authority section, collection of certain data section, and seven subtitles.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Subtitle A contains authorization adjustments and program amendments concerning the HUD lower-income assisted housing programs. The subtitle authorizes for FY 1986 $9.180 billion in budget authority for lower income assited housing programs, including $1.132 billion for public housing modernization, of which $200 million shall be used for vacant uninhabitable units, $50 million to remove lead-based paint hazards, and $1.5 million to develop tenant management in public housing. It is estimated that this total budget authority will assist 91,509 additional assisted units, including 12, 000 Sec. 202 units, 66,209 Sec. 8 regular existing units and 5,000 public housing and 2,000 Indian housing units. The bill also authorizes for FY 1986: $150 million for the Rental Development (HODAG) Program which will assist in the construction of approximately 7,500 units; $1.279 billion for public housing operating subsidies (with not more than $100 million to be used for allowable expense levels and costs beyond control and $1.5 million for technical assistance for public housing resident management corporations); $8 million for the Congregate Services Program; $15 million for a public housing child care demonstration program; $10 million for the HHS Housing Demonstration Program; $75 million for the Sec. 235 Homeownership Program which would assist approximately 3,075 Homeowners; and provides $601 million in Sec. 202 loan authority.

The bill provides a new financing method for public housing development and comprehensive improvement assistance through capital grants to public housing authorities; establishes a utility allownace for those tenants required to make separate utility payments; establishes a public housing rent phase-in for working tenants; limits the recapture of public housing construction funding; establishes receivership for public housing agencies which are in substantial default; establishes a 15-year term for Sec. 8 existing annual contribution contracts and a 5-year term for vouchers; requires the HUD Secretary, in the case of a demoltion application, to determine that no reasonable modifications are possible and to require a plan for a one-for-one replacement of public housing units, except where there is no local need for low-income housing; ****773 *18** and provides that Section 8 administrative fees paid to PHAs shall be calculated by the method which was in effect on Jan. 1, 1985.

The bill proposes a new public housing comprehensive grant program, which will not become effective until Congress some time in the future establishes by law a formula or alternative distribution system to replace the existing CIAP and provides that PHA may use its operating subsidy for modernization purposes; requires that within 6 months after the enactment date regulations for allocation and distribution of the existing CIAP assistance shall be issued and requires the HUD Secretary to submit a CIAP evaluation report to Congress; provides for the establishment of procedures and policies for mandatory meals programs in elderly housing, provides a moratorium on new mandatory meals programs and separates the meals contract from the unit lease; extends for FY 1986 a 9.25% interest rate for the Sec. 202 loan; establishes a Handicapped Housing Demonstration Program under the Sec. 202 Program; provides that rents changed low-income tenants under the HODAG program are not more than amounts permitted under Sec. 3(a) for lower income families; removes the requirement that substantially all vouchers be used in Sec. 17 rental rehabilitation projects; permits Sec. 8 assistance to be used in rental rehabilitation projects for lower income families whose rent after rehabilitation will exceed 30% of their income; makes publicly-owned property eligible for rental rehabilitation grants; requires the HUD Secretary to utilize performance funding system regulations which were in effect on November 30, 1983, modified according to several statutory provisions; provides changes to Fair Market Rents will be effective by October 1 of each fiscal year; establishes a Task Force on Family Needs in Assisted Housing: requires that administrative expenses for the voucher demonstration program be equal to the same fees provided under the regular Sec. 8 program; provides that shared housing regulations may not require tenants to move to a smaller unit because of their refusal to share their unit; allows Sec. 8 certificate and voucher portability; deletes the requirement that no more than 25% of the assisted housing constructed pre-1981 and no more than 5% constructed after 1981 be leased to lower income families whose income is above 50 percent of area median; and provides that HUD assistance may be given to aliens other than non-immigrant student aliens.

Subtitle B contains authorization adjustments and extensions to the FmHA rural housing programs. It provides an overall total for insured and guaranteed loans during FY 1986 of not to exceed $2,266 billion. $1.328 billion is provided for Sec. 502 subsidized homeownership loans, $20 million for Sec. 514 farmworker rental housing loans, $900 million for Sec. 515 low-income and elderly subsidized rental housing loans; $17 million for Sec. 504 low-income repair loans; and $1 million for Sec. 524 site loans. It also provides authorization for appropriation in FY 1986 of $20 million for Sec. 504 home repair grants; $2 million for compensation of construction defects payments; $15 million for Sec. 516 grants for farmworker rental housing projects; such sums as necessary to meet notes and obligations issued by the Secretary of Agriculture for credit on loan principal and interest due; $15 million for Section 523(f) mutual and self-help housing grants; $20 million for housing ****774 *19** preservation grants under Sec. 533 and such sums as necessary to administer HUD Sec. 235 and Sec. 8 activities.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The bill extends for FY 1986 the Sec. 515 loan insuring authority for elderly and low-income rental housing, the Sec. 523 mutual and self-help grants and site-loan authority, and requires the Agriculture Secretary, not later than 90 days following enactment of the law, to issue regulations to carry out the rental housing preservation grant program. The bill requires the maximum income levels for rural housing in the Virgin Islands to be the same as those in American Samoa, Guam, the Northern Mariana Islands and the Pacific Islands Trust Territory; requires that the procedures for rural housing escrow accounts be established within 60 days of enactment; establishes a study of the FmHA procedures for appeals of adverse decisions; provides rural housing loan guarantees for moderate income persons; requires the use of fee inspectors and appraisers in loan application processing; requires the use of fee inspectors and appraisers in loan application processing; requires FmHA to issue regulations establishing rural rental rehabilitation standards under the Rural Preservation Program within 90 days of enactment; requires the direct sale of insured FmHA loans to the public instead of through the FFB; and authorizes payment of the interest subsidy between the loan rate and market interest rate and permits guarantees of subsidized loans at the market rate interest to extend the loans originated by private lenders; and allows 10% in 1986, 20% in 1987, and 30% in 1988 and thereafter of the total insured and guaranteed loan amounts to be available for guranteed loans to persons above low income but not in excess of 115% of the area median income; extends rural area classification for areas with a population of 10,000 to 20,000 until the next decennial census; requires that FmHA shall issue regulations within 90 days of enactment regarding eligibility of rental housing for the Rural Housing Preservation Grant Program; establishes a Task Force on Housing Needs of Rual America; and prohibits the restrictions on tax-exempt bond financing for rural housing.

Subtitle C extends the FHA Mortgage Insurance programs; limits the FHA mortgage insurance premium charges to 3.8%; sets the limitations on FHA mortgage insurance commitments at $50.9 billion for FY 1986; requires HUD to submit a report to Congress describing a feasible system for implementing a voluntary preemptive national code for modular housing; extends the Federal Flood and Crime Insurance Programs for FY 1986; prohibits premium increases on flood and crime insurance policies in FY 1986; extends the GNMA Mortgage-Backed Securities Program for FY 1986 with commitment level at $68.25 billion; prohibits any fee or charge on the issuance, sale, purchase, or redemption of any securities, obligations, stock or trust certificates of beneficial interest or the acquisition, sale, or pledge of any assets by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation; provides that no fee or charge may be assessed or collected with regard to any GNMA guarantees unless such fee or charge is not more than the applicable percentage amount in effect on June 1, 1985; increases mortgage limits for multifamily projects in high-cost areas; permits an annual interest rate adjustment of 2% for FHA Adjustable Rate Mortgages; provides administrative improvements ***20 **775** in the single-family mortgage insurance program; and extends mortgage insurance for the refinancing of hospitals, nursing homes, intermediate care facilities, and board and care homes.

Subtitle C also authorizes for FY 1986: $2.98 billion for the Community Development Block Grant Program; $352 million for the Urban Development Action Grant Program; $12 million for the Urban Homesteading Program; $10 million for the Neighborhood Development Demonstration Program; $15.5 million for the Neighborhood Reinvestment Corporation, $15 million for the Solar Energy and Energy Conservation Bank; $4 million for Housing Counselling Assistance; $17 million for HUD research, $10 million for a Fair Housing Initiatives Program; and $36.9 million for FEMA flood studies. The bill also permanently extends the Home Mortgage Disclosure Act (HMDA) and requires a State-by-State data report and a report to Congress, within 36 months of enactment, on data collection costs usage and obstacles under HMDA; extends HMDA applicability to mortgage banking affiliates of bank and savings and loan holding companies and savings and loan service corporations that originate or purchase mortgage loans other than FHA-insured loans; provides that in calculating the median area income for any area that is not within a metropolitan statistical area, HUD and FmHA must use the higher of the median income of the county in which the area is located or the median income of the entire nonmetropolitan area of the State; requires HUD program recipents to disclose their Social Security or employee identification number and requires periodic verification of tenant information; requires that HUD send to the House and Senate Banking Committee, within 30 days of issuance, notice of proposed fair housing grants and contracts and requires HUD to issue fair housing program regulations 90 days after sending them to the Banking Committees; provides procedures and regulations for the prevention of lead-based paint poisoning.

Subtitle C grandfathers, in the CDBG program, central cities classified as a metropolitan city until the city is determined to no longer qualify based on the data collected in a decennial census that occurs after FY 1985 and classifies other cities which decrease below 50,000 population as metropolitan cities until such a decrease lasts for 2 consecutive decennial censuses; requires housing assistance plans to include an assessment of a community's homeless persons' housing needs; permits the use of CDBG funds for new construction and substantial rehabilitation of owner-occupied homes which are unsuitable for

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

rehabilitation; permits increases above 15% for public services under CDBG in certain circumstances; prohibits fees or charges on Sec. 108 loan guarantees; increases urban homesteading assistance for communities having high rates of mortgage foreclosures; extends the Sec. 312 Rehabilitation Loan Program and prohibits risk premiums or loan fees on Sec. 312 loans; limits the recapture of Sec. 312 loan or urban homesteading reservations; and permits the conveyance of urban homesteading properties to higher income persons under certain circumstances. Amendments to the Urban Development Action Grant (UDAG) Program include provisions to fund 40% of the applications solely on the basis of project merit; to provide points for applicants that have not received a grant after December 31, 1983; to ****776 *21** require housing UDAG's to compete only with other housing UDAG's in awarding scores for project merit; to define housing UDAG's; and to require that in awarding points for all UDAG criteria, urban county applications shall compete only with other urban county applications. Provisions are also made to specify that three funding rounds of approximately one-third of the amount available in a fiscal year be held; and to require a report by HUD on the standards and criteria, impact and distribution of UDAG funds. Provisions are made to strengthen the anti-pirating provisions of the Act with respect to speculative projects designed to attract or facilitate to relocation of a business or plant from one UDAG eligible distressed city to another distressed city. Other provisions permit the guarantee of loans to communities adjacent to UDAG projects to mitigate impacts of such projects on low and moderate income families.

Subtitle D authorizes $66 million in fiscal year 1986 for the Emergency Food Distribution and Shelter Program for homeless persons established in the Second Supplemental Appropriations Act for 1984 (Public Law 98–396); provides $50 million in FY 1986 for a Second Stage Housing Demonstration Program for the homeless and displaced which enables eligible nonprofit organizations to obtain noninterest bearing advances, annual payments and technicals assistance to develop and operate housing with on-site staff for supportive services for the homeless; and provides $100 million for emergency shelter grants to CDBG entitlement cites, urban counties and states for distribution to nonprofit groups for the rehabilitation of buildings for homeless shelters and provision of essential services to the homeless.

Subtitle E authorizes $100 million for the Nehemiah Housing Opportunity Grant Demonstration Program which will assist in the construction of approximately 6,666 single family homes in depressed areas of U.S. cities. The program enables nonprofit organizations to provide loans to familes purchasing homes constructed or substantially rehabilitated in accordance with a HUD-approved Nehemiah program. Loans must be secured by a second mortgage held by HUD, not exceed $15,000, bear no interest and be repayable to HUD upon the sale or transfer of the property to a noneligible family. Eligible families may not have owned a home during the last 3 years, family income, for a family of four, must not be more than the area or national median income, whichever is higher; and families must be able to make a 10% downpayment of the home sale price, or such greater amount as determined by sponsor.

Subtitle F authorizes $60 million for a Multifamily Housing Preservation Loan Program which will provide loans to the owners of certain HUD-assisted multifamily housing projects to permit them to make capital improvements required to maintain their projects as decent, safe, and sanitary housing and to maintain the low and moderate income character of such projects.

Subtitle G authorizes the designation by the Secretary of HUD of 75 Enterprise Zones (25 of which will be located in rural areas and 50 in urban areas) which are identified by state and local governments to provide economic revitalization, job creation and community development; provides area and eligibility requirements; requires ****777 *22** state and local commitments; establishes priorities in the selection of zones; mandates evaluation and reporting requirements; provides waiver and modification provisions of agency rules for changes which would facilitate the development of enterprise zones.

Regulatory authority

When Public Law 98–181 became law on November 30, 1983, HUD was directed to report to Congress by March 1, 1984, on the standards followed by HUD in making determinations whether program requirements are implemented through the use of regulations, handbooks, memoranda or other forms of notice. HUD was also required to describe the system used to assure that program changes affecting the eligibility, rights or benefits of persons applying for or receiving assistance from HUD would be subject to notice and public comment. That report has never been prepared and HUD continues to make significant policy changes without the benefit of notice and comment procedures. In the past year alone HUD has used handbook changes and informal notices to weaken the rehabilitation standard for public housing units, reduce the administrative fees for public housing authorities administering the Sec. 8 Existing Program, change the scoring for UDAG applications,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

retroactively impose an investment standard on the income of public housing authorities, and operate the COBG Entitlement and Small Cities Program without the benefit of regulations implementing changes in law made in 1983.

In addition, the Committee has become aware that the Office of Management and Budget has become more and more deeply involved in writing the regulations that govern the programs that the Secretaries of Hud or Agriculture (and not the Director of the OMB) are by law required to implement. The Committee has become aware of numerous regulations proposed by HUD and FmHA that are consistent with the authorizing legislation but which are blocked by OMB. A few examples will suffice to illustrate the problem: CDBG small cities, manufactured housing construction standards, FmHA Manufactured Home Loan Program, the eligibility of rental housing for the FmHA Housing Preservation Program, the coordination between HUD and FmHA to establish income eligibility for assisted housing programs in rural areas and the collection of racial data related to the HUD programs. The Committee considers this activity to be an abuse of power by the Director of the Office of Management and Budget which should be stopped.

In order to be better informed and to gain better control over these two major problems, the Committee bill directs the Secretaries of HUD and Agriculture to submit to the Banking Committees of the Senate and the House of Representatives on a quarterly basis a summary of notices and handbooks they will issue. In addition, each time a rule, regulation, notice or handbook is submitted to those Committees, a detailed summary shall be provided of all of the changes required by OMB which prohibit, modify, postpone or disapprove of such rule, regulation notice or handbook.

****778 *23** *Collection of certain data*

This provision, like many of the amendments in this bill, is necessary because the Office of Management and Budget has been interfering in a very destructive way in the efforts of the Secretaries of HUD and Agriculture to carry out their obligations under the laws governing discrimination. According to the requirements of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, the Secretary of HUD is required to administer the Department's programs to affirmatively further fair housing and to prohibit discrimination on the basis of race, color, religion, sex or national origin and Executive Order 11063 requires all Federal agencies to take actions to eliminate discriminatory practices in housing programs administered by such agencies. Many of the laws specifically affecting HUD and FmHA programs also make it illegal for anyone eligible for assistance for any of the federally assisted housing or community development programs to be discriminated against on the basis of race or ethnic characteristics. It is imperative that the Secretaries of HUD and Agriculture collect the data necessary to ensure compliance with these requirements. In the case of assuring the absence of racial discrimination in assisted housing programs, it is necessary to collect data building by building. In the case of selling newly constructed units in a single family subdivision or condominium project or in the case of a rental project subject to an affirmative fair housing marketing plan, it is necessary to make monthly reports on the racial and ethnic composition of purchasers and renters. This information is used by HUD to detect any possible problems and the need for early review of marketing practices and tenant/purchaser selection practices. This data must be collected in a timely manner; less frequent than monthly reporting could result in full occupancy without opportunities for minorities and others to apply for the unit. Notwithstanding the requirements of the Paperwork reduction Act, this Committee directs the Secretaries of HUD and Agriculture to collect appropriate data on the racial and ethnic characteristics of persons eligible for, assisted or otherwise benefiting under the community development, housing assistance, and mortgage and loan insurance programs administered by such Secretaries. Of course it is also expected that appropriate and sufficient data will be collected to assure non-discrimination in the program under the jurisdiction of HUD and the Department of Agriculture on the basis of religion, sex, or national origin. Given the experience the Departments of HUD and Agriculture have had over the last 20 years in conducting civil rights compliance reviews, and in establishing affirmative fair housing requirements, this Committee expects the Office of Management and Budget, which has no such practice experience in conducting such reviews and no legal obligation to enforce or further the affirmative fair housing requirements, to defer to the expertise of these agencies.

****779 *24** SUBTITLE A—HOUSING ASSISTANCE

PART 1—PROGRAMS UNDER UNITED STATES HOUSING ACT OF 1937

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Authorization for lower income housing

The Committee bill authorizes the Secretary of Housing and Urban Development, subject to approval in Appropriations Acts, for fiscal year 1986 to enter into contracts aggregating not more than $9,179,498,000 for the Sec. 8 and Public Housing Programs. This amount of funding would be sufficient to assist approximately 91,509 additional families who would occupy 12,100 units in the Sec. 202 Program for the handicapped and elderly, 66,209 units of Sec. 8 existing housing, 6,200 units of Sec. 8 moderately rehabilitated housing, 5,000 units of newly constructed public housing and 2,000 units of Indian housing. Some of these authorized funds plus funds available as carryovers from prior years would also be used with Sec. 8 existing assistance to subsidize approximately 14,000 units through the Property Disposition and Loan Management Programs as well as for use with public housing demolition, and conversions from the Rent Supplement and Rental Assistance Programs to the Sec. 8 Program. $1,132 billion of the $9,179 billion total is authorized for grants under the Comprehensive Improvement Assistance Program for public housing; $200 million of that amount would be available solely to rehabilitate vacant uninhabitable public housing units, $50 million must be used to eliminate lead-based paint hazards in public housing projects, and $1.5 million must be used to assist in developing resident management corporations with public housing projects.

The Committee's action is a resounding rejection of the Administration's original fiscal year 1986 assisted housing budget and a reaffirmation of the need to construct additional units and to rehabilitate the public housing inventory, as well as to provide rental subsidies to expand the accessibility of privately-owned rental housing to lower income families. The Administration's original budget request was for $499 million in budget authority, an indefensible reduction of 96 percent from the total $10,759 billion appropriated for fiscal year 1985. The President had proposed no additional public housing units, no additional Sec. 202 units for the elderly and handicapped, no additional Sec. 8 existing units (not even any additional Sec. 8 vouchers) and only a miserly $175 million would be available for emergency public housing modernization. Given the desperate need of lower income families for decent and affordable housing, the Administration's budget was an affront to the Committee and could not be endorsed.

Sec. 8 Program

Sec. 8 vouchers.—The Committee explicitly rejected an expansion of the Sec. 8 Voucher Program. In 1983, Congress authorized a demonstration of the voucher concept but the first free-standing vouchers (those issued separately from the Rental Rehabilitation Program) were not available for use by lower income families until the Spring of 1985. The major differences between the Sec. 8 Existing Program and the Voucher Program are the provisions permitting voucher holders to pay more than 30 percent of their income ****780 *25** for rent (if the payment standard is insufficient to cover the rents charged in the community) and the Voucher Program restriction limiting the subsidy increases to two increases in five years. The Committee is concerned that, especially in highcost or low-rental vacancy areas, lower income families (particularly those families with children and needing more than two bedrooms) will rapidly find their housing expenses substantially exceeding 30 percent of their income. Private rental building owners have to cover increased operating expenses by increasing rents each year. Even in radically restricted rent control jurisdictions, across the board rent increases are inevitably allowed each year and in uncontrolled jurisdictions the increases are even greater. If the payment standard is set at a reasonable level the first year but subsidy levels are only increased twice in five years, it is unreasonable to expect the rent burden of a lower income family participating in the Voucher Program will remain at 30 percent of income. The major purposes for providing federal housing assistance to lower income families is to lower their housing cost to a manageable level so sufficient funds will be available to cover other critical needs. This Committee is very reluctant to expand the Voucher Program until and unless the voucher study authorized by this bill reveals that over time the Voucher Program eases the housing cost burden for lower income families as effectively as the regular Sec. 8 existing program has done. The Committee, however, did amend the Voucher Program to eliminate the requirement that substantially all of the vouchers be used in conjunction with the Rental Rehabilitation program. While $4.831 billion is authorized for an additional 66,209 units of Sec. 8 existing certificates, $43.7 million of these funds are to be used in the Park Central New Community Project to assist lower income families, particularly those with children, to live in that community. In order to assure the availability of Sec. 8 certificates, each contract with the administering PHA cannot be for less than 15 years.

Sec. 8 fair market rents.—The Committee also approved several amendments designed to deal with administrative efforts by HUD to undermine the effectiveness of the Sec. 8 existing program. Unless the Sec. 8 Fair Market Rents (FMRs) are adjusted in a timely manner based on the actual rents charged for units available in a market area, lower income tenants will not find decent and affordable housing in the private market. In March 1981 the Department issued adjusted FMRs but delayed until

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

December 1982 publication of the FMRs for 1982 and then only readopted the March 1981 FMRs without adjustment. In September 1983, 18 months late, HUD adopted adjustments to the FMR. In order to have realistic FMRs provided in a timely manner, the Committee bill requires HUD to publish annually, to be effective at the beginning of each fiscal year, FMRs based on the most recent available data projected forward in time with adjustments so the FMRs will be current for the year in which they apply.

A second problem has occurred due to the Administration's proposal (issued through amended contract form and without public comment) to reduce the fees paid to public housing authorities that administer the Sec. 8 existing program. The reduction which took place on July 1 reduced the preliminary fee by ten percent and the ****781 *26** annual fee from 8.5 percent to 7.65 percent of the two bedroom fair market rent. Most of the activity of public housing authorities in administering the Sec. 8 program focusing on processing applications, determining eligibility, inspecting units, determining rent reasonableness, briefing certificate holders on the requirements of the program, verifying income, maintaining the Sec. 8 waiting list, and providing services for families difficult to house. The Administration did not provide any credible evidence to justify a significant reduction in fees. With the exception of determining rent reasonableness, public housing authorities have to undertake the same tasks in administering the Sec. 8 Voucher Program. For these reasons, the Committee requires the Department to maintain for both the Sec. 8 existing and the Voucher Program, the same preliminary fee and percentage amount for the ongoing fees as applied to the Existing Sec. 8 program as of January 1, 1985.

It has also come to the attention of the Committee that the FMR established for an area may be unreasonably low for a particular community or neighborhood (even after the 20 percent adjustment permitted by statute has been applied) because the rents for that community or neighborhood have been averaged with the lower rents available in a nearby community. In that case, the Secretary should consider identifying a separate high-cost community or neighborhood areas and issuing a separate FMR based on the actual rentals available in that community.

Portability.—The bill endorses the portability of Sec. 8 existing certificates and vouchers so that families assisted by those programs may move to a new dwelling units within the same metropolitan statistical area. If the new dwelling unit meets the required habitability standard, the Sec. 8 or voucher contract may be used in the new building. The Administration proposed by regulation to make Sec. 8 existing certificates and vouchers portable to any jurisdiction in the country but the accounting requirements were so cumbersome and the administrative burdens on public housing authorities so great that an alternative is needed. In addition, since federal housing assistance is supposed to be allocated locally based on need and most jurisdictions have long waiting lists for their assisted housing programs, transcontinental portability of this assistance makes little policy sense. In developing regulations to implement the portability provision in the bill, HUD should consult with public housing authorities in order to develop a simple and workable system for tracking the certificates and vouchers and assuring they will be returned to the original PHA when the original family leaves the program.

Shared housing.—In establishing standards for use of shared housing arrangements in the Sec. 8 Program, the Committee expressed its concern that regulations proposed by HUD would require individual persons living in one bedroom apartments to move to an efficiency in order to accommodate persons willing to share the one bedroom apartment. The Committee does not consider single people living in one bedroom apartments to be over-housed. The Committee bill provides that no tenant residing in a one bedroom dwelling has to accept another person, move to an efficiency or pay additional rent because they either refuse to accept another tenant in the one bedroom or refuse to move to an efficiency unit. ****782 *27** No preference on tenant admission to an assisted project, or on dwelling unit assignment should be established for individuals willing to share their apartments.

Working families

The Committee bill contains a number of amendments designed to assist working lower income families and to assure a modest economic mix in assisted housing projects. Prior to 1981 approximately 10 percent of the tenants in assisted housing had incomes between 50 and 80 percent of median. As a result of changes in policy advocated by the present Administration that disqualified them for certain forms of federal assistance, working low income families found their gradual climb out of desperate poverty made more hazardous and discouraging, particularly when their eligibility for federally assisted housing was seriously curtailed. The reforms included in the Committee bill should assure such working low-income families are not penalized through assisted housing policies that help only the desperately poor. Among the reforms are provisions which: eliminate the restriction of assistance for families between 50 and 80 percent of area median; require for purposes of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

calculating eligibility for assisted housing and rent paid, a deduction from income of 10 percent of the earned income of the family where any member of that family pays Social Security taxes; and the phase-in over 6 months of any increased rental payment required of a public housing resident who becomes employed and whose income increases. In addition, the bill permits public housing authorities to establish a ceiling rent approved by the Secretary of HUD which is not more than 30 percent of a tenant's adjusted income (and may be less) and is not more than the average monthly debt service and operating expenses attributable to similar sized public housing units operated by the local PHA or more than the Sec. 8 existing fair market rental for the area.

Elimination of the restriction on the number of families between 50 and 80 percent of median is critical to improve the economic mix in assisted housing projects and to assure the workability of the Indian Mutual Self-Help homeownership program. Since, in many cases, this program provides the only source of housing on an Indian Reservation, it is imperative to remove the limitation to assure working families are not driven off the reservation in search of housing.

The Committee discussed the issue of a minimum rent charge for certain tenants in public housing and it was made very clear that such a provision would violate a long-standing policy that low-income people should not have a pay an inordinate amount of their income for shelter.

At the present time the law requires that every tenant pays 30 percent of adjusted income for shelter costs. To require a rent beyond this amount could drastically erode the funds available to low-income tenants for food, clothing and other necessities. As an example, the minimum rent proposal under discussion in Committee would have required a tenant to pay up to $75 for rent per month. In the State of Texas where the AFDC payment for a three person household with two minors is $167 per month, a charge of this magnitude would be 44.9 percent of a tenant's income.

****783 *28** The purpose behind the minimum rent proposal was to encourage tenants to enter the work force. The Committee supports efforts to help tenants find reliable child care in order to train for, and locate employment to improve their lives and those of their children, but a minimum rent approach is not a constructive one.

The Committee was very impressed with the child care, employment, and training programs developed in the Kenilworth-Parkside Housing Project which is a tenant-managed complex in Washington, D.C. The Committee urges HUD, when allocating funds for the development of resident management programs as provided for in this bill, to require employment and training services within these projects similar to the one at Kenilworth-Parkside as a positive method of enabling tenants to obtain employment and improve their standard of living.

Child care demonstration

The Department has instituted Project Self-Sufficiency which is intended to aid unemployed or under-employed very low-income single parents with young children in making the transition from public assistance to economic self-sufficiency. Participating local communities must agree to set up a task force, and utilizing public and private sector resources, devise a comprehensive program of housing, child care, transportation, counseling, job training and placement. The participants are single parents on the Sec. 8 waiting list and the only financial assistance provided by HUD is an allocation of Sec. 8 existing certificates to the participating public housing authorities. While the goals of this program are laudable, they do not focus on the concerns addressed by the $15 million Public Housing Child Care Demonstration Program authorized by the Committee bill.

One of the major barriers to the employability of parents of young children is the lack of reliable and affordable child care. The Department of Housing and Urban Development has been unable to provide to the Committee a realistic estimate of the number of children living in public housing projects nationwide and has been unable to detail for the Committee the extent to which child care is readily available to public housing residents. Even though this Committee authorized a public housing child care demonstration program in Public Law 98–181, which required the Department of Housing and Urban Development to conduct the demonstration and report back to Congress by November 1985, the Department has not begun such a study.

The Committee bill would provide grants to public housing authorities for the purpose of establishing child care services to enable both parents or guardians of young children to be employed or to receive employment training. Both single parent and

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

two-parent families would be eligible for assistance, and to the extent space is available in the public housing project itself, the public housing project should provide it for the child care facilities. The funds may be used to renovate the space, to provide furniture and supplies, and to cover other operating costs. The child care service must meet any existing local or federal health, safety, educational or other standards but the Secretary of HUD is not authorized to establish any such standards. The experience gained by the Department ****784 *29** in operating Project Self-Sufficiency should be useful in designing this demonstration program, particularly with regard to coordinating employment opportunities and job training with the availability of child care.

Of primary interest to the Committee is whether, by providing funds to public housing authorities to establish child care services in public housing projects, the employability of public housing residents can be increased, resulting in higher rental contributions by tenants and reducing the need for federal operating subsidies. The report prepared by the Secretary based on this demonstration should include an estimate of the total savings in reduced operating subsidies that could be achieved if sufficient funds were provided to each public housing project in which substantial numbers of children lived to assure the availability of reliable child care services for working parents and guardians. The Committee wishes to make clear that the interest of this provision is not to use up the role HHS has in developing child care programs and standards.

Utility allowances

Under the federal housing programs, the tenants have always had a right to have their their rent include utilities, whether the utility company is paid by the landlord or PHA under a master-metered system. When tenants pay their own utilities, they have a right to have the rent they pay their landlords reduced by an amount, called a utility allowance, which enables the tenants to pay their utility bills directly to the utility. In this way the total of the utilities paid to the utility company and rent paid to the landlord do not exceed the tenant's required contribution of 30 percent of adjusted income. Utility allowances are also used to determine surcharges for master-metered tenants who use excessive utilities.

Although these rights have always been implicit in the United States Housing Act, Sec. 2102(c) of this bill explicitly defines rent to include shelter and a utility allowance based upon actual consumption. Utilities would not include telephone costs but would include items like electricity, gas, other cooking, refrigeration, and heating fuel, water, sewerage services and trash and garbage collection. Shelter includes the right to use the dwelling and to receive all necessary services and equipment. It has become necessary to add this definition to the statute because of changes HUD has recently made to undermine tenants' rights to accurate utility allowances. Until HUD changed its regulations in 1984, utility allowances had always been calculated objectively, on the basis of actual consumption. (Former 24 C.F.R. Secs. 865.470–865.482, 45 Fed. Reg. 59,502 (September 9, 1980). In 1984, HUD abandoned this objective approach and adopted a new test for calculating utility allowances—the 'reasonable consumption of utilities by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.' 24 C.F.R. Sec. 965.476, 49 Fed. Reg. 31,399 (August 7, 1984); 24 C.F.R. Sec. 813.102, 49 Fed. Reg. 19,926, 19,937 (May 10, 1984). That test is too vague to provide reasonable utility allowances and too administratively burdensome for PHAs and landlords. The new statutory definition is intended to require HUD to return to an objective calculation standard based upon actual utility consumption ****785 *30** for each size and type of dwelling unit. The PHA should use data from the actual buildings in which the units are located and should not rely on general information about utility use in the community. Some tenants live in modern well-insulated buildings using energy efficient appliances; others live in buildings in need of repair and use well-worn and inefficient appliances. In buildings occupied by the elderly, the Committee expects allowances to be sufficient in the warm months to cover the cost of air conditioning necessary to protect the health and safety of those tenants.

In setting the allowance, the PHAs should also avoid the use of average since an average only indicates one-half of the tenants use more energy than average and one-half of the tenants use less than the average. A reasonable allowance would assure only a small percentage of tenants were surcharged for excess utility use.

In addition, because the Act does not explicitly refer to utility allowances, a court has wrongfully concluded that the tenants' rights to correct utility allowances are unenforceable. See *Stone* v. *District of Columbia*, 572 F. Supp. 976 (D.D.C. 1983), appeal pending, No. 83–1999 (D.C. Cir. 1985). Congress has always intended that tenants' rights under the federal programs be enforceable, as implied causes of action, as Section 1983 Claims and under the Administrative Procedure Act. By putting this definition in the statute, we wish to re-emphasize that we intend that tenants shall be able to enforce this explicit statutory right to correct utility allowances.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Public housing reforms

The Committee bill contains a number of reforms affecting the public housing program. These changes affect the system for financing public housing development and rehabilitation, the criteria governing the Performance Funding System (PFS), the allocation of operating subsidies and modernization funds through the development of comprehensive 5-year public housing capital and management improvement plans and a replacement reserve system.

Capital grants.—The Committee permits HUD to finance public housing constructing through direct capital grants as well as tax-exempt financing. This change was agreed to by the Committee for several reasons. Since the 1937 Housing Act, public housing construction was funded through tax-exempt bonds and notes issued by the PHA. The 1984 federal tax amendments called into question the tax-exempt status of public housing notes and HUD was forced to suspend sale of the PHA notes until the Internal Revenue Service ruled of whether these notes satisfied the 'arbitrage' and other requirements of the tax code. Thus, since IRS provided no guidance, as of September of 1984, no new public housing notes have been issued.

At that point HUD turned to a very cumbersome and awkward method of funding the pipeline for public housing which included an increase of over $12 billion in the public housing loan fund in 1985 to pay off the maturing notes, as well as to continue construction of the pipeline. Thus, when the Committee considered the 1985 housing bill, the issue of funding public housing was a very complex one. One option was to continue tax-exempt financing, but the ****786 *31** Committee could not negate the previous actions in the 1984 tax bill nor did we know when and if Treasury would rule on this arbitrage question. Another option was to continue the status quo, but this process was considered too complex.

The third option was to go to a capital grant method. This method is included in the Committee bill which also retains the authority for HUD to issue tax-exempt bonds if directed to do so. The capital grant method of financing the 7,000 units provided for in H.R. 1 calls for much less budget authority because the capital grant method provides for federal grants for these units 'up front' rather than providing annual direct outlays and the expenditures over the long period of time needed to retire the tax-exempt bonds. The grant method of financing could also result in savings to the public housing authorities by eliminating the accounting and administrative costs related to servicing the loans and reissuing short term bonds over a 40-year period.

The Committee wishes to make emphatically clear that this provision for capital grant financing in no way diminishes the responsibility low of the PHAs or the Indian Housing Authorities to maintain the income character of the projects for 40 years. It is also the Committee's intent that the projects funded under the capital grant method be eligible for operating subsidies under Section 9 or modernization funding under Section 14 or the 1937 Act.

Finally, the Committee wishes to emphasis that by retaining the authority for tax-exempt financing the committee could return to that method in the future if Treasury issues a ruling favorable to the continued use of tax-exempt financing and if the budget situation or other circumstances warranted such financing.

Performance funding system.—$1,279 billion of new budget authority is authorized for public housing operating subsidies and $100 million of that amount is to be used for an appeals process and for costs beyond the PHA's control.

Once again this Committee believes the Administration has requested insufficient funds to assure the continued operation of public housing projects at levels that assure decent, safe and livable housing for lower income tenants. By overestimating rental payments based on the amendments included in Public Law 98–181 (which actually increased tenant deductions from income resulting in lower rental payments), by assuming a freeze on the salaries paid public housing employees (to parallel a freeze in federal salaries proposed in the budget), by understanding the inflation in utility costs, by overestimating savings from the implementation of a vacant unit policy which will actually not have an effect for several years and by failing to provide any funds to deal with the appeal of allowable expense levels or with costs beyond control, the Administration's estimate of need is totally unreliable. The Banking Committee estimates that, including $1.265 billion in new budget authority plus $135 million in funds carried over from fiscal year 1985, $1.414 billion in operating subsidies will be needed for fiscal 1986.

The bill specifies in law the criteria that must be included in the performance funding system which is used by HUD to

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

allocate operating subsidies to public housing authorities. This amendment is necessary to assure that HUD does not undertake substantial revisions ****787 *32** to the performance funding system without guidance from Congress. In the last three years HUD has attempted, without agreement from Congress, to modify regulations and policies governing this program. These efforts have included efforts to retroactively impose new standards on the investment and recapture of excess income, reduce or eliminate operating subsidy payments for vacant units and to require an end-of-year adjustment to reconcile the differences between projected and actual dwelling rental and other income. Not only would these and other proposed changes to the performance funding system have sustantially distorted the system Congress and the public housing authorities have generally endorsed, but the so-called reforms were punitive in nature and were not designed to reward improved management and budgetary practices. In addition, the Department's failure to make adjustments to the original allowable expense level (AEL) of public housing authorities (particularly where the AEL did not reflect the costs of operating projects in lower income urban area needing additional security and routine maintenance expenditures), address costs beyond the control of the PHA that were not anticipated in the estimated budget or [to make adjustments to reflect the actual inflation rate] have contributed to the perilous financial condition of many PHAs.

It must be remembered that the performance funding system provides a method for estimating the amount of subsidy that will be necessary to cover the difference between the rents paid by tenants with 30 percent of their adjusted income and the cost to operate a public housing authority. If those estimates are reasonable based on reasonable principles established in regulations that are effective prior to the beginning of each PHA's budget year, then the Department should give a PHA the benefit of the doubt and permit the PHA to keep any increased revenues if a PHA through management improvements, resulting in increasing rental payments, reduced vandalism and maintenance, lower vacancies, by receiving additional funds from local contributions or litigation is able to improve its financial or physical condition.

Specifically, the Committee bill requires that the performance funding system used to allocate operating subsidies should be substantially based on the system defined in regulations and in effect on November 30, 1983—(the date of enactment of Public Law 98–181)—subject to the modifications required by this amendment and the regulations issued to govern the system should be effective prior to the start of any fiscal year to which it applies and should not be changed during that year. In this way, public housing authorities will have sufficient notice of the requirements governing the allocation and use of the operating subsidies (including adequate notice of the PFS factors needed to project budget needs) and will not be subject to mid-year changes that could affect their capacity to plan and manage their budgets.

The performance funding system must have the following components, several of which are modifications from the present practice. Changes to the allowable expense level (AEL) shall be made annually to reflect actual inflation rates for the most recent year for which date is available HUD should make clear in its budget documents and justifications used to estimate PFS needs for the new ****788 *33** fiscal year the actual assumptions, including inflation rates for various expenses, so that Congress and the public housing agencies may use informed judgments on the appropriateness of the projected subsidy levels. Any savings achieved through reductions in energy rates due to public housing authority actions (such as administrative appeals or legal action) shall be shared equally between the PHA and HUD for the first 12 months that those savings occur. In order to encourage PHAs to enhance their financial condition and to provide better services to tenants, any funds received by the PHA from sources such as the CDBG Program, local government contributions, amounts recovered through litigation, gifts, or other sources (but not including funds estimated to be received from tenant rents or surcharges, investment income or commercial lease income) shall not be counted as income in computing the allowable federal subsidy. Subsidy payments to PHAs may only be ratably reduced if sufficient funds are not available; of course, this assumes the Administration will request sufficient funds to cover what is needed and this provision would be triggered only if Congress rejected that request. Any excess subsidy funds should be carried over to be used in the next fiscal year.

The PFS must also include a formal appeals process so that a PHA may have its basic AEL adjusted to correct inequities and abnormalities that exist in the base year expense level of that PHA, to reflect changes in operating conditions since the base year AEL was established and to take into account the higher cost of operating the project in an economically distressed community which may not be able to provide the services wealthier communities provide to their FHAs or which may result in the need for higher levels of security or maintenance than projects located in more affluent communities. One of the key elements of the PFS is the use of a weighted relative cost of living for the region in which a housing authority is located. PHAs in the southeast region for instance are assigned a relative cost of living factor which is 79.5 percent of the national average. Inequities have occurred for PHAs located in metropolitan areas such as Dade County, Florida, where the cost of living is substantially higher than the average in the region. The appeals process would require adjustments to redress such

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

inadvertent inequities. A change in operating circumstances since the base AFL was established could occur if the tenant population has changed demanding increased or different services. An aging population needs more services to assist in maintaining independence of the elderly and security must be increased as the tenants become more vulnerable. An increase in the number of families with children places different demands on a PHA's resources, including the need for child care, increased routine maintenance and possible increased security. Where PHAs have rehabilitated older projects by combining 2 one-bedroom units into a single two-bedroom unit, the total square footage is not decreased and the number of individuals housed may actually be increased. Since the PFS is generally calculated on a per-unit basis and not a square footage basis, PHAs that reconfigure projects in this way could lose badly needed subsidies even if operating costs are not reduced. Again, the appeals process should address these problems.

****789 *34** The PFS will also include provision for reimbursing PHAs for costs beyond their control that were not taken into account when the budget estimates were prepared or when operating funds were provided. Such costs beyond control could include changes in Federal or State law (such as Social Security or retirement benefit payments), increased insurance premiums, or increased fees for basic essential services such as garbage collection. The bill provides that in fiscal year 1986, $100 million of the funds appropriated for the operating subsidies should be used to fund increases necessary because of adjustments to the AEL or to cover costs beyond control.

The PFS amendment also requires subsidy eligibility to be calculated on the basis of a 97 percent occupancy rate except that a lower occupancy rate will be used (1) to account for vacant units in projects receiving modernization funds where the planned modernization activity is on schedule or (2) where the public housing authority has developed a plan acceptable to the Secretary to achieve 97 percent occupancy over a reasonable period of time. This statutory language was drafted to be consistent with the interim rule published on June 24, 1985, and assumes any units that are vacant due to litigation or natural disaster would be excluded from the occupancy requirement. Depending upon the extent of the vacancy problem and the availability of modernization funds provided by the Secretary, a PHA could take from 2 to 10 or more years to reach the optimum occupancy rate of 97 percent. As long as reasonable progress is being made annually to reduce the vacancy problem, PFS funding should be provided for both the occupied and vacant units. PFS funds may not be reduced if the occupancy rate remains low due to the failure of HUD to provide needed modernization funds on a timely basis. In allowing operating subsidies to be paid for projects with such vacancy rates, the Committee does not intend to lessen the public housing agencies' basic obligation to fully rent up their projects. Any PHA practice of holding units vacant without a plan to achieve full occupancy would be contrary to Congress' intent to guarantee the maximum number of low-income families possible the right to decent, safe and sanitary housing, which is affordable to them.

The PFS requires PHAs to maintain reasonable operating reserves similar to those established by well-managed privately-owned rental property. In order to achieve this standard, HUD should provide sufficient operating subsidies to build up the PHA reserves to reasonable levels and HUD should not require PHAs to draw down operating reserves below safe levels in order to receive other funds such as operating subsidies or modernization funds.

The PFS amendment will also require the estimate of rental income for the PHA's next budget year to be based on the actual rent collected for either the fourth, fifth or six month prior to the beginning of the new fiscal year. In order to reward PHAs for increasing the rents collected in any year beyond the amount projected when preparing their budget, generally any revenues resulting from rental income or other income (not including investment income which is covered by a separate provision of law) which exceeds projected revenues from such sources may not be recaptured, used or recomputed to reduce the federal operating subsidy. If the estimate was unreasonable according to regulations in effect when ****790 *35** the estimate was made or was fraudulent or deceptive, operating subsidy funds could be reduced.

Finally, the Committee bill permits estimated revenues from investments to be recomputed at the end of the PHA's fiscal year to make appropiate adjustments upward or downward to reflect the actual average cash availability and the actual average interest rates during the year. This amendment is needed to assure PHAs keep alert during the budget year, invest unused funds wisely, and to protect them if actual cash availability or interest rates are lower than anticipated when the estimates were made. Of course, this amendment assumes that the existing regulation governing investment income will be retained and that any investment income earned in excess of that required by the regulations in effect when the estimate was made will not be recaptured, used or computed to reduce operating subsidies. The Committee is very concerned that because of pressure from the Inspector General's Office, HUD attempted to retroactively impose on PHAs new investment and rental income guidelines that were not clearly included in the regulations that were in effect during the budget year when the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

estimates were made. HUD may have been in error originally in not providing sufficient and consistent guidance to the PHAs on how to estimate revenues. It is unfair, however, to try to correct that error by retroactively requiring PHAs that originally acted in good faith in following the directions that were in existence when they prepared their budgets to recalculate those budgets according to newly clarified and retroactively imposed procedures. The Committee assumes, however, that if HUD believes that there was intentional fraud or abuse in calculating investment income in some circumstances that the Inspector General would investigate these situations.

Public housing development.—The Committee firmly believes that in order to meet the housing needs of our lower income families over the long-term additional public housing units must be constructed. The bill authorizes $418 million in grants for the construction of 5,000 public housing and 2,000 Indian housing units. Recently, the Department has developed unreasonably low prototype cost construction limits and placed unrealistic limits on the time public housing authorities will have to proceed from fund reservation to actal construction. PHAs that fail to meet those deadlines have their funds recaptured and needed units are not built. The Committee bill recognizes that it is sometimes difficult, because of HUD administrative delays, community opposition or events byond the PHA's control, to meet HUD's deadlines. Therefore, the bill provides that the HUD Secretary may not recapture any development funds from the date a PHA actually receives a reservation of development funds due to the failure to begin construction or rehabilitation within a 30-month period from that date. The 30-month deadline is to be extended to cover delays caused by HUD's failure to process the project in a timely manner within a resonable period of time, by environmental assessment and review requirements, legal actions affecting the project (such as law suits filed to enjoin the location of the project or to appeal adverse zoning decisions) or other factors beyond the control of the public housing agency (such as the need to rebid a project, to clear ****791 *36** a title, or to challenge adverse decisions by the local zoning board). During the time (including legitimate extensions) before construction or rehabilitation begins, the PHA has the discretion to change the site of the project or redesign the structure, if such changes result in at least the same mnumber of units as originally planned being substantially rehabilitated, acquired, or constructed.

Public housing receivership.—The bill also establishes a procedure for HUD and tenants to petition the courts for appointment of a receiver when a public housing agency has defaulted upon its obligations. The Committee wishes to make it absolutely clear that in establishing this enforcement procedure for tenants and HUD it has no intent to diminish tenants' and HUD's other rights to secure relief in Federl or State court when a public housing agency has defaulted with respect to its obligations under the Act, HUD's regulations and handbooks or the Annual Contributions Contract.

Public housing demolition and disposition.—The bill amends the requirements of Sec. 18 of the U.S. Housing Act of 1937 to assure that the demolition or disposition of public housing units does not occur unless the project is obsolete due to its physical condition, location, or other factors which make it unusuable for housing and no reasonable modifications, such as rehabilitation, are feasible to return the project to useful life.

Given the desperate need for affordable housing for lower income families, care must be taken not to sell or demolish these units unless no way can be devised to make the units livable. Increased density, commercial or industrial use in a neighborhood can only justify demolition or disposition if those changes impact so adversely on the project that it becomes unlivable and nothing reasonable can be devised to make the project habitable.

The amendments included in the bill guarantee tenants and applicants to public housing an enforceable right not to have their projects demolished or otherwise disposed of unless the housing authority has developed and HUD has funded a plan for replacing the units with additional public housing units or project-based subsidies such as the Sec. 8 moderate rehabilitation program on a one-for-one basis. This one-for-one replacement requirement is taken from the Department's present regulatory requirement which has been in effect since 1979. It is intended to ensure that in those situations where, as a last resort, the PHA must undertake demolition or other disposition, the adverse impact upon low-income people, both tenants and applicants in need of housing, will be mitigated by replacement of the units that will be lost.

This requirement will not apply when there is no need for low-income housing in locality. A PHA and HUD may rely upon an absence of need only if they carefully demonstrate that in the locality there is a sufficient supply of decent, safe and sanitary housing available to and affordable by the lower income population which would be served by public housing. A PHA's ability to relocate any tenants who might be directly displaced will not be sufficient to demonstrate an absence of need. Substantial waiting lists for public or other low income housing in the locality would preclude a finding of no need. The fact that the particular project to be demolished ***37 **792** or otherwise disposed of experience high vacancies or is

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

completely vacant will not establish an absence of need.

If there is not sufficient funding for the construction or acquisition of additional public housing units, then the units can be replaced by units which are assisted under the Sec. 8 Program, so long as the Sec. 8 contracts are tied to the specific unit, as under the Sec. 8 Moderate Rehabilitation Program. It is very important that when a PHA, whose legal obligation is to house lower income families, disposes of housing that could be available to such families for 20 to 40 years, the replacement housing should also be available for such families for a substantial period of time. Only project-based subsidies can assure that long-term availability. Sec. 8 Existing Housing subsidies and vouchers cannot be used as substitutes nor can the rehabilitation of vacant public housing units be considered replacements for lost units.

The Committee is concerned that, under the demonstration program created by the Administration to sell public housing units to tenants, insufficient restrictions have been placed on the program so that, if these units are resold after being owned by a lower income tenant for 5 years, this valuable housing resource will no longer be available for lower income households. HUD should either amend the requirements of the demonstration program to assure only lower income households are eligible to purchase the properties on resale or, if those units are resold to families whose income is higher than 80 percent of area median, to provide that HUD will provide the PHA with sufficient public housing development funds to assure a one-for-one replacement of housing units available for occupancy by lower income households. Of course, if there is no need for lower income housing units in the community, this requirement should not be imposed.

Public housing management improvements.—Several amendments included in the bill are designed to improve the ability of public housing authorities to manage their projects and to simplify the procedure for complying with federal requirements. The public housing profession is in the process of developing voluntary professional performance standards which will be used to provide guidance and to certify efficient and well-managed public housing agencies. Within 2 years of the institution of this system, the HUD Secretary is to prepare a report to Congress evaluating the feasibility of establishing a system that would substantially simplify the requirements for receiving federal operating assistance or modernization funds. There will be troubled housing authorities that need close supervision by HUD and would not qualify for simplified certification procedures but for well-managed and efficiently-run authorities, every effort should be made by the Department to develop less cumbersome procedures that respect the professional competence of such authorities.

Public housing modernization.—Several amendments affect the public housing modernization or CIAP Program and are necessary to counteract steps taken by HUD that have made the program less effective. It is clear that the purpose of the modernization program is to assure that one of the most valuable resources this nation has for allevating the housing problems of the poor—the public housing stock—is to maintain the marketability of existing ****793 *38** projects and to assure the long-term viability of those projects. Weakening the rehabilitation standards, making it more difficult for public housing authorities to install durable materials and equipment which may initially be more expensive than cheaper items that have a shorter useful life, and failing to fund the cost of advanced architectural, engineering and planning expenses necessary to develop modernization proposals are all steps HUD has taken recently that have made it difficult for PHAs to meet the intent of the CIAP. Such action will be prohibited by the Committee bill.

The Department is presently funding a comprehensive modernization study which will assess the current physical condition of public housing projects, the costs to renovate those projects to standards assuring their long-term viability, and the cost to meet future accrued rehabilitation needs; the results of this study should be available in the Fall of 1986.

It is expected the Department will use data provided by that study to give Congress a thorough report on the total cost of improving the physical condition and management systems governing the public housing stock, the feasibility and cost of creating a replacement reserve account system for major and non-routine repairs, and the feasibility of developing a formula for the distribution of all CIAP funds, as well as an estimate of the amount each public housing agency with more than 500 units would receive annually under this system. It is critical that this report be provided to Congress in a timely manner so that, if the CIAP is to be changed along the lines suggested in the Comprehensive Grant proposal included in this bill, this Committee has thorough and accurate data on which to base its policy decisions.

Public housing comprehensive grants.—The Committee has been concerned for sometime with the numbers of public housing projects that are in need of rehabilitation and the system presently in existence is not being administered to deal effectively with the needs of these projects. Before 1978 modernization funds were provided by HUD, based on priorities

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

established annually in Washington. In some years the priority would be roofs, in others heating facilities, and in others energy conservation. In was very difficult for a PHA to receive funds to comprehensively rehabilitate a complete project in order to assure the long term viability and livability of the project. Many times rehabilitation in the form of replacing all of the roofs would be undertaken even if not actually needed because of the PHA's fear that when roof repair was needed several years later HUD would have established a different priority. The Comprehensive Improvement Assistance Program (CIAP) was created by Congress in 1978 in order to eliminate the piecemeal approach and to require a PHA to devise a comprehensive plan to physically upgrade the whole project and to undertake the management improvements necessary to maintain those physical improvements. While CIAP has been a substantial improvement over the past, HUD has established cumbersome procedures designed to second guess and challenge the minute details of each rehabilitation proposal, has failed to fund multiyear proposals on a consistent basis and has not requested sufficient funds to address the outstanding need. The way current Modernization Program is ****794 *39** administered is an inefficient way to distribute resources for the capital improvement needs of the public housing inventory. It denies PHA's the flexibility and responsibility essential for setting priorities for capital improvement expenditures weighing the needs of all projects against each other and the options of repair and major maintenance against capital replacement. Because HUD presently decides what to fund and when to fund it, PHA's cannot do rational multiyear planning for the capital improvement needs of the existing public housing inventory now estimated to be worth in excess of $60 billion.

The Committee is committed to developing an alternative system for providing sufficient funds on a reliable and consistent basis to permit PHA's to develop and implement a comprehensive rehabilitation and maintenance program. Key to the design of this alternative however is the ability of this Committee to understand the extent of the existing rehabilitation needs, the extent of the needs that will accrue in the future, the total cost to bring all existing buildings up to a standard that ensures their long term viability and the impact of changing the law on PHA's that have used the CIAP Program successfully. Since a comprehensive study of these needs and costs is presently underway at this time, the results of which will not be available before the fall of 1986, the Committee determined not to eliminate the CIAP Program at this time. However, the amendment included in the bill puts both HUD and the PHA's on notice that the CIAP will be replaced with a more comprehensive approach designed to rely more heavily on the professional judgment of and provide greater flexibility to the PHA's while assuring individual PHA's of reliable annual funding to meet identified needs. It is the Committee's intent, with the passage of this legislation that the often excessive regulation and oversight by HUD will be replaced with greater PHA planning and responsibility for decision making on modernization activities.

The Committee bill extends the existing CIAP Program (with improvements described elsewhere in this bill) until such time as Congress defines a formula or alternative allocation system for distributing modernization funds. It is expected that a new formula or allocation system could not be developed until HUD completes the pending comprehensive rehabilitation needs study and provides to Congress a realistic estimate of the aggregate annual cost of changing the existing system in order to meet all outstanding modernization needs over a five-year period and a comparison for a significant number of individual PHA's of how their modernization funds would increase or decreeased in the future compared to their historical pattern.

Once Congress defines the new formula or allocation system, the CIAP Program will be replaced by the following program. Funds will be granted based on five-year comprehensive plans and annual statements of work. Each public housing agency would be required to develop a five-year comprehensive plan which assesses the physicial condition of each public housing project owned or operated by the PHA, describe the physical improvements necessary to rehabilitate such projects, estimate the replacement needs of equipment systems and structural elements projects to be necessary during the five-year period of the plan, the improvement needed to upgrade ****795 *40** the management and operation of the public housing agency, and describes a five-year plan for making the improvements in order to ensure the long-term social and physical viability of the project. Once the Secretary of HUD, subject to standards defined in the bill, approves the comprehensive five-year plan and any subsequent amendments, the PHA must submit an annual statement of activities and expenditures projected to be undertaken and must certify that these activities will be consistent with the approved plan. HUD review will be extremely limited. HUD must conduct annual performance reviews to determine that: activities have been carried out in a timely manner in accordance with its comprehensive plan; the PHA has a continuing capacity to carry out the plan and the PHA has satisfied or made reasonable progress toward meeting performance standards prescribed by the Secretary. These standards should include at least the requirements thst all occupied dwelling units meet the housing quality standards established for the Sec. 8 Voucher Program; that a 97 percent occupancy (taking into account units proposed for rehabilitation) should be maintained; and that an operating reserve equal to at least 20 percent of the routine expenses included in the annual budget should be maintained. Elsewhere in this bill the Committee recognizes that the public housing industry is in the process of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

developing voluntary professional performance standards for certifying efficient and well managed projects and expects the Secretary to incorporate their recommendations in the standards he promulgates.

It is the Committee's intent that the Department of Housing and Urban Development will report back to the Committee with recomendations on what criteria Congress should consider in enacting a formula or other allocations method. The allocating method envisioned in this legislation is based on each PHA receiving its fair share of the national 'pot' each year. The reason that the Committee adopted this formula funding concept is to ensure reliability of funding based on a 'fair share' allocation of funds.

Under this new program, the freedom from pervasive regulation, the fungibility of operating and capital funds and the increased reliability of funding will provide the opportunity and incentives for efficient management. PHA's will be able to set their own priorities, to chose among projects and to plan realistically on a multiyear basis knowing that they will have substantial control in carrying out the plan.

Resident management corporations.—The Committee is very pleased with the success that has been demonstrated in a number of public housing projects which are run by resident management corporations and has authorized the use of $1.5 million of the CIAP funds to assist in the formation and development of resident management corporations (RMCs) or other appropriate entities, as an alternative to conventional management of public housing projects by PHAs. The technical assistance would be limited to no more than $100,000 per project.

Tenant management cannot work everywhere, but it will work in some projects, and where it will work, it has advantages. It can improve the management of individual projects by giving the tenants greater control over the delivery of management, maintenance, and social services. When tenants gain the ability to influence ****796 *41** the management and conditions of the projects in which they live, their commitment to improve that project may increase. Tenant management can also promote job training, job creation, and a network of social services designed to facilitate participation in the labor force. The tenant management corporation should also be encouraged to hire public housing tenants, where possible, for jobs on the premises not only to help the employment situation but to foster a sense of responsibility and commitment within the community. This resident involvement enhances long-term cost effectiveness of the project, through savings in management maintenance and social costs.

The technical assistance provided by HUD might be used in several ways including: the development of an RMC for the project and the election of a governing body for the project; the determination of the project's social support needs and secure them, including child care, employment counseling and training; the development, in conjunction with the RMC, of policies for the project that are consistent with the PHA's policies, but which allow sufficient flexibility to allow the RMC to develop its own approach to management; assisting the RMC to employ a management staff and present a comprehensive training program to prepare them to manage and maintain the project over the long term; and assisting the RMC and the PHAs to negotiate a management contract and a budget for the project.

The Secretary would be expected to monitor closely this technical assistance, to determine the costs and benefits of RMCs in assisting PHSs to manage projects and to recommend to Congress whether additional efforts should be made to assist in the involvement of public housing residents in improving the condition and management of public housing projects.

Rental development and rental rehabilitation programs

The bill authorizes $150 million for the Rental Development Program which should provide sufficient funds for the construction or substantial rehabilitation of approximately 7,500 units. At least 20 percent of those units must be occupied by lower income families and the bill assures that those units will remain available to and occupied by such families for at least 20 years. A family whose income was 80 percent of median or below when first occupying the unit but whose income eventually exceeds 80 percent of median will be considered to be lower income for purposes of the 20 percent requirement until it pays rent equal to the rent paid for a similar sized unit by a family who does not qualify for the subsidized rent. The bill provides that the rents paid by the subsidized tenants will not exceed 30 percent of adjusted income or 10 percent of gross income. When HUD establishes the appropriate level of the grant necessary to make the units affordable, it would be reasonable to assume that the average rent paid by the assisted tenants will be the rent paid by a family whose income is 50 percent of area median Care must be taken that no building owner receiving this assistance discriminates against families

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

whose income is less than 50 percent of median.

The Committee has confidence that this program will be very successful in alleviating the housing problems of communities that ****797 *42** need affordable rental housing. Because the original criteria selected by HUD to identify communities with such needs excluded major urban cities, such as Seattle and Milwaukee, the statute was changed in 1984 to cover such communities. Clearly, based on the original intent of the program and in light of the number of families in poverty, the percentage of substandard housing and the amount of rental housing crowding in those communities, they should be eligible for participation in the program.

The Committee has not authorized additional funds for the Rental Rehabilitation Program for fiscal year 1986 although it did provide that publicly-owned real property may qualify for the program if, upon completion of the rehabilitation, the property will be privately owned. This amendment would be particularly useful in communities like New York City where the city has acquired properties through in rem proceedings and plans to sell the property to private owners after rehabilitation.

PART 2—MULTIFAMILY HOUSING MANAGEMENT PROVISIONS

Prepayments of mortgages

The Committee bill places certain additional limitations on the HUD Secretary's discretion to approve prepayment of multifamily mortgages. The Secretary must not only determine that the tenants have been consulted and that there is a relocation plan, but also find that the project no longer meets a need for lower income families or the tenants' needs can be met more effectively through other federal housing programs taking into account the remaining time the project count serve these needs.

Management and preservation of HUD-owned multifamily housing projects

The Committee has been concerned over the use of the Property Disposition Program by HUD and includes a provision in this bill that clarifies that the utmost goal of the Property Disposition Program is to preserve housing for low and moderate income tenants. The Committee wishes to emphasize that cost is relevant but only to the extent that reasonable alternatives are available; saving money would not be, as HUD has argued, a co-equal goal In view of the lack of affordable rental housing in many areas of the country, the Committee expects all formerly subsidized units and those units occupied by low-moderate tenants in unsubsidized projects to be preserved for these tenants.

The Committee bill gives the Secretary explicit new authority to enter into Sec. 8 contracts following foreclosure or sale to carry out preservation goals.

Mortgages on formerly subsidized projects could not be sold unless HUD ensures that the projects will continue until the mortgage matures on terms at least as advantageous to current and future tenants as the existing terms.

Troubled multifamily housing projects

The Committee bill amends the Flexible Subsidy statute to permit an owner to get out of the extended lock-in for retaining the low/moderate character of the project if application for flexible ****798 *43** subsidy funds was made but insufficient subsidies were not available, offered and received. The Committee, while supporting the intent of this amendment expects HUD to request sufficient funds so as not to create a situation where by units are no longer available to low and moderate income tenants.

PART 3—OTHER HOUSING ASSISTANCE PROGRAMS

Housing for the elderly and handicapped

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The bill authorized the appropriation of $601 million in loan authority for the Sec. 202 elderly and handicapped housing program; the higher of 15 percent of the funds appropriated or $100 million is to be use specifically for housing for the handicapped under a newly devised financing mechansim. These funds should be sufficient to provide 12,100 additional units, 2,450 of which would be provided specifically for the handicapped. The Committee extends through fiscal year 1986 the requirement that the interest rate on Sec. 202 loans should not exceed 9.25 percent.

In revising the method for financing housing for the handicapped, the Committee is expressing its frustration at the way HUD has used the Sec. 8 fair market rents to control the amount of 202 loan authority provided a project sponsor. This system has made it frustratingly difficult for the construction of new projects designed to meet the needs of elderly and handicapped residents. The Committee expects the Secretary to take steps during the coming year to revise the Sec. 8 FMRs for housing primarily for the elderly so that they are sufficiently high enough to support the cost of new construction or substantial rehabilitation which address such special needs.

Housing for the handicapped.—Presently, in addition to serving the special housing needs of the elderly, the Sec. 202 Program serves the developmentally disabled, physically handicapped, and chronically mentally ill. Since the 1974 Act through 1984, over $6 billion has been reserved representing some 3,000 projects and 168,000 units. Of this amount, approximately 10 percent of the funding goes to the handicapped, primarily those with development disabilities. In many cases these handicapped individuals have been integrated into elderly projects. An independent consulting firm developed the standards and criteria for housing the chronically mentally ill; HUD has not endorsed those standards and critera by incorporating them in the 202 program handbook, but rather has made the document available to sponsors of housing for the handicapped as background information only.

Although projects designed solely for the handicapped have been somewhat successful in accessing program funding, once selected, projects for the handicapped in comparison with projects for the elderly, have a poor track record of progressing through the HUD processing system up to the point of start of construction. On the average, based on actual program experience, projects for the handicapped take generally 2 ½ to 3 years to start construction from the time funds are reserved for the project. Projects for the elderly, on the other hand, average a little under the HUD regulatory requirement of 18 months.

****799 *44** The processing problem is aggravated by procedural difficulties in developing small community-based projects for the handicapped. These difficulties are primarily attributable to ambiguities in program policy and processing requirements which were originally established on the premise that Sec. 202 was primarily a multifamily rental housing program, not a program to provide small-scale single family type housing for the handicapped.

As identified by an independent research firm which evaluated the HUD/HHS Demonstration Program for the Chronically Mentally Ill, the problem thwarting the development of housing for the handicapped under the present Sec. 202 Program is the use of Sec. 8 fair market rents. Although this demonstration was geared to housing for the chronically mentally ill, the findings are also applicable to the two other disability groups served by the Sec. 202 program. The present fair market rents of the Sec. 8 program are particularly inappropriate for the development of group homes and other facilities for the handicapped since often there are inadequate market comparables and the FMRs are set too low to address the real cost of small group homes. The Committee's proposal abandons the use of the Sec. 8 program and establishes a Sec. 202 rental subsidy that is specifically designed to assist projects for handicapped persons. $290.4 million is authorized for use as a rental subsidy which will cover the difference between 30 percent of tenants' income and the cost of build and operate the project. The Sec. 202 rental subsidy would be based on HUDs determination of what it would cost to build and operate specific projects, after applying standard HUD cost containment policies adjusted with respect to design and amenities which recognize the special needs of handicapped persons. The Committee expects HUD to allow these projects to be designed to blend into a local community environment even though present HUD policies under cost contain may prohibit such development. However, sponsors must also keep in mind the requirement that construction be done in an economical manner. The Committee also wishes to make clear that the use of a small number of prototype designs should be used by sponsors on a voluntary basis and that project sponsors who do not use these designs should not be disadvantaged in the competition for funds.

It has come to the Committee's attention that HUD has adopted a policy that permits a sponsor to limit tenancy in a 202 building to elderly persons or to the elderly and physically handicapped but excluding developmentally disabled persons, and

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

other handicapped persons. See *Brecker* v. *Queens B'nai B'rith, Housing Development Fund* (ED, NY April 10, 1985). Such a policy is contrary to the purposes of Sec. 202 and of this Act, which are designed to maximize housing opportunities for the elderly and the handicapped.

There exists and acute shortage of housing for handicapped persons. Handicapped persons capable of living independently in housing primarily for the well elderly should be permitted to do so. Such integrated living arrangements encourages handicapped persons to obtain employment, become self-supportive and avoid isolation from the general society.

These goals are intended to be furthered through Sec. 504 of the Rehabilitation Act as well. Like the Housing Act, Sec. 504 seeks ****800 *45** the integration of persons with disabilities in every type of housing financed in whole or in part by federal funds. Although HUD published proposed 504 regulations in June 1983 to implement that Act, the regulations have serious shortcomings. Congressman Pat Williams, testifying before this Committee, accurately described those shortcomings. Therefore, in order to promote the goals of both Sec. 504 and the Housing Act, as amended by this legislation, this Committee expects HUD to publish a revised set of 504 regulations that incorporates the same definitions and standards of the governmentwide 504 regulations. Similarly, the Committee expects HUD to enforce this new legislation in a way that maximizes the opportunity for persons with disabilities to reside in all types of housing financed in whole or in part by HUD. Particularly in the case of Sec. 202 housing specifically financed to house the elderly, no sponsor should exclude from occupancy a physically or mentally or handicapped, developmentally disabled person who is capable of living in the project without requiring the sponsor to provide additional services specifically for such person.

The Committee bill includes a provision to clear up the very complex situation surrounding recipients of Medicaid in accordance with Sec. 1905(d) of the Social Security Act who reside in Sec. 202 projects. The Committee expects that these tenants who reside in a project that is certified as an Intermediate Care Facility for the Mentally Retarded (ICF)/MR) will not have their SSI payments reduced because of this certification. Language included in this bill authorizes the Secretary to treat as project income the amount that would be available from SSI payments on the President's behalf if the facility were not to be certified as an ICF/MR vendor. The Committee expects the Secretary to work with the Secretary of Health and Human Services to assure that State Medicaid agencies are informed that Federal Law permits Medicaid reimbursement rates to be dovetailed with Sec. 202 subsidy payments. In addition, the Committee expects the Secretary to issue clear policies spelling out the procedures a sponsoring agency should follow to assure that appropriate Medicaid rates and adequate 202 subsidies are provided. The 202 subsidies should be adequate to cover the difference between 30 percent of the tenant's adjusted income, which in this case is based on the Medicaid payments, and the costs of running facility under this section.

Congregate services.—The Committee has authorized $8 million for the continuation and extension of the Congregate Services Program. This program appears to be one of the stellar examples of ways to reduce federal government expenditures by investing in cost-effective solutions to very serious problems. Although HUD has not formally transmitted to Congress a final report on the program, preliminary results indicate this program has been extremely successful in preventing the premature institutionalization of frail, elderly persons, has been instrumental in helping some individuals leave costly nursing homes, and has resulted in saving the Medicare and Medicaid programs substantial amounts as a result.

The aggregate annual cost of the Congregate Services Program which served 2,041 persons in 1984 is $4.3 million—an average annual cost of $2,100 per person. These funds are used by 32 public housing agencies and 30 Sec. 202 nonprofit sponsors to provide ****801 *46** meals and supportive services such as housekeeping, personal care and transportation. An analysis prepared in April 1984 which surveyed 22 of the Congregate Services projects revealed that the total annual cost per person to the government of nursing home care ranged from a low of $6,880 to a high of $26,346, and averaged $14,510. On the other hand, the total annual cost per person to the government of the congregate services care and the rental subsidy ranged from a low of $2,653 to a high of $8,680 and averaged $4,589. The savings to the Federal, State and local governments of preventing institutionalization for frail elderly and handicapped who cannot live alone without supportive services ranged from a low of $4,227 to a high of $17,666, and averaged $9,921. Fifty-eight percent of those savings accrue to the Federal Government through reduced Medicare and Medicaid payments. When the congregate services program can save an average of 66 percent of the cost of caring for a person in a nursing home, the program is certainly a cost-effective investment which should be expanded. Sufficient funds have been provided by this bill to extend the expiring contracts through the spring of 1987 and to expand the program to cover another 580 individuals for 3 years.

Task force on family housing needs

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Committee bill calls for establishing a Task Force to examine and gather accurate and useful data on the housing needs of families living in assisted housing or who are on the assisted housing wating lists nationwide. The provision directs the Task Force to examine the programs of families with children living in high-rise buildings and to help develop a process that will enable HUD and the public housing authorities to deal with the problems. The Committee believes that it would be particularly useful to have someone with an architectural background involved in this phase of the study. The Committee urges that particular attention be paid to the problems in the worst developments.

This provision also directs the Task Force to examine the problems of families on the waiting list for housing assistance, as well as the number of new units that would be needed to accommodate these families. The Committee is concerned that we are unable to obtain accurate information as to the numbers of families who are living in overcrowded and substandard housing and the percentage of income that they are paying for shelter costs. This information is vital in order to develop a housing policy that reflects the need in our country.

The Committee is aware that HUD may have some of this data available in some form and expects that this information be made available to the Task Force as soon as it is appointed in order for them to plan their study accordingly.

Energy conservation in assisted housing

The bill requires the Department of Housing and Urban Development to develop life cycle cost effective energy conservation performance standards for any housing project assisted under the U.S. Housing Act of 1937 or the Sec. 202 program for the elderly and handicapped. This program would cover the construction or substantial rehabilitation of units under the public housing, Sec. 8 ****802 *47** moderate rehabilitation, Sec. 17 rental development grants and Sec. 202 elderly and handicapped loan program. One reason for creating all of these programs is to offer a variety of approaches to assist in the development of decent and affordable shelter primarily for lower income families. It has become abundantly clear that one of the major expenses associated with housing costs is the expense of heating, cooling and lighting that building. It makes no sense for the Federal Government in programs that subsidize the cost of construction, rehabilitation or operation of housing to tolerate the construction or rehabilitation of housing that is not optimally energy efficient.

The energy conserving requirements presently in place for most of the programs covered by this amendment are required by the FHA minimum property standards for multifamily housing and are based on standards established in 1975 by the American Society of Heating Refrigerating and Air Conditioning Engineers (ASHRAE). Since then energy costs have escalated dramatically but only minor modifications have been made to those standards.

Building new buildings and substantially rehabilitating existing buildings based on life-cycle cost effective energy standards designed to ensure the lowest total construction and operating costs over the estimated life of the building could have a significant impact on the per unit subsidy the Federal Government would have to provide to make such housing affordable. Any such standard should take into account the construction costs, fuel costs, inflation rates and interest rates as well as the major factors affecting energy consumption such as insulation, infiltration reduction, major heating and cooling equipment and appliance efficiencies, as well as radiative gains and losses. While such changes may increase the cost to construct or rehabilitate those buildings (and HUD is directed to increase the development cost limits to accommodate such increases), the ultimate impact will be to substantially lower the cost to the Federal Government and to lower the shelter costs of the building residents because the energy saved over the life of the building will more than offset the increased construction cost. In fact, it is highly likely that even in the first year of occupancy, the average monthly value of the saved energy will more than offset the monthly cost of financing the increased construction cost.

Annual characteristics of families in assisted housing

The Committee bill also includes a provision in this title that directs HUD to include certain data on characteristics of families in assisted housing in the Secretary's annual report to Congress. The provision was prompted by the inability of the Committee to obtain data on families with young children living in public housing in order to develop a child care demonstration program. The Committee was advised that those data were not available from HUD.

The Committee is very concerned over the serious decline in HUD statistical information over the past several years. The

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

HUD statistical yearbook has not been published since 1979, and the Committee understands that it will no longer be published. The last available edition of the National Housing Production Report is 1982, although the Committee is aware that the 1983 and 1984 reports ****803 *48** have been in clearance for some time. The Committee urges the expeditious release of this very useful background data on housing. The Consolidated Annual Report on Community Development Program is also scheduled for reduction in content and frequency due to budget decreases.

Another concern of the Committee is the reduction in sample size of the American Housing Survey. The usefulness of these data can be seriously damaged if this change is made; the Committee urges HUD to reconsider any sample size reduction. Cost should obviously be a consideration but not at the price of inaccurate and unusable data.

The Committee is also concerned over the proposed regulations recently issued by the Office of Management and Budget on the collection and dissemination of Federal Government information. The Committee believes that these regulations would have a disastrous effect on the ability of many of the Federal Agencies together, analyze, and distribute data. This then would impact on the ability of Congress through its Committee structure to obtain data needed to evaluate and develop public policy in an accurate and timely fashion.

The Committee urges both HUD and OMB to reconsider their attempts to limit or in any way curtail the collection, analysis and dissemination of information that is vital to our system of government.

Meals programs in HUD assisted housing for the elderly

The Committee recognizes that having meals programs available in federally-assisted housing for the elderly is an important and desirable service and adjunct to decent and affordable shelter. The Committee is, however, concerned about the operation of meals programs in housing for the elderly developed with assistance under Sec. 202 of the Housing Act of 1959, Sec. 236 of the National Housing Act, and Sec. 8 of the U.S. Housing Act of 1937. For many years, the Department of Housing and Urban Development has approved assisted housing projects for the elderly which include congregate dining facilities and meals programs. While a majority of these meals programs are operated on a voluntary basis, a number of meals programs, primarily in projects designed and processed by HUD as congregate projects in which meals programs and other services are an integral part of overall project design, have been operated on a mandatory basis. Typically, mandatory meals programs involve one required meal per day, with prospective tenants being notified in advance that their tenancy will include a required meals program.

Given the number of lower income elderly households requiring decent and affordable housing, and the shrinking inventory of such housing, the Committee is concerned that when affordable federally-assisted housing alternatives for the elderly are conditioned on tenant participation in a mandatory meals program, some tenants may agree to participate in the program because they have no real alternative in order to obtain decent and affordable shelter. In some cases, such requirements may have resulted in unnecessary expenses for those tenants independent enough to prepare their own meals and who might prefer an optional program.

****804 *49** The Committee has heard testimony that both voluntary and mandatory meals programs in HUD-assisted housing projects for the elderly have been loosely monitored by the Department and possibly abused by some sponsors and that the absence of adequate HUD administrative procedures and policies governing operation of these meals programs has contributed, in some cases, to abuses and administrative shortcomings. To assure that these concerns are properly addressed, the Committee bill will require the secretary of Housing and Urban Development, in consultation with owners, managers and tenants of projects for the elderly which are assisted under Sec. 202, Sec. 236, or Sec. 8, and which have meals programs, to develop and implement within one year of enactment of the requirement, procedures and policies governing the operation of all meals programs in HUD-assited housing projects for the elderly. These procedures and policies shall be designed to encourage and facilitate voluntary rather than mandatory meals program and to assure the sound and equitable administration of all meals programs. To that end, procedures and policies prescribed by the Secretary, under the bill, will be required to cover 3 main elements.

First, for an 18-month period following the enactment of this Act, only voluntary meals programs shall be permitted for assisted elderly housing projects with respect to which funds for assistance are reserved by the Secretary after September 30, 1985, and no project presently offering a voluntary meal program may convert to a mandatory program during this time.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Second, the bill would require all meals programs in assisted housing projects for the elderly to meet certain minimum requirements, as follows. All programs would be required to accept Food Stamps toward payment. Also, all programs would be required to excuse individual tenants with special overriding needs from participation in any such programs which are mandatory. Recognized special overriding needs include circumstances where a tenant demonstrates that participation would adversely affect his or her health, as certified by the tenant's physical; would constitute an unbearable, financial hardship; violate the food practice tenets of the tenant's religion; would substantially interfere with the tenant's employment; or would be unreasonable because the tenant is not in occupancy for a particular extended period.

Regarding unbearable financial hardship, the bill will require tenants to be excused from mandatory participation where they will have a low disposable income remaining after paying rent and required meals costs which will make it extremely difficult, especially for the very low income tenant, to meet the cost of meals not covered by the meals program and other necessary living costs such as clothing, medical expenses and transportation costs.

In order to avoid unbearable financial hardship, the Food Stamp Act of 1964 (Sec. 7 U.S.C.A. 2017(a) provides sufficient subsidy to assure lower income families do not pay more than 30 percent of their income for food. According to the Quarterly Family Economic Review of the Department of Agriculture, in 1985 the average total cost of food for a American family will use 14.6 percent of the family's income. Clearly any mandatory meal program, which may cover no more than one-third of the meals eaten by a resident in any month, and which costs more than 10 percent of that elderly ****805 *50** resident's income, will cause an unbearable financial hardship. In cases where participation in the mandatory meal program would cause such a financial burden, the resident should be exempt from participation unless the sponsor can provide sufficient subsidy to reduce the resident's mandatory payment to no more than 10 percent of the resident's income.

Third, while residents living in projects with mandatory meals programs who do not qualify for exemptions would be required to sign an annual contract agreeing to pay for those meals, the contract would not be part of the lease for the presidential unit which is the present practice. The Committee is distressed that a number of elderly tenants who refuse to participate in the mandatory meals program, who have been attempting to gain exemption from or changes to the program or who have been discussing such problems with their neighbors have been threatened with eviction from their homes. It is unconscionable that lower income elderly persons who faithfully pay rent for their rental units are threatened with eviction if they have a dispute with their landlord over the payment of a meals service that has nothing to do with their shelter needs. By requiring a separation of the 2 agreements so the dwelling unit is governed by a lease and payment for the meals service is governed by a contract, both the landlord and the tenant will have their rights protected. The landlord can enforce the agreement to pay for the meals service based on a valid contractual agreement. The tenant can preserve his or her right to occupy decent and affordable housing and will not lose that basic shelter right in a dispute over a separate service—the meals service.

The amendment would also require HUD to conduct a study and report to Congress within 18 months on the operation of mandatory and voluntary meals programs. Of particular concern to this Committee are the cost-effectiveness of mandatory meals programs in comparison to voluntary meals programs. Particular attention should be paid in the concerns of tenants who are competent to care for themselves and would prefer not to participate in the program or who have limited disposable income after paying 30 percent of their income for rent, as well as to the concerns of tenants who rely on the availability of the meals service.

The Committee is aware of both voluntary and mandatory meals programs designed to serve resident populations ranging in size from 30 to 350 persons and is concerned with the claim that is financially infeasible (and therefore not cost-effective) to operate a program on a voluntary basis. It would be helpful, therefore, in assuring a thorough analysis of this problem if owners of projects which have mandatory meals programs, in consultation with their project managers and tenants (including tenants preferring voluntary and mandatory programs), would review the cost and quality of their meals service and consider whether it is financially feasible (given resources available from federal, State, local government and private funds) and in the best interest of all their tenants to offer a voluntary meals program. By reporting their analysis to the HUD Secretary and by including those results in the required report, the Committee would have a better understanding of the various concerns. Of particular interest to the Committee is the availability of funding from Federal, State and local government ****806 *51** programs, as well as from private contributions, which would make it possible to provide tenants with the option of participating in a meals program on a voluntary basis.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Committee intends that the Sec. 202 program be administered by HUD in a way that encourages the construction and assures the availability of adequate rental subsidies for elderly projects that include congregate dining facilities where voluntary meals services will be offered. Given the fact that so many sponsors of housing for the elderly have devised voluntary meals programs for their residents, HUD must take the experience of these sponsors into account when establishing guidelines for determining the financial feasibility of voluntary programs.

It is distressing to the Committee that in the name of containment, HUD has established policies and restrictions that contravene policies explicitly established by Congress in subsections d, f, i, and k of Sec. 202 of the Housing Act of 1959, as amended, in order to assure the inclusion of special design features and congregate space if necessary to meet the special needs of elderly and handicapped residents. While the Committee recognizes that construction must be economical and should not involve elaborate or extravagant design or materials, it is very important that housing for the elderly and handicapped which is financed by the federal government provide sufficient common space that can be used for meeting rooms, dining facilities, workshops, adult day health facilities or other essential service facilities necessary to provide a supportive living environment for our aging population. HUD should take immediate steps to adjust construction cost limits, Sec. 8 fair market rent limits, common space limits and design restrictions in order to ensure the law and the intent of Congress are fully implemented.

Restriction on use of assisted housing

Existing law denies the benefits of federal housing subsidies to undocumented aliens or other aliens not covered by the statutory exemptions and other members of their households. To date, implementation of those amendments has been delayed because of the recognition by the Congress, by HUD, by owners of federally subsidized housing projects and by residents that their enforcement, especially as planned in HUD's present regulations, will produce extraordinary hardships, excessive paperwork and unnecessary financial difficulties for the individuals, the owners and, in some cases, the Federal Government. The injustice that would be caused by implementation of Sec. 214 of the Housing and Community Development Act of 1980 include: the mandatory eviction of thousands of families now residing in federally subsidized housing; the eviction of individuals who are citizens or who are properly documented aliens because other members of their household cannot meet the documentation requirements; the denial of admission to families which include citizens and properly documented aliens because not all family members can be properly documented; and the imposition of documentation and verification requirements upon citizens and aliens alike which are not only unduly burdensome, but also impossible even for some citizens to meet. Since these hardships and burdens have now been made obvious, this statute is repealed ****807 *52** by the bill except in the case of nonimmigrant student aliens who would continue to be ineligible for federally subsidized housing.

Exclusion of housing assistance as income

The Committee bill includes a provision that prohibits State welfare departments from including Federal housing subsidies as income under the AFDC program. This provision reverses what was adopted by Congress in 1981.

The Committee believes that to treat housing subsidies as income will produce disastrous consequences for both tenants and the landlords. When the housing subsidies are treated as income, the shelter portions of the AFDC grants will be reduced, dollar for dollar, by an amount equal to the subsidy. The result is that the tenant can end up without enough money to pay even their share of the rent. Rent collection problems will develop and in some cases threaten the financial viability of a project. Also, a reduction in the welfare grant will increase the housing subsidy and in the end merely increase the Federal expenditures under the housing programs.

The Committee wishes to state that a housing subsidy does not create a financial windfall that should be then taken away from a family who is generally living below the poverty level. Housing subsidies are intended to supplement the bare minimum income provided for in welfare programs and are designed to assure lower income families decent shelter affordable with 30 percent of their income. The intent of this provision is to prohibit this bare minimum income from being reduced.

Housing subsidies are provided as an additional help to families to afford decent housing for themselves and their children

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

and the Committee expects these subsidies to be used for that purpose.

Subtitle B—Rural Housing

AUTHORIZATIONS

The Committee had originally provided an authorization of $3.238 billion for rural housing loans for fiscal year 1986 which is the same amount as approved by the Congress for fiscal year 1985. This amount was estimated to provide loan assistance for almost 80,000 units or about 5,000 units less than the amount approved in fiscal year 1985, amounting to more than a 6 percent reduction in rural housing loans. Because of a provision adopted by the Committee to provide 10 percent of the total amount of loan authority for Sec. 502 homeownership loans for persons and families above the low income level, even fewer loans will be available for low- and very low-income rural families. If the cost per unit for loans to families having incomes as high as 115 percent of the area median income does not exceed that of loans for low- and very low-income families, slightly more than 5,000 loans would be mandated for higher income families reducing further the number available for low- and very low-income Sec. 502 housing loans. The Committee is concerned that despite new fianncing methods it adopted to reduce the budgetary impact of rural housing programs by more than $1 billion in budget authority and outlays, further reductions in the ****808 *53** 1986 rural housing loan program levels were required in the Budget Resolution. Although, the Committee understood that low income and means tested programs would be frozen at fiscal year 1985 levels, a 30 percent reduction was made for Budget Resolution purposes. Even at a freeze level rural low income housing assistance was limited to 80,000 units included in the original bill that the Committee reported. The levels pursuant to reconciliation will now drop to about 63,000 units. Also, for the first time, the Committee was required to take into account both the on-budget and off-budget impact of the rural housing loan programs operated by FmHA. Heretofore, the Committee had only to be concerned with the budget authority and outlays associated with the on-budget accounts. Under the existing approach the purchase of FmHA loans by the FFB results in an outlay of funds charged to FFB which is an off-budget agency. Under the approach the Committee adopted wherein FmHA loans will be sold directly to the public and not through the FFB, the outlay associated with those sales is eliminated.

The Committee has acted to reduce the amount of principal obligations for rural housing loans that may be insured or guaranteed in FY 1986 from $3.238 billion as originally proposed by the Banking Committee to $2.266 billion pursuant to reconciliation instructions. Accordingly, it has adjusted the several loan program levels under this limitation as follows:

	Millions
Section 502	$1,328
Section 514	20
Section 515	900
Section 524	1
Section 504	17
Total loans	2,266

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

In setting these lower loan levels, the Committee took into account the need to target these reduced funding levels on the programs that serve the lower range of the low income population in need of the rural housing loan programs. Therefore, it has maintained the $900 million level it originally approved in H.R. 1 for rental housing loans under Section 515.

The Committee has acted further to reduce the amount of rural low and very low income housing support grants from $97 million, the amount approved in its original bill, to $72 million, as follows:

	Millions
Section 504. Repair grants	$20
Section 509. Construction defects	2
Section 516. Farm labor housing grants	15
Section 523. Self-help housing grants	15
Section 533. Housing preservation grants	20
Total FmHA housing support	72

In addition, the Committee has authorized an appropriation level of $198 million for the Sec. 521 rental assistance payment contracts. This reflects the current estimate of the amount required to renew existing rental assistance payment contracts that will expire in FY 1986. This estimate was not available from FmHA when the Banking Committee originally acted on H.R. 1. In taking this ****809 *54** action, the Committee has made clear in statute that this authority is to be used for additional rental assistance payments contracts for existing or newly constructed rental housing units, as well as for contracts that expire in fiscal year 1986.

Several technical revisions have been included to clarify that the Committee intends that loans originated by private lenders as well as those made directly by FmHA are required to be sold to the public directly, rather than through the FFB; that no distinction between guaranteed and insured loans is made by the Committee in these amendments; and, that regulations issued by the Secretary no later than 90 days following enactment shall facilitate the marketability of the loans sold in the secondary market to assure that such loans are competitive with FHA insured and VA guaranteed loans. These revisions reinforce the savings estimated to accure from direct sales of these loans and further assure that their budget impact will be reduced as intended.

Financing rural housing loans through the private sector

The Committee bill makes a major change in the way that FmHA housing loans are financed. It adopts a provision that would return to the pre-1974 practice of selling loans directly to the public instead of through the Federal Financing Bank (FFB). In taking this action, the Committee also will permit loans to be initiated by private lenders as well as directly by FmHA. The provision authorizes a guarantee of the full principal and interest payment at market rates on subsidized loans. This provision would require the Secretary to sell loans it originates and to sell (or cause to be sold) loans originated by private lenders to the public rather than to the Federal Financing Bank. The Committee is aware that the practice of selling loans directly

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

existed until 1974 when the FFB was created. With the full guarantee the Committee provides, however, these loans will have liquidity equal to unsubsidized loans and will not necessarily be competing with general government debt in the credit market. Their sales will not have the same tendency to increase the cost of government debt as when they carried interest rates similar to the rates applicable to government debt issues. Thus there is no need to utilize the FFB to sell these loans. These loans will have somewhat the same competitive position in the private market as Veterans Administration and Federal Housing Administration guaranteed and insured loans which are traded in the secondary market largely, through mortgage-backed securities. Accordingly, the loan agreements will provide the holder of such loans the difference between the rate of interest paid by the borrower and the market rate of interest for such loans. In this borrower and the market rate of interest for such loans. In this way the Committee expects that the private sector will be able to these loans. Moreover, by extending the guarantee to the full interest and by making payments to the holder to cover the difference between the market rate of interest and the borrowers' subsidized rate, large discounts involved in the sale of these loans are prevented and the graduation policy requiring the borrowers payment to increase in accordance with increasing income can be maintained so as to reduce the cost of these loans to the taxpayer.

****810 *55** Under this provision, the Committee expects that the Secretary of Agriculture will continue to make direct loans to eligible applicants and then sell such loans to investors individually or in pools as may be appropriate. The Committee does not intend the FmHA to stop its direct lending or to do anything to delay the approval of loan applications from eligible borrowers in any eligible rural areas. Loans that are made by private lenders should not be given any preference over direct loans in the administration of the FmHA housing programs, both with respect to processing applications or in allocating and obligating loan funds. The Committee expects that the Secretary will encourage private lenders, including mortgage bankers, to participate in the programs and take all measures to expeditiously process the loans they originate and make to eligible borrowers through a system that takes into account the requirements of the secondary market with respect to accepted underwriting and loan servicing practices. The Committee has included a provision to assure that loans that are serviced by private entities will carry all the protections under law that are available to borrowers whose loans were made directly by FmHA.

Allocation of assistance

The Committee has been concerned about the uneven manner in which the FmHA has allocated and sub-allocated its funds among the State offices and, in turn, the district and county offices. FmHA has made notable progress in utilizing objective allocation data in its allocation system and the Committee recognizes and appreciates this. Nonetheless, the results of the allocation and the knowledge of funds available to each State and county office must be shared with the public in a timely and accurate manner. The Committee directs the Secretary to set forth an effective and uniform method that each State office must follow to implement this provision. Prospective borrowers, and other users of FmHA programs, as well as State and local financial institutions and organizations concerned with housing for low- and very low-income families are expected to be among those who should receive notice of available financial assistance.

Escrow procedures and prepayment

In the past the Committee has been reluctant to require FmHA borrowers to escrow taxes, insurance and other necessary expenses in connection with FmHA housing loans. It had gone as far as to strenthen the escrow provisions in statute by requiring adequate advance notice to borrowers that they might escrow these items. Finding that these provisions were ignored or so unevenly implemented across the nation and that in certain instances serious defaults and even foreclosures were attributed to the failure of borrowers to pay taxes, maintain payments for insurance and other related expenses, the Committee has acted to require that the Secretary establish procedures necessary to implement the escrow policy desired by the Congress. In so doing, however, the Committee is concerned that such procedures be set forth in full consideration of the role that private lenders are now expected to have under the financing approach included in the bill. The Committee is also concerned that the requirement on prepayment of allowable ****811 *56** escrow items be implemented so as not to disqualify any eligible borrower from participation in the program. Within the accepted practices in the private sector regarding escrow procedures, the Secretary is directed to prescribe such terms and conditions for the prepayment procedures he established first with full consideration of the main purpose of the housing assistance programs, which is to meet the housing needs of low- and very low-income rural families, and then with consideration of what is reasonably necessary for implementing the prepayment provision.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Guaranteed loans to above low income families

The Committee adopted a provision permitting 10, 20 and 30 percent of the loan authority provided for Sec. 502 loans in fiscal years 1986, 1987 and 1988, respectively, to be available to borrowers having incomes above 80 percent of the area median but not in excess of 115 percent of such median. This provision was adopted in recognition of the fact that many families just above the income eligibility levels cannot obtain mortgage credit in rural areas even though they have the means to meet the obligations of home mortgages without subsidy. Often in rural areas private financial institutions lack the resources to meet competing credit needs in the areas they serve. Agricultural lending is often a priority in these places and exhaust their lending capacity. It is unfortunate that the fiscal constraints the federal government faces does not permit the appropriation of sufficient authority to meet the needs of these families as well as the relatively larger needs of those having low and very low incomes. The Committee, therefore, intends that the Secretary provide such guaranteed loans to above low-income families only when it is demonstrated that credit elsewhere is not available at market interest rates and that the borrowers are living in housing determined to be below decent, safe and sanitary housing standards. The Committee intends that the guarantees under this particular provision be limited to not more than 80 percent of the loan values in order to lessen the burden of the taxpayer in the event of default such that the net loss in the case of any default cannot be in excess of 80 percent of the value of the loan. In order not to add to the burden of the FmHA State and county offices that are intended by the Committee to concentrate on farm and low- and very low-income families, the Secretary should take such measures as are necessary to place the primary burden for the paperwork involved in processing these particular loans on private lenders.

Fee inspectors and appraisers

The Committee deplores the unwillingness of the Farmers Home Administration to carry out the full intent of Congress with respect to utilizing fee inspectors and appraisers to expedite the processing of housing loans and related grants. Since the agency refuses to carry to the Congressional intent under existing authority and because it has responded to inquiries about its failure to do so by claiming that on the one hand it lacked experience in using outside appraisers and inspectors and on the other hand that State Offices had not requested their use, the Committee has included a further provision to insure that they are used when by objective determination ****812 *57** any County Office or District Office finds that it is unable to process a housing loan or grant application within 30 days of receiving it. The Secretary is directed to require such office to report to him directly that it is unable to process loans or grants within the allotted period. The Secretary then is expected to expeditiously determine whether the delay is likely to continue without the use of outside help and if he so finds he shall require the employment of such help for such a period of time as he deems necessary. In making the determination, the Secretary is directed to take into account objective information including staff capacity and workload both with respect to housing and farm loans. The object here is twofold. First, Congress intends that despite the seasonal burden of farm lending and related activities, housing loan and grant applications must not be delayed in being accepted and processed. Also, Congress intends that the implementation of this provision should not be further postponed. There is ample experience in the industry as well as in FmHA in using outside inspectors and appraisers. The Committee is aware that a demonstration of their use was undertaken several years ago by FmHA and does not accept its recent statement that a more recently initiated demonstration is necessary before fully using its authority to use outside appraisers and inspectors. The Secretary has had ample notice of the Committee's intention in this regard and expects him to carry out the law and its intent without further delay.

Eligibility of certain rural areas

The Committee extended the authority for making certain rural communities having populations from 10,000 to 20,000 eligible for rural housing program assistance. This extension will permit such communities to be eligible until after the next decennial census, thus removing the uncertainty that has ensued in many rural areas under the year-to-year basis used in the recent past for determining their eligibility. Most of these areas have severe low income housing problems, are credit poor, and are beyond the reach of other federal assistance programs either because of the critical lack of sufficient federal assistance to satisfy both the urban and rural demand or because they are remote from HUD service areas. In spite of this demand and the lack of sufficient assistance, the Administration has persisted in its attempts to remove these communities from being eligible for rural low income housing assistance. Therefore, the Committee has acted to assure their continued

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

eligibility until new census data is available to confirm their standing regarding population, distress and rural character.

Manufactured housing

On November 30, 1983, Public Law 98–181 became law and the FmHA was directed to make or insure loans for manufactured homes which are installed in a permanent foundation and which meet energy conserving requirements applicable to site-built housing financed by FmHA. These standards were originally created by the FmHA in order to assure the cost of owning and operating a FmHA subsidized home and would be as low as possible and the FmHA loan portfolio would be protected against energy cost related defaults.

****813 *58** Numerous studies have revealed that the present energy conservation standard applicable to the manufactured homes covered by the National Manufactured Housing Construction and Safety Standards Act are woefully inadequate and do not assure that manufactured home buyers will benefit from the lowest overall total construction and energy costs over the life of the building. The Committee is aware that the FmHA, totally consistent with the requirements of Public Law 98–181, has submitted regulations to the Office of Management and Budget which includes appropriate energy conservation standards. By opposing the energy conserving standards proposed by FmHA, the OMB is once again interfering with the legal obligation of the Secretary of Agriculture to carry out the law consistent with the intent of Congress. Twenty months have passed since the law directed the Secretary of Agriculture to implement this program. As soon as the program is in place, the Secretary of Energy is to undertake a study comparing the actual energy use of manufactured homes meeting the basic HUD code standard with the energy use of manufactured homes meeting the stricter standard applicable to FmHA housing. The results of this study will be very valuable in helping Congress to decide whether it is appropriate to extend the stricter energy requirements to all HUD code homes, or at least to manufactured homes financed with FHA insured loans. This Committee is committed to finding better ways to help families, particularly low and moderate income families, to reduce the total cost of homeownership. One of the most cost-effective ways to reduce such costs is to construct housing that (taking into account construction costs, fuel costs, geographical location, inflation rates and interest rates) is optimally energy efficient and that uses heating and cooling systems that are energy efficient. Reducing a family's monthly fuel bill by an amount that exceeds the increase in the monthly mortgage payments attributable to the cost of energy conserving improvements, can increase a family's monthly disposable income. Particularly in the case of the FmHA housing programs, which overwhelmingly serve families whose income in below 80 percent of area median, this reduction in total shelter costs is extremely important. FmHA should issue the manufactured home regulations, including the energy standards recommended to OMB, without any more delay.

Other provisions

The Committee has included several other provisions designed to require the implementation of the intent of the Congress with respect to the full implementation of the Rural Housing Preservation Grant Program and Rural Rental Housing Rehabilitation Loans; a Rural Housing Needs Task Force and certain technical amendments.

Subtitle C—Program Amendments and Extensions

PART 1—FHA MORTGAGE INSURANCE PROGRAMS

The Committee bill continues the practice of recent years in extending for only one year through fiscal year 1986 the authority of the Secretary to insure mortgages or loans under all the HUDFHA ****814 *59** mortgage or loan insurance programs contained in the National Housing Act.

The Committee also reaffirmed its long-standing support of FHA as the program that makes it possible for a great many moderate income Americans to be homeowners and has enabled out Nation to be the best housed in the world.

FHA insurance limit

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Committee bill authorizes the Secretary of HUD to enter into commitments to insure loans and mortgages under the various FHA insurance programs with and aggregate principal amount not to exceed $50.9 billion. The Committee expects the Secretary to utilize all of the authority available, subject to qualified applicants, and intends that no arbitary limit be imposed by either HUD or the Office of Management and Budget.

Negotiated interest rate for FHA insured mortgages

During consideration of the housing bill in 1983, an amendment was agreed to by the House that eliminated the authority of the Secretary to set the interest rate for FHA-insured mortgages. The Committee bill contains a provision that extends the negotiated rate authority to two additional programs, nursing home fire safety equipment and armed services housing.

While there was very little debate on this issue, the Committee urges HUD to continue to monitor the FHA negotiated rate program to insure that exhorbitant or excessive points are not charged families seeking to become homeowners.

Limitation on certain premium charges

The Committee bill sets a ceiling of 3.8 percent on the mortgage insurance premium for FHA-insured programs. The Committee strongly supported this provision which removes the authority the Secretary presently has to set this rate. This ceiling provision had strong support for several reasons. First, the FHA fund is very sound and, in fact, presently has more than enough reserves to meet its demands, as well as operating at a profit. Second, the proposal to raise the mortgage premium to 5 percent came out of the Grace Commission Report and was based on the argument that federal guarantees provide a subsidy. This is not true under the FHA program as theire is documented evidence that the FHA program pays its own way. The Committee rejects the premise established in the Grace Commission on FHA and unanimously supports the ceiling provision to prevent any attempts to undermine or damage this program that helps to house moderate income facilies. The Committee dismisses any proposals to use the FHA fund as a back door method to reduce the budget deficit.

Mortgages on Hawaiian Home lands and Indian lands in the General Insurance Fund

The Committee permits the use of the FHA General Insurance Fund to carry out the insuring authority on Hawaiian home lands and Indian reservations. The Committee previously included a provision in the Housing and Urban-Rural Recovery Act of 1983 to add FHA insuring authority for Hawaiian home lands and Indian lands ****815 *60** but has been advised by the Department that the insuring authority should be provided for under the General Insurance Fund instead of the Mutual Mortgage Insurance Fund as originally provided in previous legislation.

Authority for increased mortgage limits for multifamily projects in high-cost areas

The Committee bill includes a provision that deals with the time-consuming procedure now available for increasing the statutory per unit limit under the multifamily insurance program. This change does not increase the project cost risk; it merely gives more authority to the Field Office to approve increases on multifamily projects above the base limit without further Headquarters' review. The intent of the provision is to enable HUD to deliver multifamily projects more quickly.

Permissible annual interest rate adjustment for adjustable rate mortgages

The Committee bill includes a provision that raises the ceiling on annual adjustments in the effective interest rate for FHA-insured adjustable rate mortgages from 1 to 2 percent, while keeping the life of the loan cap at 5 percent. This change in the annual cap will bring the FHA-ARM in line with what the conventional ARM market has been offering over the last 18 months and should increase the volume of FHA ARMs to enable the GNMA ARM mortgage-backed security program to get off the ground.

Even though the Committee recommended this change in the annual rate there is still a great deal of concern with regard to adjustable rate mortgages and the Committee expects HUD to continue to monitor very closely the risks involved in the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

ARM instrument.

Double damages ready for unauthorized use of multifamily housing project assets and income

This provision expands the Secretary's authority to deter the use of assets and income of multifamily housing projects in violation of the project's regulatory agreement or applicable regulations by enacting a double damages civil recovery statute. HUD's present civil remedy of recovering the amount of the project assets and income used in an insufficient deterrent.

Under this change this Secretary, at the Secretary's discretion, could apply recovered funds to the project accounts or to the applicable insurance fund or deposit them in the Treasury of the United States. At the present any recoveries go to the Treasury and not to help HUD minimize the actual damage caused.

The double damage approach is consistent with other enforcement statutes that provide multiple civil damages as well as criminal remedies.

Administrative improvements in single-family mortgage insurance programs

The Committee bill requires the Department of Housing and Urban Development to implement stricter internal standards and better information and statistic gathering and dissemination capabilities ****816 *61** in the administration of its single-family mortgage insurance programs.

The Committee has observed through a hearing in Milwaukee, Wisconsin; through a recent GAO report on Camden, New Jersey; and via HUD's own recent admission of problems and irregularities in the 2 previously-mentioned cities and in Chicago, Illinois; Houston, Texas; and Washington, D.C.; that there has been constantly recurring instances of fraud, false information, inaccurate documents, and inferior appraisals in HUD's single-family mortgage insurance programs.

The specific problems have occurred in the same of single-family properties. These properties are sold to investors who make little or no home repair improvement and then obtain FHA guarantees for unqualified home buyers. The buyers subsequently default on the property, while the financier collects their investment through the FHA guarantee. HUD must then dispose of the property, and the cycle repeats itself. The consequences of such inefficient oversight are adverse for the home buyer, the stability and fabric of the neighborhood, the city and the taxpayers who fund these programs.

The provisions in the Committee bill charge HUD to obtain better information in order to evaluate and carry out its single-family mortgage insurance programs. Such information should include, but not be limited to an individual buyer's income, assets, indebtedness, employment and credit history. This information should also include specific repairs and improvements made to improve the condition of the dwellings. HUD must then compile this and all other pertinent information into a viable bank of statistics which can be used to predict and determine future trends relating to single-family mortgage foreclosures. The Committee believes that this information and its immediate abailability and dissemination will allow HUD management and other concerned individuals to prevent foreclosures or take other appropriate actions.

Additionally, the bill requires the Department of Housing and Urban Development to use only FHA-employed fee appraisers in order to exert better control and oversight, presently not exhibited, in the singel-family mortgage insurance program. The bill also directs HUD's fee appraisers to implement a higher standard of appraisal taking into account the type of dwellings in low and moderate income neighborhoods under consideration. Such standards must take into account inflated values, faulty repairs, and limited equity investment.

Finally, the Committee bill directs HUD to advertise and publicize available single-family homes in such a manner as to attract a more diverse bidding audience. This is to be done by providing information on single-family homes on a priority basis to public housing agencies and community advocacy groups located near the available properties.

Refinancing mortgage insurance for hospitals, nursing homes, intermediate care facilities and board and care homes

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Committee bill includes a provision that continues federal mortgage insurance available for refinancing hospitals and expands this authority to nursing homes, intermediate care facilities and board and care homes. To be eligible for mortgage insurance ****817 *62** when refinancing, a facility must meet whatever approval is required by a state in terms of need.

Mortgage insurance for nursing homes, intermediate care facilities and board and care homes

This provision expands the mortgage insurance program to include public nursing homes. Any facility that meets whatever approval is required by a state in establishing need is eligible for insurance under this section.

Requirements of State approval for mortgage insurance for hospitals

The provision eliminates the present requirement in law that required a needs certification to obtain mortgage insurance for hospitals, with a provision that a facility meet whatever approval is required by a State.

Home equity conversion insurance demonstration program under FHA

After debating the issue of a home equity conversion demonstration program for the elderly under FHA in both the Subcommittee and Full Committee markup, the Committee rejected the proposal.

The Committee concludes that before moving further into the unknown consequences of such a program the results of the study of home equity conversion, mandated in 1983 by Public Law 98–181 should be thoroughly reviewed. HUD has been conducting this study for some time and it is due to be released shortly.

In general, the most serious concern expressed by the Committee is whether or not the Federal Government should be involved with this type of mortgage through the FHA Insurance Fund and whether or not home equity conversion is in the best interest of the elderly. According to several examples of home equity mortgage programs, the elderly borrower can, depending on the term of the contract, end up using more of the equity in their home to pay the interest owed under the agreement than they receive per month as additional income over the life of their contract. For example, a very low income homeowner, 65 years of age has $37,000 in equity, to pledge for a home equity mortgage. If the term is for 5 years at 12 percent interest the homeowner could receive $403 per month. But at the end of only 5 years when the homeowner is 70 the mortgage must be paid off, generally through the sale of the home. At that time the interest on this particular mortgage would be $9,120. Thus, the homeowner would receive $24,180 of his or his equity back in 5 years, the remainder would be owed in interest. The homeowners would also have to locate other shelter since it is assumed the home would be sold to pay off the debt. But looking at this same example, with payments over 15 years, the homeowner would receive a great deal less of his or her equity back. A homeowner with $37,000 in equity for 15 years at 12 percent interest would receive $66 per month. At the end of the term he or she would have received a total of $11,879 and would owe almost two-thirds of their equity or $21,420 in interest.

Another serious consideration is how means tested benefits presently received by many low income homeowners would be treated if homeowners entered into such a mortgage. Federal benefits could ****818 *63** be reduced or perhaps eliminated by taking into account the income received from the reverse mortgage, in which case, the elderly could then turn out to be no better off then before. They may even end up in a worse financial situation since their home would have to be sold at the end of the mortgage term to pay off the home equity loan.

The private market already provides for home equity conversion. The American Homestead Mortgage Corporation has originated $25 million in reverse annuity mortgages in one year so the elderly do have access to freeing up the equity in their homes, making the need for an FHA insurance program questionable.

The Committee feels that this issue must be thoroughly and carefully reviewed before the appropriate role of the Federal Government is determined. The Committee does not want to make it easier for investors to tap into the equity of elderly homeowners without being sure that the elderly homeowner truly benefits from such a financial undertaking.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Multifamily Coinsurance

The Committee is also concerned that HUD is not accurately carrying out the intent of the provision included in P.L. 98–181 that removed the 20 percent limitation on the volume of multifamily co-insurance that could be approved by HUD. The provision was included in the 1983 bill in order to remove a potential restriction that might inhibit efforts to build coinsurance volume and not to move the multifamily insurance program totally in the direction of coinsurance. It is particularly important for HUD to retain its ability to process full insurance for the multifamily programs, because small lenders do not have the capacity to undertake coinsurance projects and these lenders are responsible for providing much of the smaller scale multifamily housing, particularly in rural areas.

The Committee also is aware that there is currently a backlog at HUD in processing applications by lenders to be approved for coinsurance. If HUD moves its efforts totally to coinsurance, those lenders that are already approved will, in effect, be able to monopolize the multifamily development market, because lenders lacking coinsurance approval could not in such an instance rely on the full insurance multifamily programs.

The Committee expects HUD to maintain its operations and staff as necessary to provide administrative support for the full insurance multifamily programs and the Committee intends to monitor HUD to ensure that adequate staff levels are maintained to administer those programs.

VOLUNTARY CONSTRUCTION STANDARDS FOR MODULAR HOMES

The Committee has become aware that the growth of the factory built or industrialized housing industry is being retarded because of the imposition of conflicting State or local building code requirements. A multiplicity of construction code requirements and administrative procedures require significant expenditure of time and money by manufacturers in order to satisfy differences among jurisdictions. These costs are passed along to the homebuyer and are counterproductive to the primary goal of the factory-built housing ****819 *64** manufacturer—to efficiently produce shelter units particularly for the first-time homebuyer.

The Committee bill directs HUD, within 6 months of enactment, to prepare a report to Congress which describes several feasible alternatives for implementing a voluntary, pre-emptive national code for modular housing. Modular housing means any factory-built single-family housing which is not subject to the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974. It could include panelized homes, prefabricated homes, modular homes and any other type of single-family housing which is constructed substantially within a factory. Once the national system is in place, single-family factory-built homes that meet the construction standard recommended by HUD and that are certified as meeting that standard, would be exempt from State and local construction requirements. To the extent possible, given the provision that the federal standard must include construction, design and performance requirements that ensure quality, durability and safety and must include life-cycle cost-effective energy standards designed to ensure the lowest total construction and operating costs over the life of the building, it is expected that HUD would recommend the adoption of a generally accepted model code that is already in existence. Of particular interest to the Committee are HUD's recommendations for establishing a system for inspecting the structures in order to ensure compliance with the recommended codes; it is expected that HUD's experience in implementing the National Manufactured Housing Construction and Safety Standards Act of 1974 will be useful in this regard and could be the basis for recommended improvements.

Any inspection system should assure that conflict of interests are avoided and that manufacturers cannot influence the independence of the design review or inspection agency. It is expected that HUD will consult with the National Institute of Building Sciences, the National Conference of States on Building Codes and Standards, models and local code officials, as well as manufacturers and consumer representatives in developing the report to Congress.

PART 2—FLOOD AND CRIME INSURANCE PROGRAMS

Flood insurance

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Committee bill provides for a one year entension of the Federal Flood Insurance Program through September 30, 1986. In extending the regular and the emergency Flood Insurance Program, the Committee reaffirms its strong support for the structure of the program enacted by the Congress in 1968 and revised again in 1973 that provides essential flood insurance coverage for 2 million policy holders with a total insurance coverage of $132 billion. It is estimated that by the end of Fiscal Year 1986, the total number of flood insurance policies in force would be at a level of 2,356,000 with a total insurance coverage of $164 billion. The Flood Insurance Program provides essential coverage for homeowners and businesses that is unavailable on the private market. The affordable rates charged by the Federal Flood Insurance Program and the required areawide flood plain management responsibility of the ****820 *65** program are important elements of a rational development of housing patterns in our nation.

The Committee bill provides an authorization of $36,902,000 for the purpose of continuing flood elevation studies and surveys. This authorization level would provide for the initiation of 87 detailed flood insurance studies; the initiation of 14 detailed flood insurance restudies; the initiation of 39 limited detail on existing data flood insurance studies; the completion of 403 flood insurance studies (through review and processing); the evaluation of 200 official appeals and 1,100 requests for letters of map revision/amendment of flood hazard boundary maps and flood insurance rate maps; the establishment of eligibility of 100 communities to participate in the emergency phase of the National Flood Insurance Program, and 1,553 communities to participate in the regular phase, as well as the continued provision of technical assistance to officials at all levels of government and property owners; and the continuation of printing, distribution and storage of completed flood study data.

By the end of Fiscal Year 1986, 9,574 communities will have had their flood elevation studies completed. The Congress directed FEMA in the Housing and Urban Rural-Recovery Act of 1983 to complete the initial flood mapping studies in a timely manner. FEMA has provided a plan to the Congress for providing full program status to all participating communities in an expeditious and resource-efficient manner. In its report to the Congress, FEMA believes that it can complete all the remaining flood studies by 1991.

The flood hazard program is an essential component to promote sound flood plain management practices through increased community assistance, and to monitor and enforce community compliance with minimum standards for flood plain management. At the present, over 17,000 flood prone communities are participating in the National Flood Insurance Program. The Committee believes that this authorization of $36,902,000 is essential to the continuation of this effort.

The Committee again expresses its reservations, as we did in the 1983 Committee Report, about discussion emanating from OMB and FEMA over the possibility of turning the Federal Flood Insurance Program over to private industry. The President's budget states, 'The administration proposes to continue the phaseout of this costly subsidy by 1988 through a combination of rate increases, coverage changes, and optional deductibles, thereby recovering clearly allocable costs of flood insurance from beneficiaries of this program.' As we have done so with other Administration efforts to propose user fees, the Committee has rejected the approach outlined in the Administration's budget regarding the Flood Insurance Program submitted earlier this year. The genesis of the Flood Insurance Program arose from the simple fact that no flood insurance was available prior to 1968 that was actuarial, sound, and affordable for the homeowning public. The Committee has seen no development since that time to justify the Administration's statements that flood insurance can be provided at affordable rates for homeowners by private sector initiatives. No evidence is presented to the Committee other than the Administration's philosophical belief that the private sector can run everything in an efficient and affordable manner, even flood insurance. If the Administration's ****821 *66** proposals are approved by the Congress, homeowners living in flood prone communities will find that their expected flood insurance coverage no longer exists. Again, the Committee believes that the Administration, under the guise of budgetary exigency is proposing to terminate flood insurance over a two-year period for some 2,356,000 property owners.

As part of the Committee's effort to disuade the Administration's efforts to end the Flood Insurance Program, the Committee bill would prohibit flood insurance premiums from being increased through Fiscal Year 1986. The Committee expects to monitor closely the efforts that FEMA might propose to take to carry out the administration's mission to end the Federal Flood Insurance Program.

The Committee bill contains a provision assisting the City of Winfield, Kansas, in obtaining early relief from restrictive flood plain regulations. As part of its participation in the Federal Flood Insurance Program, Winfield, Kansas, agreed to proceed

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

with plans to improve the City's levee system to provide protection from the 100-year frequency flood. Under existing law, any community that has made adequate progress in constructing a flood protection system acceptable to FEMA affording the necessary protection from the 100-year frequency flood can be eligible for flood insurance at the subsidized premiums, as if the flood protection system is already in place. Since the construction of the flood protection facilities in Winfield is being financed locally through a one-half percent sales tax and does not involve any Federal funding, FEMA is not permitted under existing law to make an early revision of the City's flood plain map as they could do if Federal funds were involved. All necessary improvements to the levee system will be completed by April 1986, thereby setting the stage for FEMA to revise the City's flood insurance rate map in accordance with the new levee system.

The Committee believes it would be unfair to the Winfield community to deny them the flood insurance protection through a quirk in the law that permits FEMA to provide flood insurance coverage to a community that has not completed its flood mitigation system because it is locally financed.

Crime insurance

The Federal Crime Insurance Program, which was enacted in 1970, was created for the same reason as the Federal Flood Insurance Program: because of heavy losses, those insured most subject to risk would be unable to afford insurance coverage without a Federal subsidy. Premiums based on actual loss experience would be prohibitively expensive for those in high-crime areas.

The program, by its nature, was never intended to be self-sustaining. The $150 million in Federal losses from crime insurance are comparable to the far higher $1.5 billion in Federal Flood Insurance costs. The losses for both programs reflect the fact that neither flood insurance nor crime insurance is true insurance. Both are responses to the unaffordability of these essential insurance coverage inhigh risk areas.

More than 60,000 small businesses and residents, concentrated in heavily populated, crime-prone urban areas, rely entirely on the ****822 *67** Federal Crime Insurance Program. Its elimination would be particularly counter-productive in those urban areas where attempts at revitalization by various Federal and local efforts and programs are taking place.

Although there are some States currently participating in the Federal program with relatively few insureds and low levels of losses, in States with high-crime losses, there is no way for the States to provide the necessary subsidy. In high-crime areas of States, many small businesses will not survive without the Federal program. The arguments have been put forth that the Federal Crime Insurance Program benefits only a very few large urban States, that over 60 percent of the policies are in New York State, and that it is unfair to the taxpayers of the other States to subsidize crime insurance coverage in New York State. Over 60 percent of the Federal Flood Insurance Program policies are located in the States of Florida, Texas, and Louisiana. The argument has never been made with regard to the Flood Insurance Program how unfair it is for taxpayers of other State to subsidize flood insurance policies in these three States.

The subsidy under the Federal Crime Insurance Program is a mirror image of the subsidy under the Federal Flood Insurance Program. In the case of crime insurance, non-urban taxpayers subsidize crime insurance losses in urban areas; under the Federal Flood Insurance Program, urban taxpayers subsidize flood insurance losses in other areas of the country. The Committee believes that the Federal Crime Insurance Program is more in the nature of a crime victim's assistance program and should be attractive to many proponents, especially within the Administration, who proclaim the need for providing assistance to victims of crime. It is unfortunate that when it comes to providing assistance for victims of crime, the Administration responds by requesting, as it has done since 1981, the termination of this crime insurance program which costs less than $10 million. The Federal Crime Insurance Program has benefitted many small businesses in inner-city areas who continue to provide the necessary business and commerce in inner-city areas. The Committee continues to believe that crime insurance is a necessary component of retaining small businesses in our inner-city areas.

In an effort to terminate this program, FEMA has been notifying policy holders that as of October 1, 1985, the Crime Insurance Program will no longer be available. The Committee directs FEMA to discontinue this high-handed effort to kill the program on its own and leave the decision up to the Congress. As long as crime insurance remains available, this Agency is an agent to carry out the statute which it has been entrusted to administer. In addition, the Committee believes that actions taken to discourage the marketing and the further participation in the Crime Insurance Program are high-handed efforts to

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

force the termination of this insurance program. This is an active and on-going insurance program and unless the Congress terminates it, it is the duty of FEMA to provide all the necessary services and marketing efforts to make this program more available and workable.

****823 *68** PART 3—SECONDARY MORTGAGE MARKET PROGRAMS

GNMA Mortgage-Backed Securities Program

The Committee bill limits the authority of GNMA to enter into commitments to issue guarantees under the Mortgage-Backed Securities Program to $68.25 billion in fiscal year 1986.

Prohibition of certain fees

The Committee bill includes a provision that prohibits any user fee or charge to be assessed or collected by the Federal Government on debt and mortgage-backed securities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and on the fee that the Government National Mortgage Association can charge under its single family mortgage-backed securities program, unless such fee or charge is not more than the applicable percentage amount in effect on June 1, 1985.

This issue of user fees was discussed in depth in a number of the hearings held this year and the Committee concluded that the proposals advanced by the Administration were nothing more than a back-door tax on homeownership.

The fee proposals stemed from views expressed in the Grace Commission Report and were designed to basically neutralize the agency status of FNMA and FHLMC, and are not in any way related to the costs and underwriting risks of these agencies. The Committee strongly rejects the views expressed in the Grace Commission. The Committee has no interest in seeing FNMA or FHLMC privatized and any changes in the charter acts of these two agencies is the sole responsibility of Congress and its two Banking Committees.

The increased fees proposed by the Administration would be passed on both directly and indirectly to borrowers and would make mortgages more costly to low and moderate income homebuyers, making it more difficult for families to obtain shelter at prices they can afford.

The increase proposed for the GNMA fee from the present 6 basis points to as high as 15 basis points was soundly rejected. This increase is not needed to make the program actuarially sound or self-sustaining as the GNMA mortgage-backed securities program for single family mortgages has a more than adequate reserve and has had very little problem with defaults. This proposed increase was simply a way of raising additional funds for the Treasury.

The programs provided by FNMA, FHLMC and GNMA have a proven track record of meeting the purpose for which they were designed and that is to foster homeownership opportunities by making mortgage credit more affordable for the average income homebuyer. The Committee believes that any additional fees proposed for any of these entities is nothing more than an end run on the government's efforts to help the American dream of homeownership become a reality.

Federal Home Loan Mortgage Corporation

Last year the Federal Home Loan Mortgage Corporation transferred 15 million shares of participating preferred stock to the 12 Federal Home Loan Banks which in turn distributed the stock to ****824 *69** member savings institutions. At that time Edwin Gray, Chairman of the Federal Home Loan Bank, stated that this change would not alter the fundamental character of Freddie Mac to limit or effect the access of any customer such as mortgage bankers, commercial bankers and other HUD-approved mortgages, to Freddie Mac services.

The Committee is in strong agreement with this statement of Chairman Gray and supports continued access to Freddie Mac by all types of lenders. This broad access is needed to provide adequate supplies of mortgage credit nation wide.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

At the time of the stock transfer, the Committee supported the action because of Freddie Mac's assurances that it would continue to offer equal access to its products and services by all eligible seller/service and the Committee assumes that this access will continue.

PART 4—REGULATORY AND OTHER PROGRAMS

Solar Energy and Energy Conservation Bank

The Committee bill provides an authorization of $15 million in FY 1986 for the Solar Energy and Energy Conservation Bank (The Bank). These funds are to remain available until expended by consumers installing solar energy or energy conserving measures.

The past 4 years have witnessed a struggle between the Administration that has tried to eliminate the Solar Bank program and to conclude energy conservation, solar development, demonstrations, and commercialization programs initiated earlier and the Congress that has insisted that the Bank's programs continue to deal with the nation's immediate and long-term energy needs by providing loan subsidies and matching grants to low- and moderate-income individuals and nonprofit owners to purchase energy conservation and solar energy improvements for residential, commercial and agricultural buildings.

Testimony received during hearings on energy conserving requirements and policies affecting housing which is insured or subsidized by the Department of Housing and Urban Development and the Farmers Home Administration held by the Subcommittee on Housing and Community Development on March 22, 1984, overwhelmingly support one of the broader purposes of the Solar Bank which is to increase the Federal energy conservation efforts as they affect single and multifamily housing. Thus it is the clear intent of the Committee that the Solar Energy and Energy Conservation Bank continue in order to help the country achieve greater energy independence and to assist families, particularly low-and Moderate-income families, to substantially lower their housing costs by reducing the consumption of energy needed to heat and cool their homes.

Counseling

In authorizing $4,000,000 for HUD's Housing counseling Program, the Committee reaffirms its belief in the value and success of a program which provides funds for public or private organizations (with competence, knowledge and experience in housing counseling and Departmental programs) to provide relevant housing information, ****825 *70** advice and technical assistance (including but not limited to budget, debt management, purchasing a home, property maintenance, and other matters as may be appropriate to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership) to homebuyers, homeowners and tenants under HUD programs.

Home mortgage disclosure

The Committee bill makes several changes to the Home Mortgage Disclosure Act. The first extends the disclosure law on a permanent basis. Based on the hearings held on HMDA the Committee believes that it has been a very effective instrument in generating private sector mortgage investment in the nation's older urban neighborhoods and should not have to be reauthorized every few years. One survey found that over $2 billion in new investment had occurred or was committed as a result of HMDA. The call to sunset HMDA in order to assure adequate oversight and review of the program was rejected by the Committee because such review of HMDA can be provided adequately through the legislative hearing and oversight process.

Another provision extends the Home Mortgage Disclosure Act to mortgage banking subsidiaries of a bank holding company or savings and loan holding company. This expansion was included to insure that as much disclosure as possible is made in terms of where private mortgage investment is going in a particular community.

A study of HMDA is also mandated to be conducted by the Federal Financial Institutions Examination Council in order to

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

assess the cost to institutions who comply with HMDA, to estimate the usage of the data, and to determine any obstacles to the usage of the data by the public and how these obstacles may be eliminated. In estimating the use of the data, the Committee urges the Council to take into consideration not only requests for raw data but also how this raw data is then utilized and disseminated in communities. The Council must submit the report within 36 months following the date of enactment.

Research authorization

The Committee authorizes $17,000,000 for HUD research and demonstration activities for fiscal year 1986. The Committee directs the Secretary of Housing and Urban Development to continue to undertake programs of research, studies, testing, and demonstration to develop more efficient, effective, and equitable ways to assist low-income households in securing decent, safe and sanitary housing.

Timely payment of subcontractors

The Committee believes that it is imperative for subcontractors, suppliers and individuals providing labor and materials to prime construction contractors of the Department of Housing and Urban Development to be paid for their services in a timely manner. The Committee expects that unless the required payment date is stipulated in the contract, 'prompt payment' means paying most proper invoices within 30 days of receipt or acceptance of the goods ****826 *71** or services, whichever is later. This definition is consistent with government payment guidelines established under the Prompt Payment Act 1982.

The Committee further expects that in evaluating proposals for Federally-assisted projects, the Department of Housing and Urban Development will consider the past performance and future ability of prime contractors to meet the payment goals established by this section. Thus, it is the clear intent of the Committee that the Department of Housing and Urban Development take affirmative action to assure that subcontractors and suppliers are paid in a timely manner.

Median area income

The Committee has adopted a provision requiring the HUD Secretary and, as appropriate for rural housing program purposes, the Secretary of Agriculture in calculating the median income for areas other than metropolitan statistical areas to use the higher of the median income of the county in which the area is located or the median income of all nonmetropolitan areas of the State. This action is taken to make uniform the basis for establishing eligibility limits for federal housing and community development programs operated by HUD and FmHA. In the past, the operative limits applicable to an area depended on the particular federal assistance program. This resulted in several income eligibility being used in one area. As the States have pointed out to the Committee, this frequently confused intended beneficiaries of the several programs, as well as local and State agencies involved with housing and community development programs.

The Committee also intends that this provision furthers the objective of assuring that the establishment of eligibility limits be sufficiently flexible in order to assure that the intended beneficiaries of the several programs are served. The Committee directs both the Secretary of HUD and the Secretary of Agriculture to take into account the different levels of subsidy that are available under their several housing assistance programs by using the broadest interpretation of this provision when establishing income eligibility limits. The Committee is especially concerned that in areas of the nation that have large concentrations of very low income families, such as in many rural areas, the limits established based on 80 percent of median are often so low that families having incomes above this and who are as much in need of assistance as those with income below this are not denied assistance. Several instances of this have been brought to the attention of the Committee in connection with the FmHA Sec. 502 program which is a major low income housing resource in rural parts of the nation.

Manufactured housing construction and safety standards

The bill requires that the Secretary of Housing and Urban Development shall prepare and submit to the Congress not later than the expiration of the 6-month period following the date of the enactment of this Act, a detailed report describing the fees collected by the Secretary during the 4-year period preceding the date of the enactment of this Act in connection with

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

inspection of manufactured homes under Sec. 614 of the National Manufactured Housing ****827 *72** Construction and Safety Standards Act of 1974. Such report shall include but not be restricted to the amount of such fees collected, the allocation of expenses, the costs of the program, and any available reserves.

The Committee is very concerned about recent allegations of fraud in the sale of manufactured homes based on invoice padding which increases the consumer's cost without providing additional quality or amenities. The Department of Housing and Urban Development should work closely with the Veterans Administration to assure that the regulations and contracts governing the FHA-insured Title I and Title II loan programs are consistent with the requirements of the Veterans Administration and where necessary, both agencies should modify those requirements to improve the protection consumers deserve.

Removal of maximum fee for interstate land sales registrations

To provide HUD with a more effective way to administer the laws governing land sales registration which protect subdivision lot purchasers by requiring full disclosure and prohibiting fraudulent practices by land developers and their promoters by mail or any other means in interstate commerce, the Committee has removed the maximum fee of $1,000 for interstate land registration. The Secretary may instead charge a reasonable fee based on the cost of rendering services to the developer under this title.

Preventing fraud and abuse in the Department of Housing and Urban Development programs

It is the Committee's intent that as a condition of initial or continuing eligibility for participation in any Department of Housing and Urban Development program involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, and to ensure that the level of benefits under each program is proper, the Secretary may require that an applicant or participant (including members of an applicant's or participant's household) disclose his or her Social Security number or employer identification number to the Secretary.

The Committee provides that the Secretary, or the public housing agency or owner responsible for determining eligibility, or level of benefits, may require the applicant or participant (including members of an applicant's or participant's household) to sign a consent form approved by the Secretary to verify the information furnished by the applicant. The Committee intends that any Federal, State, or local agency or private person or entity release information related to the determination of eligibility and benefit level. The information may include, but is not limited to, data concerning wages, unemployment compensation, and veterans' benefits. All individually identifiable information received by the Secretary under this section shall be subject to the requirements of the Administrative Procedures Act.

In order to guard against errors and abuse in the verification process, the Committee provides applicants and participants the right to obtain, examine and correct information before HUD, a public housing agency, or an owner acts on the basis of that information. Under this provision, HUD, the PHA or the owner will ****828 *73** have to inform the applicant or participant of the proposed action, allow him or her to examine the information and to present information which shows the original information to be inaccurate. Furthermore, the applicant or participant shall also have the right to file a statement disrupting or augmenting any such information and to have the statement included in any information records.

Fair Housing Initiatives Program

Recent evidence indicates that housing discrimination remains a virulent but increasingly sophisticated feature of American housing markets. The elimination of discrimination requires strengthening and coordinating all fair housing enforcement and compliance agencies—public and private. The $10 million Fair Housing Initiatives Program (FHIP) authorized by this bill is designed to provide the resources and flexibility needed to assist in the elimination of all forms of discrimination by funding a variety of public and private, grass-roots organizations.

HUD proposes to fund three subcomponents of FHIP. The Administrative Enforcement Initiative will provide $3 million in funding to State and local fair housing enforcement agencies which administer fair housing laws substantially equivalent to

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Federal law. This replaces competitive funding currently provided under the existing Fair Housing Assistance Program (FHAP). The Education and Outreach Initiative will provide $3 million in funding to public and private entities to conduct education or outreach programs to the general public and to housing industry groups. This is a continuation and expansion of education and outreach support currently provided on a limited basis through the Community Housing Resource Boards Program. The Private Enforcement Initiative will provide $4 million in funding to nonprofit organizations or other private entities to conduct a variety of activities, including investigations and testing, in support of fair housing enforcement through appropriate judicial or administrative proceedings.

The bill requires HUD, 30 days prior to entering into any grant, contract or cooperative agreement, to inform the House and Senate Banking Committees of such grants, contracts, or agreements and to provide quarterly summaries of the activities funded by this section, as well as a description of the geographical distribution of those grants, contracts or agreements. In addition, the Secretary is required to issue regulations governing applications for the program which should include a description of activities to be undertaken, the experience of the applicant in fair housing activities, available information regarding the existence of discriminatory housing practices in the applicant's service area, an estimate of other available public or private resources, a description of procedures to be used by the applicant in monitoring and evaluating the results of the proposed activity, and any additional information required by the Secretary. These regulations could not be effective prior to the expiration of 90 calendar days from the date those regulations are submitted to the House and Senate Banking Committees.

The role of private fair housing groups of 'testers' in pursuing the enforcement of fair housing rights by private action under the Fair Housing Act has been recognized by the Supreme Court in the ****829 *74** *Gladstone Realtors* and *Havens* decisions and is endorsed by this Committee. In the *Havens* case, the Court held that testers, in their capacity as such, had a right to sue under the Fair Housing Act for damages if housing had been represented to them to be unavailable when, in fact, it was available. More fundamentally, Congress has never assigned fair housing investigation and enforcement responsibilities exclusively, or even primarily, to governmental agencies. A prime source of civil rights progress in this nation has been, not government initiative, but the activie pursuit of Constitutional and statutory rights through the judicial process—by private plaintiffs. That expectation has been built into the Fair Housing Act itself by Congress by conscious design. The United States Supreme Court has said:

> Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits in which . . . the complainants act not only on their own behalf, but also as private attorneys general in vindicating a policy that Congress considered to be of the highest priority. *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 211[1] (1972).

The Private Enforcement Initiative component of the FHIP proposal will assist 'private attorneys general' in realizing the role assigned to them by Congress under the Act. It does not authorize private groups to institute private courts or other private tribunals; it will assist them only in the utilization judicial or administrative proceedings.

'Testing' is a means of gathering evidence of differential treatment of minority and nonminority homeseekers. 'Testing' is only as good as courts and juries find it. Like any other evidence, it is the courts that must determine the probative value of the evidence presented to them. Therefore, it is the success or failure rate in the courts that will dictate the evolution of standards and adherence to them.

Nevertheless, as one fair housing lawyer stated at the HUD Conference on Fair Housing Testing last December:

> Auditing and testing techniques, like the way people discriminate in housing and lending, are ever changing. Real estate people, lending institutions and others in the industry who choose to discriminate are becoming more sophisticated in the way they discriminate. Therefore, auditors who test and audit real estate and lending practices must be prepared to alter their methods and techniques to meet new ways of discriminating.

That is why any attempt to prescribe set 'standards' must avoid putting a straitjacket on further development.

In granting funding for proposed testing projects under FHIP, HUD will utilize years of successful experience, based on court rulings in cases brought by public, as well as private, plaintiffs and on State and local agency administrative findings, in the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

design, monitoring, and assessment of testing activities by private agencies. (In ****830 *75** recent years, the Civil Rights Division of the Justice Department has based several Fair Housing Act 'pattern and practice' complaints on testing by private fair housing groups.) Under the Private Enforcement Initiative, fundings will be awarded on a competitive basis, only for testing proposals clearly designed to produce evidence sufficiently probative to sustain a judicial verdict of discrimination.

Lead-based paint poisoning prevention

The bill amends the definition in Section 302 of the Lead-Based Paint Poisoning Prevention Act to include intact lead-based paint on the interior and exterior surfaces of applicable buildings. The change makes the definition of 'immediate hazard' consistent with the decision of the appeals court in *Ashton* v. *Pierce*. Clarification of the definition should make clear that the approach proposed in HUD's Advanced Notice of Proposed Rulemaking, to change from a housing approach for lead paint identification to a health approach, is unacceptable. The HUD-suggested health approach would require the identification of a high lead level in a child's blood prior to removal of the lead-based paint, thereby establishing injury to a child as the indicator of the existence of the hazard. HUD's proposed approach ignores the purpose of the statute—to prevent lead-based paint poisoning—and is unacceptable to the Committee.

The Secretary is directed to make periodic inspections of housing constructed during and after 1950 to determine whether such housing presents hazards of lead-based paint, and to apply the procedures established under this section if such immediate hazards are determined to exist. The Secretary is further directed to take any necessary action to ensure compliance with establish procedures by all public housing agencies. With the direction, HUD is required to take action to implement established procedures for lead-based paint removal which, at present, are not being adequately enforced.

COMMUNITY AND NEIGHBORHOOD DEVELOPMENT AND CONSERVATION PROGRAMS

Authorization for the CDBG and UDAG Programs

In order to comply with the assumptions included in the conference report on the First Concurrent Budget Resolution for Fiscal Year 1986, the Committee has reduced the budget authority in Fiscal Year 1986 for the CDBG Program to $2.980 billion and for the UDAG Program to $352 million. In addition, the authority to issue loan guarantees under the Section 108 loan guarantee program has been suspended for Fiscal Year 1986.

Metropolitan city classification

Cities classified as metropolitan cities under existing law for the purposes of being eligible for assistance under the Community Development Block Grant program have suffered considerable uncertainty as to their eligibility status because of changes in the method of definition approved by the Office of Management and Budget and, in a significant number of instances, because of fluctuations in population in the years between the decennial censuses. ****831 *76** Central cities of metropolitan areas and other cities in a metropolitan area having populations close to 50,000 were subject to losing their entitlement status due to these factors. Therefore, the Committee provided that cities classified as central cities of metropolitan areas shall retain such classification for CDBG purposes until data obtained after the next decennial census indicates that they no longer qualify.

This provision also establishes a mechanism to provide stability for those CDBG entitlement communities with populations marginally above 50,000 who may be threatened with falling, or who may fall, below 50,000 population in a decennial census or in one of the biennial updates. Since 1977, the Congress has provided relief to cities who either temporarily or otherwise have fallen below 50,000 in one of the census counts, through repeated short-term eligibility extensions.

The Committee bill would continue the entitlement eligibility of any city until two successive decennial censuses after the 1970 decennial census showed a population of less than 50,000 and thus would permit marginally eligible cities to conduct long-range planning and projects and to undertake activities in an efficient progression by eliminating the threat of an abrupt suspension of entitlement eligibility. Those cities which actually drop below 50,000 in one census count and regain 50,000 population in a few years in another census count, as a substantial proportion already have, would avoid a disruptive break in

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

their community development programs, while other cities would have adequate time to adjust to nonentitlement status. This provision in the Committee bill applies to cities that fall below 50,000 population in the 1980 decennial census as well as to cities that fall below 50,000 population subsequently.

Statement of activities and review

The Committee has acted to delete a requirement under the statement of activities and review provisions of the CDBG program that called for a description of the use of funds and an assessment of their use in relation to stated community development objectives and to the certifications regarding the projected use of funds. This requirement has been found to be unnecessary since CDBG recipients are required to provide such descriptions and assessments regarding the use of funds in their annual report to the Secretary.

Housing assistance plans

The Committee has added a requirement to the Housing Assistance Plan which CDBG recipients must formulate to take into account the homeless when surveying the condition of the housing stock and assessing the housing needs of residents of the community. It is also concerned that the Secretary is failing to give adequate consideration to the role that Congress intended that the HAP should have in the CDBG program and has failed to employ a housing specialist in the central office CDBG program for 2 years. The Committee, therefore directs the Secretary to immediately employ a qualified housing specialist to handle the HAP program and not further thwart the intent of the Congress.

****832 *77** *Limited use of new construction*

The Committee has acted to open up the CDBG program in a limited way to permit as an eligible activity new construction or substantial rehabilitation of dwellings owned and occupied by low and moderate income families which are determined by the grantee to be unsuitable for rehabilitation. This action should not be construed as a precedent toward opening up this program generally for housing construction. The purpose in adopting this provision is specifically to enable local CDBG funded neighborhood rehabilitation programs to be comprehensive. The Committee is aware that in these programs a few properties may be found to be clearly unsuitable for rehabilitation. Where such properties are owned and occupied by low and moderate income families, the Committee believes that CDBG funds may be used to either substantially rehabilitate or construct dwelling units to be occupied by such families. In this way neighborhood rehabilitation projects can be undertaken without either causing such low and moderate income families to be displaced or leaving their dwellings unrepaired.

Public service activities

The Committee has included a provision permitting on a case by case basis local governments to use more than the general limit of 15 percent of their CDBG funds for public services activities. In no instance, however, will the amount of CDBG funds used for such purposes by the community be more than the higher of the amount or percentage used in fiscal year 1982 or 1983 or an amount higher than 15 percent but not higher than the amount or percentage of CDBG funds used in either fiscal year 1982 or 1983 by another local government in the same metropolitan area for public service activities. This provision requires local governments to determine that the public service activities involved be necessary to support community development activities as proposed in a CDBG program and the local government desiring to use such higher amounts or percentages must submit a written request to the Secretary.

Secretary's discretionary fund

The Committee has included a provision that would set aside $5 million from the Secretary's Discretionary Fund for the construction of public improvements in the Park Central New Community project or in the area immediately adjacent to the project. This amount is needed to facilitate the orderly termination of the project. The Congress terminated the funding sources originally designed to support new communities assisted by the Federal Government under the defunct New Communities program. It was not anticipated that further funding was required in order to facilitate the orderly termination of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

the program. Congress intended that such terminations be undertaken in a manner that fairly protected the interest of the local governments affected by the new community, the residents of the new community as well as the developer. As this project is a new-town-in-town project and the funds required are pursuant to the project agreement, the Committee believes that the set-aside it has provided will assist in meeting the intent of the Congress to orderly and expenditiously close out this project.

****833 *78** *Urban development action grants*

The bill makes several major changes to the Urban Development Action Grant Program in order to perfect this important community development aid and to ensure fairness in the allocation, distribution and use of its funds. These measures were adopted by the Committee in recognition of the contribution that this program has made in assisting local governments to revitalize their neighborhoods through the maximum participation of the private sector. The demand for UDAG assistance is enormous, far exceeding the funds available. This demand has grown substantially in the past five years, especially in locations hardest hit by the unevenness of the economic recovery. Prior to December 1983, the amounts available to fund qualified applications were sufficient to fund all of the applications that were submitted by applicants that met the threshold criteria for eligibility. There was no need to use the UDAG project selection criteria. After that date, the applications from UDAG eligible communities required funds far in excess of those available and the Department began to use for the first time the project selection criteria to cull the applicants through the competition process. Based on the existing law, HUD designed a 100-point system of which 40 points were for impaction (pre-1940 housing, poverty and population growth lag); 30 points for distress (mainly per capita income and unemployment); and 30 points for project merit (leverage ratios of UDAG funds, job creation and other project related factors). As a result of using these criteria the distribution of UDAG funding shifted dramatically from the pre-1984 patterns. The weight given to impaction and distress (70 out of 100 points) skewed the distribution without much regard to the relative merit of a UDAG project. It also led to funding several projects in some cities and none in others that had more meritorious projects while discriminating against projects that were designed primarily for housing.

The Committee devoted more than six months of effort in working with Committee members and other organizations, including public interest groups and representatives from the private sector, to develop a compromise position for changes in UDAG that would fairly balance the competing interests of these parties. The objective was to strike a balance among these interests so that the purposes of the UDAG program were maintained as Congress intended and at the same time distressed communities in all regions of the nation would have a fair chance of competing for UDAG funding. After considering several alternatives, the Committee adopted provisions in the bill designed to accomplish this objective.

Selection criteria

Project merit set aside: The major provision requires a set-aside of 40 percent of the UDAG funds to be made available for applications submitted by UDAG eligible communities scored only on the project merit criteria. This project merit competition shall be funded first. The Secretary then shall award the remaining funds to applications that have been scored according to the three criteria: impaction, distress and project merit.

****834 *79** Additional points to be awarded: The Committee also modified the project merit selection criteria to require that points be awarded to applicants that has not received a UDAG approval after December 21, 1983.

Housing UDAGs: In addition, the Committee provided that in evaluating UDAG applications that primarily involved housing activities, the Secretary should award point values for each of the project merit criteria by comparing these applications only with data from other housing applications rather than from all applications. After these applications are awarded their scores for project merit, they are then to be placed into competition for overall ranking according to their combined score, including the scores for impaction and distress criteria. This method is intended to give parity to housing applications but not an advantage over other UDAG applications.

Definition: The Committee has also clarified that an application shall be defined as a housing UDAG if it proposes to use not less than 51 percent of both UDAG and any other funds available for the project for dwelling units and related facilities and that either not less than 20 percent of all of the funds used for dwelling units and related facilities shall be used for dwelling units that will be occupied by low and moderate income persons or that not less than 20 percent of all dwelling units that are

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

made available for occupancy shall be occupied by low and moderate income persons, whichever results in providing more units to be occupied by low and moderate income persons.

Urban counties: The Committee also acted to give parity to urban counties in order to better able them to compete for UDAG grants along with other distressed local governments. It provides that, just as housing UDAG applications are awarded scores for project merit based on data from other housing applications, the scores awarded urban counties for each of the three project selection criteria will be based on data from other urban county applications. After scoring these applications in this manner, the Secretary will place the urban county applications in the overall ranking for all UDAG applications.

Annual competitions for UDAG funding: The Committee also acted to require three annual competitions for UDAG grant assistance for all applicants except small city applicants and three similar competitions for small city applicants. In establishing the amount of funds to be made available to be awarded in each competition, the Committee directs the Secretary to use approximately one-third of the amount of UDAG funds appropriated for the particular fiscal year, in addition to any amounts that may be available from recaptures and from amounts not awarded in previous competitions. Further, the Committee directs the Secretary to not deviate by more than five percent of the amount based on one-third of the appropriated funds in establishing the amounts to be available for each competition. It is the intent of the Congress that the Secretary of Housing and Urban Development commit equal amounts of Urban Development Action Grant funds in each funding competition. However, it is recognized that the amount of the requests will not equal the amount of the funds available, that there will be fluctuations in demand for funds from competition to ****835 *80** competition, and that worthwhile opportunities will exist from time to time to fund projects which would otherwise be lost due to short time constraints. For example, the Committee is aware of the fact the Chicago Theatre project was under a court order to be demolished if UDAG funding was not received by June 1, 1985.

Study and report: The Committee has included provisions requiring the Secretary to evaluate the UDAG eligibility standards and the selection criteria, including the economic and social data used in establishing these standards and criteria, in order to determine the extent to which they are current and accurate. In this respect, the Committee is concerned that the age of housing in particular be analyzed to determine how valid it is as a proxy for establishing the relative distress of local governments. This one factor was often pointed out to the Committee as being discriminatory against the West and Southwest regions of the nation. The study also shall include a report on the changes made to the UDAG program by this bill insofar as they impact on (a) the targeting of grant funds to cities and urban counties having the highest level or degree of economic distress; (b) the distribution of grant funds among regions of the United States; (c) the number and types of projects receiving grants; (d) the per capita funding levels for each distressed city, urban county, or identifiable community receiving assistance under this section.

Regulations: The Committee requires that regulation implementing these changes be published for comment not later than 60 days after the date of enactment of this Act. The Committee further directs the Secretary to make these amendments applicable to projects that have not received preliminary approval before the date that the final regulations issued pursuant to these amendments become effective. The amendments made by this Act are intended to apply to funds awarded for grants on or after the date on which the final regulations become effective. Awards from funds available prior to the effective date of the regulations are expected to continue to be made on the basis of the regulations in force at the time so as not to interrupt the awarding of UDAG assistance until regulations pursuant to these amendments are made effective.

Prohibitions on the use of UDAG

Existing law prohibits UDAG funds from being used for activities likely to facilitate the relocation of plants or facilities from one area to another unless it is determined not to significantly and adversely affect the unemployment or economic base of the area from which the relocation occurs. However, the Committee is aware of instances where UDAG funds have been used to facilitate the relocation of operations that have had a detrimental impact on the abandoned community. The result of a recent UDAG award to Wilmington, North Carolina, for example, was the loss of 500 jobs as well as substantial amount of equipment, all the productive capacity, and the product line of a manufacturing plant in St. Paul, Minnesota. The Committee believes that such use of UDAG funds is prohibited by current law and has acted to further clarify the Congressional intent to prohibit such an event from occurring in the future.

****836 *81** One of the primary purposes of the UDAG Program is to create new jobs and economic growth. UDAG projects

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

which assist the transfer of operations from one area to another, whether by direct relocation or by expansion, is clearly in contradiction to the fundamental purpose of this program. The Secretary shall review the Department's policies and procedures concerning Sec. 119(h), modify any policy or procedure which is not in concert with Congressional intent, and promulgate new regulations, policies and procedures to implement UDAG as the Congress intended.

Speculative projects: In reviewing several instances of undesirable relocations through the use of UDAG, it became clear that essentially two types of relocation were involved. One type of relocation that the Committee intends to prohibit involves projects that have no, or relatively few, identified intended occupants but are designed on a purely speculative basis to attract plants, facilities or other businesses from other areas. The Committee believes that these are speculative projects which, if found to significantly and adversely affect the area that loses businesses, should not be allowed under the program. Existing law in Sec. 119(h) covers speculative project prohibitions.

Projects with identified intended occupants: To clarify further the prohibitions that Congress intended, the Committee added a provision designed to address a prohibition against the use of UDAG funds for projects designed to cause identified intended occupants of a distressed city or county to relocate or to expand operations in another distressed city or county if the relocation or expansion is determined by the Secretary to significantly and adversely affect the distressed city, county, or community which is losing the occupants.

Definition of 'operation': The Committee further clarifies the Congressional intent by providing a definition of the term operation as to include any plant, equipment, facility, position, employment opportunity, production capacity or product line.

Determination of significant and adverse effect: The Committee also provides that the Secretary shall include specific criteria for making the significant and adverse effect determination under the prohibition applying to projects with identified intended occupants.

UDAG loan guarantees

The Committee has added a provision authorizing the Secretary to guarantee the repayment of loans made to neighborhood-based nonprofit organizations for activities undertaken in areas impacted by UDAG projects. Guarantees may be made only if: the organization is based in a neighborhood in which activities financed with UDAG funda are being or will be carried out; loan funds are to be used to finance neighborhood revitalization activities that are designed to meet housing and other related needs of low and moderate income persons in the neighborhood and that have been developed with the approval of the city or urban county receiving the grant; the amount guaranteed at any time does not exceed 90 percent of the outstanding unpaid principal balance of the loan; the neighborhood revitalization activities financed by the loan; the organization meets requirements established by the Secretary; there is reasonable assurance of repayment of the loan; the guarantee is ****837 *82** requested by a financial institution in the manner and form required by the Secretary; the loan is not available from financial institutions without the guarantee; and the guarantee meets terms and conditions prescribed by the Secretary with respect to the interest rate and amortization of the loan, security required for the loan, proceedings in the event of default, and other matters defined by the Secretary. The Secretary shall give a priority to assisting neighborhood revitalization activities designed primarily to mitigate the displacement of low and moderate income persons that is likely to occur as a result of commercial or other activities in the neighborhood. The aggregate amount of loans guaranteed during fiscal year 1986 may not exceed 10 percent of the appropriated UDAG amounts.

Urban homesteading

The Committee bill permits states and local communities which participate in the Urban Homesteading program to transfer their program properties to individuals and families who are above 80 percent of the area median income for an amount agreed upon by both parties. However, non-lower income persons would not be able to purchase these properties if there are qualified lower income applicants or special priority applicants waiting to acquire these properties. The Committee wishes to reaffirm its commitment to providing urban homesteading properties primarily to lower income persons. The Committee also intends that non-lower income persons be subject to the same program requirements, such as a five-year residency and the repair of property defects, as the other eligible program recipients. This provision does not conflict with the provision included in the Housing Urban-Rural Recovery Act of 1983 which requires that local and State governments establish

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

procedures which give special priority to those applicants who live in dilapidated housing, pay more than 30 percent of their income for shelter or have little prospect of obtaining housing in the future.

The Committee bill continues to prohibit governmental entities from charging lower income persons any substantial consideration for homestead properties, but does allow a non-lower income person to purchase a homesteading property for an agreed upon amount. Such amount may be collected in full or partially during conditional conveyance of the property or in full at fee simple title conveyance. Currently, States and localities are not allowed to charge more than a nominal amount for conditional conveyance of properties. The Committee does, however, intend that HUD and the participating governmental entities should continue to publicize the availability of homesteading properties to lower income and priority applicants.

The Committee requires that all funds collected from the purchase of homesteading properties by non-lower income persons be given to the U.S. Treasury in order to restrict governmental entities from offering properties only to non-lower income persons who would be able to pay more than lower-income and priority applicants.

The bill permits local governments which have had a 20 percent foreclosure rate of FHA-insured single-family homes in the last ****838 *83** year to apply to the Secretary for an increase in their urban homesteading assistance. Local governments must provide to the Secretary, in order to support their request for assistance, their foreclosure data, evidence of their administrative capacities to handle additional assistance and the likely effect of the additional homesteading assistance on persons who have been foreclosured upon. The bill limits any increase in homesteading assistance to 50 percent of the amount requested by the localities in their ogiainal program application. The Committee believes that there have been serious increases in foreclosure rate for FHA-insured loans because of previous difficult economic periods of high mortgage interest rates and unrealized property appreciation. The Committee believes that this amendment will assist those communities with increased foreclosure rates to meet their housing needs by transferring additional unoccupied homesteading properties to eligible program applicants.

The Committee authorizes $12 million for urban homesteading for fiscal year 1986.

Sec. 312 rehabilitation loans

The Committee extends the Sec. 312 Rehabilitation Loan authority in Fiscal Year 1986 in order that loans may continue to be funded from loan repayments and other funds provided in the Sec. 312 Rehabilitation Loan Fund. An estimated $86 million will be available in fiscal year 1986 for new loans. The Committee believes that the program is an important source of rehabilitation loans for low and moderate income persons, enhances the revitalization of urban areas, and has been vital to the success of many urban homesteading programs. The Committee vehemently opposes the Secretary's efforts to terminate the program in FY 1986.

The Committee restricts the assessment or collection of Sec. 312 loan fees or risk fees by the Department. This action is taken response to the Department's intention to charge application fees and a one percent risk fee for each loan. The Committee believes that there 'user' fees are but another attempt to discourage low and moderate income persons from applying for rehabilitation loans.

The Committee also is concerned that the Secretary may be requiring that the interest rate charged for Sec. 312 loans is higher than the Congress intended. The Committee reminds the Secretary that Sec. 312(c)(3) specifically provides that 'The loan shall bear interest at such rates as the Secretary determines to be appropriate, but not to exceed three percentum per annum for loans to families with adjusted incomes of not more than 80 per centum of the median income for the area.' Any deviation from this language is clearly unlawful.

Neighborhood Reinvestment Corporation

The Committee reaffirms its commitment to the Neighborhood Reinvestment Corporation by authorizing $15.512 million for the Corporation in Fiscal Year 1986. This amount is the same amount appropriated for in FY 1985 and will be sufficient to support the Corporation's efforts to promote reinvestment in older neighborhoods.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

****839 *84** *Neighborhood Development Demonstration Program*

The bill authorizes $10 million for the Neighborhood Development Demonstration Program which was first authorized in the Housing and Urban Rural Recovery Act of 1983. The Committee supports the continuation of this valuable program of grants to eligible neighborhood organizations to assist them to carry out neighborhood development activities.

Urban renewal disposition proceeds

The bill permits the City of Boston, Massachusetts, to retain land disposition proceeds from the closed-out Government Center Urban Renewal Project (No. Mass. R–35) which were not paid to the Department. The provision requires the City to use these proceeds to fund activities in accordance with all of the requirements of the Community Development Block Grant Program.

Limitation on recapture of rehabilitation loan and urban homesteading assistance

The Committee prohibits the Department from recapturing any reservation of Sec. 312 Rehabilitation Loan Assistance or Sec. 810 Urban Homesteading Assistance because of the failure of persons or governmental entities to use, obligate or spend that assistance during the fiscal year in which the assistance is reserved or during the next fiscal year. The Committee takes this action to ensure that funding is available for those previous program reservations and rejects the Department's efforts to reduce funding for these valuable programs by recapturing previously reserved authority.

Subtitle D—Shelter Assistance for the Homeless and Displaced

The flight of the homeless

Beginning in 1982 and continuing through 1985, the Subcommittee on Housing and Community Development has held a series of hearings on the plight of the homeless in America. These hearings demonstrated that many charitable, nonprofit organizations, churches and State and local governments, have found an unprecedented increase in the number of unemployed and homeless individuals and families who come to them for assistance and a safe place to sleep. The resources of communities, nonprofit groups and charitable institutions are stretched to the breaking point as they attempt to provide basic shelter and essential services for the homeless. There has been an increase in the number of people who have a desperate, immediate need for temporary emergency shelter and a disturbing broadening in the type of individual or family seeking this assistance. The sight, common in all our major cities, of people so destitute that they are forced to live on the street has brought back haunting memories. These sights are reminiscent of newsreel footage showing the poorest citizens of developing countries who could not afford to house or feed themselves. In a nation so blessed with natural resources and material wealth, as is the United States, there is no justifiable reason for the Federal Government to abdicate an appropriate role to assist these most needy citizens.

****840 *85** The number of homeless people has increased dramatically in recent years. While it is difficult to count accurately the number of individuals and families who are homeless, and who face imminent loss of housing or who are currently living in overcrowded or unsafe conditions, even the most casual observation suggests a dramatic increase. Reliable estimates range up to 2,000,000 persons. The Federal Government as well as numerous state and local governments have endeavored to assess the scope of this problem. Without exception, the Committee has found the number of persons identified in such assessments as being at risk of becoming homeless or actually homeless is shockingly high.

Equally disturbing has been the broadening across cultural, income, gender and geographic lines of the homeless experience. Until recently, it was commonly perceived that the individual was homeless either by choice or because of a chemical or alcohol abuse. Today this perception does not even approach reality. Today, it is likely that the homeless individual is actively seeking employment but cannot find it. There is no question that unemployment is an important factor in the increase in homelessness. Persons who previously could not conceive of a situation where they would be without a roof over their heads have now lost their jobs and subsequently their homes or have been evicted from their rental housing. Today, it is far more common than before for homeless people to be women, or to be members of an entire family. It is also more common

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

that the homeless are younger, educated and possess a stable work history.

An additional factor in the rise of homeless Americans has been the decrease in federal, state and local social service funding. Not only has there been a decrease in housing assistance, but services provided to individuals appropriately released from mental institutions have been reduced. Many of these people could function in our society if there were sufficient funding for the necessary supportive services. As it stands today, these people face the worst of both worlds; ineligible for treatment at a residential facility and forced to survive on their own without sufficient support. The Committee is also cognizant that fiscal constraints on state and local governments have resulted in the inappropriate release of some individuals from mental health facilities. These individuals face the prospect of a life without adequate food, shelter or services and without the capability to function in our complex society. Their plight, while most appalling, is perhaps the most difficult and expensive to remedy.

Finally, the Committee has found that the shortage of housing affordable to low income individuals and families is pushing more people out of their homes or into overcrowded and unsafe housing. The causal relationship between the shortage of affordable housing and the increase in the number of homeless Americans is so direct that it has become almost axiomatic to state that homelessness is caused by a lack of affordable housing. The Committee has found that unless further action is taken to increase the stock of low income housing, the need for the programs authorized in Title IV will become more urgent with each passing year.

The first step our nation and the Federal Government must take is to dispel the stereotype of a homeless person as a middle-aged, ****841 *86** chemically dependent male who has by default or voluntarily chosen a life on the street. This stereotype may or may not have been true in the past but it is certainly demonstratably false today.

Second, the Federal Government must address the most severe obstacle faced by a religious, charitable or social service agency in providing assistance to the homeless; that is a lack of suitable buildings to serve as shelters. In cities across this nation volunteers can often be found to staff the inadequate number of emergency shelters and soup kitchens that exist. However, nonprofit volunteers have been artificially limited by a lack of buildings to house emergency shelters. In many cases, churches and religious orders and nonprofit organizations divide the responsibility for staffing a shelter on a daily basis. It is even possible to obtain cots, blankets, food and some medical services from donations. But the financial requirements inherent in rehabilitating and operating a building, as well as paying for utilities and other essential services exceed the ability of most groups helping the homeless.

For the homeless individual or family, the single most important problem is also shelter. Dr. Louisa Stark of Phoenix, Arizona, in testimony before the Subcommittee on Housing and Community Development in December of 1982, spoke to this:

> But the most critical aspect of homelessness is shelter. Holding a job while living in the street is an impossibility. Keeping clean while living on the street is a contradiction. Being healthy, both physically and mentally while living on the street is unimaginable. Any hope of reintegrating the homeless into the socio-economic mainstream must begin with shelter.

This is most evident in cold weather areas where people without adequate shelter literally face death from hypothermia. Life on the streets, under bridges, on heating grates or in a make-shift ‘tent city’ such as that which existed outside Houston is a dangerous existence. Life threatening situations caused by exposure to the elements, physical assault, rape, and lack of food are an almost daily occurrence. It is impossible to begin to put the pieces of a life together when all your energy must be spent protecting yourself and finding food and shelter. Providing temporary shelter on an emergency basis is only the first, but most important, step in a more comprehensive attempt to meet the needs of these Americans.

A shelter can provide the one element of stability in an individual’s life which is so essential. It can function as a referral center to put a family or individual in contact with existing social services or employment opportunities. Equally as important, it can provide a focus for a community’s efforts to address the problems of homelessness on a local level. Food, shelter, family counseling and emergency medical services as well as donations of time and materials can then be coordinated through a community’s emergency shelter. The Committee firmly believes that the most critical need of the homeless individual and of the communities attempting to assist the homeless is federal assistance designed to increase the supply of shelter.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

It is critical that this nation respond to this problem with speed and compassion. The cruel winds of the current economic conditions ****842 *87** have blown far too many people away from their moorings of family, job and home. Homelessness is the most acute and striking example of the economic hardship faced by millions of Americans. Considering the magnitude of the problem, the proposal contained in H.R. 1 for emergency shelters in a modest federal response. The Committee believes the Federal Government is given a clear choice; it can continue to virtually ignore the abysmal plight of its most needy citizens or it can recognize that shelter is a basic human need and a fundamental component of any person's human dignity.

National Board of Charities Program

Subtitle D authorizes the Emergency Food and Shelter Program administered by the Federal Emergency Management Agency and the National Board of Charities. Funds for the program were first appropriated in the Second Supplemental Appropriations Act (P.L. 98–8). The Committee has studied the efforts of the program and believes that the assistance made available to local charitable organizations has been essential in reducing the suffering of our nation's hungry and homeless. The Committee is pleased that the National Board of Charities has been able to provide financial assistance to local service providers in a timely and cost-effective manner. However, the Emergency Food and Shelter Program has been provided an insufficient amount of federal funds to meet the food and shelter needs of millions of homeless and hungry Americans. The National Board of Charities has been forced to allocate its insufficient funds between needy communities based on a specific formula. Any such effort is bound to leave great unmet needs in some communities who are either not served by this program or whose funds are substantially less than that required to adequately meet the needs of its homeless and hungry population. The program has been asked to accomplish an impossible task with inadequate funds. As a result there remains a need for the programs authorized in parts 2 and 3.

In authorizing the Emergency Food and Shelter Program, the Committee intends that this program continue to operate and be administered as it has been prior to this Act. The program has focused on providing food assistance and short-term shelter assistance. The Committee believes that continuing this emphasis is appropriate. Specifically concerning shelter, the Committee has found that payment of utilities, rent or mortgage advances to be used to prevent eviction or foreclosure or vouchers to be used for short-term rental housing effectively meets the needs of many individuals.

The Committee believes that further federal involvement is needed to provide for the rehabilitation of existing structures into emergency shelters. The Committee is aware that some Emergency Food and Shelter Program funds have been used to rehabilitate structures for use as shelters or to modernize kitchens and other facilities to assist the homeless. The Committee believes that in the absence of other programs specifically designed to assist in rehabilitation, this program activity was appropriate. However, the Committee wishes to avoid duplication of the efforts authorized by part 1 and part 3. To this end, subtitle D restricts funds authorized ****843 *88** in part 1 from being used to rehabilitate structures into emergency shelters.

The Committee intends that the National Board of Charities Program continue to provide assistance to modernize kitchens and other facilities designed to meet the needs of homeless and hungry Americans, and encourages the National Board of Charities to coordinate its efforts with those of the Department of Housing and Urban Development and the Homeless Assistance Council.

H.R. 1 authorizes $66 million for the National Board of Charities Program in Fiscal year 1986. This is $4 million less than that appropriated in Fiscal Year 1985, and is approximately equal to the amount of appropriated funds used for activities other than rehabilitation. By this action, the Committee does not intend to reduce the amount of assistance provided to local service providers. Instead it believes that rehabilitation of structures to be used as emergency shelters can be more efficiently provided through a program, such as that authorized by subtitle C, specifically designed for that purpose. The Committee believes that funds made available in excess of $66 million should be used for the program authorized in parts 2 and 3.

Part 3 of subtitle D authorizes $100 million for a new program which provides federal assistance to state and local governments and local nonprofit charitable organizations to supplement their efforts in providing shelter and other essential services for the homeless. The program is intended to meet the following several goals. The program is designed to insure that this federal assistance is available for use in the community as rapidly as possible. Federal involvement in the day to day administration of the program has been kept to the minimum necessary to ensure distribution of funds to the appropriate community, and accountability for the use of federal funds. The program is intended to build upon existing services where possible and to provide the flexibility local communities need to use this assistance in the most appropriate and cost-effective

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

manner. Finally, this program is designed to assist in establishing a community focus for providing shelter and essential sevices for the homeless.

The Secretary is authorized to make grants to state and local governments, and directly to private nonprofit agencies with reallocated funds, to assist in meeting the needs of the homeless. The funds shall be allocated to states and urban counties, metropolitan cities and entitlement cities using the Community Development Block Grant formula. Within 30 days from enactment of legislation providing appropriations for this program, the Secretary shall notify east state, metropolitan city, and urban county of its allocation. A community or state wishing to receive such assistance shall submit to the Secretary a plan describing how the funds are to be used. The Secretary must within 60 days of submission of such plan provide the appropriate amount of assistance or make a determination that such plan is not in compliance with this program.

The Committee wishes to stress that it does not intend the plans submitted by states and communities to be highly detailed. The Secretary must balance the competing goals of distributing these funds as quickly as possible to meet the urgent needs of homeless Americans and ensuring that these funds are used in a manner ****844 *89** contemplated by this act. In the case where the recipient of this grant is a state or local government, the Secretary shall evaluate the history of compliance with program requirements of other HUD programs in which the state or local government has participated. The Committee is also aware that many state and local governments will distribute these funds to nonprofit groups providing assistance for the homeless. In many instances these groups do not have the administrative personnel to provide detailed planning. As a consequence, the requirements established by the Secretary should not be so prescriptive as to disadvantage plans submitted by states or local governments which intend to distribute all or portions of these funds to nonprofit agencies.

During consideration of Subtitle D in the full Committee an amendment was adopted which clarified that the reporting and other administrative requirements of Section 106 of the Housing and Community Development Act of 1974 were not appropriate for this program. Requirements for submission of plans, administration and certification are contained in Sec. 2424 of the bill.

No community shall be allocated an amount less than $30,000 by the Secretary. Any allocation to to a community of less than $30,000 shall be combined with other allocations of less than $30,000 within a state and allocated to the governor of that state. This legislation, contrary to current CDBG practice, allows the governor of that state to distribute these funds in any community in the state. The amount allocated to the governor shall be available for use in both CDBG entitlement and nonentitlement communities.

State and local governments receiving Emergency Shelter Grants are authorized to distribute all or a portion of the grants to nonprofit agencies providing assistance to the homeless.

Appropriated amounts which are not requested by a state or local government shall be available to the Homeless Assistance Council. The Council shall not less than twice a eyar reallocate any assistance which is returned to the Secretary or is unused. The Council shall distribute this money to communities which have an extraordinary need or a large number of homeless persons. The council may distribute these funds directly to local nonprofit agencies providing services to the homeless. In addition, the Council may distribute these funds for other purposes which are consistent with this program. The other requirements established by this subtitle including certification of matching funds and approval of plans submitted to the Council shall apply to grantees receiving these reallocated funds.

Funds made available under this subtitle may be used for the renovation of existing structures to be used as emergency shelters. Up to 15 percent can be used to provide essential services such as employment assistance, health services, drug or alcohol abuse treatment if the unit of general local government has not provided these services to its homeless population during the previous 12 months. The Committee wishes to ensure that any services funded by this program supplement and do not supplant current services provided to the homeless. Funds may also be used to maintain, operate, pay utilities and furnish shelters. No funds made available by this subtitle shall be used to pay the costs associated with staffing ****845 *90** shelters or the staffing costs associated with providing services to the homeless. The Committee intends that staffing costs including volunteers can be used to fulfill the matching requirements of Sec. 2424.

Recipients of Emergency Shelter Grants are required to certify to the Secretary that the grants will be matched by an amount at least equal to the federal grant amount. In calculating the value of the local match, grantees should consider the cost of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

services provided to the homeless served by the shelter, the cost of materials donated to the shelter for rehabilitation or furnishing, the cost of staffing the shelter and other direct and in kind contribution for the operation of the shelter and provision of services to the homeless. Specifically, excluded from qualifying for the match are funds received under part 1 of the subtitle. The value of service provided through other federal programs would qualify to be used to match Emergency Shelter funds. The Committee has designed this matching requirement for two purposes. First it wishes to effectively double the value of the federal assistance. Secondly, the Committee made the matching requirement very broad so that it would be more a measure of the communities' efforts to assist the homeless rather than an exercise in accounting.

The Homeless Assistance Council is established to relieve HUD of the administrative burden for distributing Emergency Shelter grants made with reallocated funds. Another purpose of the Council is to coordinate activities of the FEMA National Board of Charities Program and other federal programs with the efforts authorized by part 3.

The Council is composed of 9 members who have expertise in providing assistance to the homeless. Funds which were allocated to states and local governments but which were not requested by States or local governments or funds which are returned or recaptured by the Secretary or the Homeless Assistance Council shall be available to the Council. The Council shall distribute these funds at least twice a year, based on a case-by-case review of plans submitted by State and local governments or nonprofit charitable organizations. The Council may review plans submitted to the Secretary and make recommendation regarding actions to be taken by the Secretary affecting the homeless.

The Secretary shall provide the Council with sufficient staff to ensure that it can function efficiently. The Council may request additional staff from the Secretary.

Within 30 days of enactment of legislation providing appropriations for this program the Secretary shall be notice publish requirements for recipients of grants made under this program. Within twelve months, the Secretary shall publish regulations, based upon the initial requirements, for administration of the program. In establishing this two step procedure the Committee clarly intends that the program not be delayed while regulations are developed; the requirements of grantees are to be kept to a minimum to accommodate accountability and to ensure funds are used in compliance with this subtitle. The Committee has approved an additional safeguard to ensure rapid distribution of funds. The bill requires the funds to be distributed by the Secretary even in the event that the notice has not been published within 30 days. It is ****846 *91** the clear intent of the Committee that the Department of Housing and Urban Development quickly implement this urgently needed program.

Second stage housing for the homeless and displaced

The Committee provides $50 million for a Second Stage Housing for the Homeless and Displaced Demonstration Program as an effort to assist homeless persons who are unable to live independently and need full time supportive services. This Demonstration Program is a result of testomony heard by the Committee from homeless person and service providers during extensive Committee hearings on homelessness which revealed the need for housing and supportive services for homeless persons who lack permanent housing and cannot live independently without on-side supportive services. The Housing and Community Development Subcommittee received testimony that approximately one-third of the over two million homeless persons in our nation are mentally ill who are no longer housed in state institutions. These deinstitutionalized person are victims of a public mental health system which continues to release these individuals into society without funds for housing or follow-up treatment, the plight of these persons is further exacerbated by an unsympathetic Administration which proposes deep federal subsidy reductions in programs which benefit the mentally-ill and low-income persons. The Committee believes that it is most important to provide housing for these homeless persons who have been neglected by society and are forced to live on the streets without adequate housing facilities or proper care.

This Committee approved a provision which requires the HUD Secretary to provide non-interest bearing advances to eligible nonprofit organizations to acquire and/or rehabilitate an existing single or multifamily structure suitable to serve as a home with a stable envionment for up to twelve homeless persons who need onsite, full-time supportive services. Testimony presented to the Commitee has indicated that nonprofit organizations have been the principal service providers to the homeless. The Committee intends that the Secretary in selecting eligible organizations to participate in the Demonstration Program should consider the ability of each nonprofit group to develop and operate a residence and coordinate the supportive services for program residents. In addition, each nonprofit organization is expected to contribute 20 percent of the program's operating expenses. Like tenants in public housing, tenants are expected to contribute 30 percent of their income.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Committee requires that nonprofit organizations employ a full-time residential supervisor with expertise to handle supportive services for persons unable to live independently who may have a physical, psychological or other impairments which impede their ability to live independently. The Committee believes that this type of vitally-needed homeless shelter assistance should be available in communities as a long-term housing site. Each nonprofit organization is expected to operate their program for at least 10 years and the Secretary will enter into a 10-year annual payments contract with each participating organization.

The Committee believes that it is essential that this demonstration program be quickly implemented by the Secretary and has ****847 *92** provided that program regulations be implemented within 180 days following enactment. The Committee requires the Secretary to consult with homeless service providers in preparing program regulations because such entities have significant experience in providing services to the homeless.

The Committee has designed this demonstration program to determine the acquisition, rehabilitation, and operating costs of providing housing and supportive services as an alternative to the institutionalization of mentally or physically handicapped homeless persons. The Committee therefore feels that the Secretary should prepare both interim and final reports which assess all activities carried out under the demonstration program.

The Committee estimates that the demonstration program will assist at least 900 individuals or approximately 75 structures (assuming 12 individuals per structure). Estimates may vary because of the assumptions on per unit development and operating cost, tenant income and inflation and vacancy rates. There is generally an absence of reliable data on the per unit cost of the type of housing envisioned in this demonstration program. Assumption for per unit costs and operating subsidies are based on the new construction of group homes for the handicapped and mentally ill under the Sec. 202 program.

Subtitle E—Nehemiah Housing Opportunity Grants

Subtitle E contains the Nehemiah Housing Opportunity Grant Program, a new initiative that the Committee believes can help revive the dream of homeownership for thousands of families living in the economically depressed areas of our nation's cities and towns. In some communities, homes assisted under this title should be affordable by families earning as little as $15,000 per year, and in almost all communities they will be within reach of families earning $20,000 per year.

This title is modeled on the widely acclaimed 'Nehemiah Plan,' an ambitious plan to build 5,000 single family homes in East Brooklyn, New York, in neighborhoods that most observers had written off as beyond hope. Almost 400 homes have already been built and sold, construction is under way on hundreds more, and the resources have been secured to build the first 2,000.

The Nehemiah Program is based on three fundamental principles. First, that homeownership is important. Homeownership is truly the American dream, and is as important to families with modest means as it is for those who are more well to do. Nowhere has this been demonstrated more forcefully than in East Brooklyn, where over 1,000 potential buyers line up outside model homes every Saturday, well in advance of the opening of the homes. Homeownership gives people a stake in their neighborhoods, and encourages them to care not just about their property, but about what is happening throughout their neighborhood.

Second, that redevelopment of distressed neighborhoods must be directed from the bottom up. Neighborhoods are built as much by spirit as by bricks. Countless plans have failed for failing to abide by this simple proposition. The Nehemiah Plan in Brooklyn—named for the Biblical prophet who rebuilt Jerusalem—was conceived ****848 *93** of by I.D. Robbins, a long-time builder and community activist, and implemented by an ecumenical group called East Brooklyn Churches, Inc., a coalition of 40 local churches brought together under the auspices of the Industrial Areas Foundation. East Brooklyn Churches built a membership of several thousand local residents, united around the goal of fighting the seemingly irreverside deterioration of the community. The City and State governments were the last to offer assistance, not the first.

The Committee was greatly impressed, not only with the grass roots organizational efforts of the churches involved in the East Brooklyn Churches, Inc., but by the major financial commitment made by the Catholic Diocese of Brooklyn, the Episcopal Diocese of Long Island, and the Lutheran Church totaling almost $9 million. These contributions established the construction loan fund, making possible access to expensive construction funds at no interest. This type of Church financial

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

commitment, along with the inspirational and organizational efforts, firmly cemented the community bond that is the basis of the Nehemiah Program experience.

Third, redevelopment of these areas must be on a scale large enough to withstand the forces of deterioration that surround them, and to generate the kinds of positive externalities necessary to help turn neighborhoods around. The first phase of the Nehemiah Plan in Brooklyn calls for the construction of 1,000 homes on contiguous parcels of land, enough to cover 40 square blocks of land. It is literally a suburb rising in the middle of the city. Building on a large scale also offer other advantages, such as economies of scale in the building process, reduced costs of compliance with local regulations (since it is just as hard to get a small job through local housing, planning, environmental, and other bureaucracies as a large one) and reduced per unit legal, architectural, engineering, and selling costs.

Although the Brooklyn Nehemiah Plan involves no direct federal assistance, the Committee believes that through the targeted use of a limited amount the Federal assistance, the Nehemiah experience can be repeated in similar neighborhoods throughout the nation. The availability of this assistance can serve as a catalyst for the formation of strong community groups, and can give existing groups an incentive to expand their activities.

Legislation to create a national program for similar projects nationwide was first introduced last Fall by Congressman Schumer, Housing Subcommittee Chairman Gonzalez, Housing Subcommittee Ranking Republican McKinney, and other Members, and has been revised for inclusion in H.R. 1. The Committee held two hearings on the Nehemiah Plan, one at the East Brooklyn site in April 1984, and another in Washington, D.C., in April of this year, at which the Committee heard testimony on how the Nehemiah Plan could benefit cities around the country. With the benefit of this testimony, and the input of local housing officials from around the country, the Committee adopted an amendment to Title V which it believes preserves the essential concepts of the Nehemiah Plan, while ensuring that the program may be used to benefit communities throughout the country, each of which has different needs and faces different local conditions.

****849 *94** As adopted by the Committee, Subtitle E authorized $150 million to be used in support of programs of construction or substantial rehabilitation of one-to-four family homes run by nonprofit community based organizations. Consistent with the desire to ensure that redevelopment efforts are driven from the bottom up, applications for assistance may be submitted by nonprofit groups only. Applicants must demonstrate that they have consulted with and have the support of residents in the area of the project, as well as the support of the local government in which the project is located.

Funds awarded under the program will be used as a second mortgage loan of not more than $15,000 per home. These second mortgages will be held by the Secretary of HUD. They will not bear interest and will be repayable out of the proceeds when the home is sold. The legislation allows the Secretary to waive this requirement, but anticipates that the Secretary will do so only if the proceeds of the sale are insufficient to repay the full second mortgage in full. In such a case, the Committee anticipates that the unpaid balance of the mortgage will remain as a lien on the house, and will be repayable upon resale by the subsequent purchaser.

Assistance may be offered to families with an income up to 115 percent of the median income of a family of four in the metropolitan area of the project or, for projects not located in metropolitan areas, the national median income. This is higher than the eligibility level of other programs within the Committee's jurisdiction, but the Committee believes that attracting families with a wide range of incomes is important to building strong, stable neighborhoods. In addition, given the characteristics of neighborhoods most likely to be the sites of Nehemiah programs (funds may be used only in census tracts and identifiable neighborhoods within census tracts in which the median income is less than 80 percent of the area median income) and the experience of the Nehemiah program in Brooklyn, the Committee anticipates that the average income of homebuyers will be below the area median income.

Purchasers must be either first-time homebuyers or may not have owned a home in the previous 3 years. Purchasers must make a minimum downpayment of 10 percent of the sales price of the home or more if the sponsoring group specifies in its application. While a downpayment of this size may seem high for purchasers in this income range, the downpayment requirement has proven to be a valuable incentive to save for families wishing to purchase a home. And by ensuring that purchasers have some equity in their homes from the start, it gives them a greater stake in its upkeep. Sponsors must pay interest to the purchaser on any downpayment during the construction period, and may apply the interest to the purchase of the home. In order to reap the full community benefits of owner-occupancy, purchasers may not lease homes assisted under

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

this title.

The Committee gave particularly careful consideration to the choice of the minimum size and location requirements for a Nehemiah project. On the one hand, part of the success of the Nehemiah Plan in Brooklyn is attributable to sheer size. Large, compact projects establish more of a 'beachhead' to combat surrounding deterioration, they tend to be cheaper per unit, and they require the mobilization of more local residents and resources, all of which ****850 *95** are important in helping to turn a neighborhood around. On the other hand, projects on that scale, may be extremely difficult to implement in smaller cities. In cities where there is little vacant or government-owned land, or where a different type of development may be more appropriate.

The original version of H.R. 1 required a nonprofit sponsor to build or substantially rehabilitate a number of homes equal to one percent of the total number of housing units in the jurisdiction in which the project was located or 1,000 units, whichever was less. It also required that all homes be constructed on contiguous parcels of land, with a narrow exception. During consideration by the full Committee, an amendment was adopted which should preserve the benefits of large scale, compact development, while providing the flexibility necessary to make the program work in cities throughout the nation.

The amendment reduced the minimum size requirement to 0.25 percent of the number of housing units in the jurisdiction in which the project is located or 250 units, whichever is less, with a minimum project size of 50 units. The amendment also modified the contiguous land requirement. Homes must be built on contiguous parcels of land (not including streets, rights of way, or other similar divisions) unless the local government certifies that such land cannot be made available, in which case homes may be constructed in a single neighborhood, as long as homes are built on at least 20 percent of the lots in such neighborhood.

In evaluating competing applications for funding, the Secretary shall select programs for assistance on 6 factors:

First, the extent to which non-federal public and private entities will contribute the land necessary to make each program feasible.

Second, the extent to which non-federal public and private financial or other contributions will reduce the carrying charges of homes built under the program (including, but not limited to, tax abatements, direct financial contributions, waivers of fees related to development, and waivers of construction, development, or zoning requirements).

Third, the extent to which the program is concentrated in an area of physical and social blight. In evaluating physical blight, the Secretary shall consider the condition (but not age) of the housing, other buildings, and infrastructure of the program area.

Fourth, the extent to which the program uses construction methods which reduce the cost per square foot below the average construction cost in the market area involved.

Fifth, the extent to which the program will produce the greatest number of units for the least amount requested from the federal government, taking into account cost differences among different areas.

Sixth, the extent to which the program calls for the involvement of local residents in the planning and construction of homes.

In evaluating competing applications, if a State law prohibits contributions from the local government involved of land or other types of assistance contemplated under the first 2 selection factors, then the Secretary shall not consider those particular elements which, by law, cannot be contributed. The purpose of this provision is to allow a fair evaluation of competing applications. The implementation ****851 *96** of this provision will inevitably require the exercise of some judgment by the Secretary. The following situation offers one example of how the Committee envisions that the Secretary might exercise that judgment. First, assume that each of the 6 selection criteria has been accorded equal weight, and that in evaluating competing applications an applicant may score up to 10 points on each. If a State law prohibited the contribution of land by a local government then applications from that State would not be evaluated on the basis of the extent to which the local government contributed land. Obviously, it would not be fair to score such applications on a 10-point scale on the first selection factor. The number of possible points should be determined by looking at the degree to which permitted forms of assistance were actually contributed, and mix of contributions from other jurisdictions where no types were prohibited. Thus, if the proposed

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

project does not involve private contributions of land, but few other applications call for private contributions of land, either, then it would be appropriate for the Secretary in evaluating the proposed project to accord the first selection criteria fewer than 10 points, if, on the other hand, a number of other applications called for the private contribution of land, then the number of points it was possible to receive on the first selection factor would still be less than 10, but would not be as low as in the previous situation.

As a further example, if a State law prohibited the granting of a tax abatement, an application could not be scored on a 10-point scale on the second selection factor. Again, the number of possible points should be determined by looking at the degree to which permitted forms of assistance were actually contributed, and the degree to which the prohibited form of contributions was contributed by other jurisdictions. Thus, if tax abatements are not a common form of assistance offered by other jurisdictions, or if tax abatements account for a small proportion of the overall amount of assistance offered under the second selection factor, the number of possible points for the second selection factor should be lower than 10, but not much lower. If, on the other hand, tax abatements are common in applications from other jurisdictions, and constitute a substantial proportion of the overall amount of assistance offered by local governments under the second selection factor, then the number of possible points should be reduced significantly.

At the end of the evaluation procedure, the Secretary may find that some projects have been scored on a 60-point scale, while others have been scored on a 55- or 50-point scale. In order to compare these projects to each other, the Secretary could convert the raw scores to a percentage, in which projects were ranked on the basis of points scored out of possible points, awarding funds first to those with the highest percentages.

In order to ensure that Nehemiah programs selected for funding proceed to construction expeditiously, applicants must submit an estimated schedule with their application that has been agreed to by the local government. In addition, grantees may not break ground (except on model homes to be used to assist in sales) until at least 25 percent of the homes to be built are contracted for sale, and the required downpayment has been made.

****852 *97** The Committee believes that this program can act as a major catalyst in neighborhood development throughout the nation. We are confident that it will be successful on 3 levels. First, we will build houses in a cost-efficient way, providing badly-needed housing, and precious homeownership opportunities to families who had all but given up hope of owning their own homes. Second, by building on a large scale, we will build neighborhoods, helping to reclaim economically-distressed, all-but-forgotten neighborhoods of the nation's cities and towns. Finally, we will help neighborhoods of the nation's cities and towns. Finally, we will help neighborhood residents realize citizenship in the fullest sense of the word, as they take control of their lives and shaping their own future, beginning with housing, but soon extending to health care, police services, park services, and far beyond.

The bill authorizes $100 million for the Nehemiah Program. This should assist the construction of at least 6,666 homes, and more if communities request less than the maximum amount per unit.

Subtitle F—Mulifamily Housing Preservation Loans

The Committee believes that the $60 million Multifamily Housing Preservation Loan Program contained in this title is needed to assist owners of certain older HUD-subsidized multifamily projects to accomplish the goal of preserving both the physical stock and long-term availability of that housing for low and moderate income people. The target projects are those which were built under several HUD/FHA programs, mostly in the years of the late 60's and early 70's and are essentially in no serious difficulty. There are approximately 700,000 eligible subsidized units. They serve low and moderate income persons and have their rents and rates of returns strictly controlled. Therefore, these projects do not have sufficient disposable income to qualify for commercial loans, nor are other forms of financing feasible. The loan program does not include projects under the Sec. 8 New Construction/Substantial Rehabilitation Programs.

Replacement reserves are woefully inadequate, with only 14 percent of necessary amounts remaining in the average project according to HUD and industry reports. Other federal programs are not appropriate. The Sec. 241 Program has not been utilized successfully and the Flexible Subsidy Program is aimed at much more troubled projects.

The HUD Secretary's general authority is to make direct loans to owners of certain projects in order for the owner to make

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

necessary capital improvements and to maintain the low and moderate income character of the project.

There is a capital repair need generally of between $800 and $3,000 per unit, although there is no statutory cap included in the bill. However, the Secretary is given additional guidance in the Committee bill to direct him to the appropriate housing stock whose need is generally in this range. Much of the stock is approaching the age that capital improvements are necessary or will be shortly. This stock is also nearing the 20th anniversary date allowing mortgage prepayments and an end to required low and moderate income tenancy.

****853 *98** Many of the projects involved now have regulatory agreements providing, in essence, that the lower income use of the housing can be changed at any time after its 20th anniversary by prepaying the HUD-subsidized mortgage. The Committee is not attempting to abrogate those agreements. To the contrary, the Committee wishes to offer project owners the opportunity to maintain the project's physical integrity via a below-market-rate loan, in exchange for an agreement to extend the lower income use of the property through the full life of the underlying mortgage. Loan repayments would be directed to a revolving fund, hopefully allowing for selfsufficiency in years ahead. The Committee sees this as an effective method to address the twin preservation concerns—both physical condition and tenant characteristics of these projects.

The Committee notes that the term 'low and moderate income character' refers to the provisions of the HUD regulatory agreement governing tenant admission and rental charges. These items should help define, but not exclusively, the items in that regulatory agreement which HUD should expert to be extended as part of the loan under this title.

The term 'capital improvement', as provided in the Committee bill, is designed to make sense in the business community, i.e. those items of repair/replacement which would normally and properly be charged as a capital item.

Some confusion is sometimes voiced about the eligibility of projects under Sec. 221(d)(3), Below Market Interest Rates; the BMIR aspect of the program actually exists in Sec. 221(d)(5). Hence, the bill intends to assist 221(d)(3) BMIR projects; indeed, they are a major portion of the inventory. The remainder of the eligible projects are assisted under Sec. 236 of the National Housing Act, Rent Supplement Projects, former Rent Supplement or Rental Assistance Program Projects which converted to the Sec. 8 Program, Sec. 23, or formerly HUD-owned subsidized projects sold with tenant income restrictions.

The loan/borrower eligibility included several points the Committee wishes to stress. First, the loan must be necessary—in times of fiscal restraint, the Secretary must be careful to determine that items have failed or will fail or seriously deteriorate in the near future. Once again, common sense business-like decisions should prevail and priorities are provided to the Secretary. Second, other than nonprofits, the owner's contribution is expected to be not less than 20 percent of the cost of the capital improvements. However, in the event that the Secretary makes certain determinations about financial feasibility with respect to that contribution, he may waive or reduce this requirement. It is expected that this waiver will not be a common occurrence. The Committee sees little reason, at least under current law and business practice, why capital could not be attracted to these projects. The Committee is persuaded, however, that some limited flexibility is needed to deal with changing environments or unusual situations. The contribution requirement is waived for nonprofit owners, although such owners are by no means precluded from making such contributions.

With respect to the Secretary's priorities in providing loans, the Committee intends that, among other enumerated factors, the Secretary give priority to projects having the greatest financial distress ****854 *99** while continuing to meet the bill's other requirements of being financially sound. It is the purpose of this program to assist projects not so severely distressed as to be eligible for Flexible Subsidy Funds and projects should show an essentially solid financial future, particularly if this loan is provided to deal with capital repair problems.

The Secretary is directed to add the costs of 3 necessary items in computing overall amounts of loans; capital improvements, improvements necessary to meet cost-effective energy standards, and improvements necessary to comply with Sec. 504 of the Rehabilitation Act of 1973. The Committee intends that capital items which should be upgraded to meet cost-effective energy standards should also be related to another capital items already chosen for improvement so as as to make it logical to upgrade for energy efficiency as well. For example, it would seem sensible to insulate exposed walls through which new plumbing is being installed.

The Committee is sensitive to concerns about minimizing the rental impact on tenants due to loan carrying charges.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Therefore, the Committee has given the Secretary several tools to deal with this matter. The Committee expects the Secretary to do all in his power to minimize adverse effects on tenants—the Committee does not wish the Secretary to be a catalyst to displacement through this necessary program. The Committee also expects the Secretary to report back to the Committee on how this authority is being exercised and the resources necessary to handle this matter appropriately.

And finally, the Committee intends that the provision allowing a reduction of the loan interest rate to 1 percent is to assist tenants directly. Savings generated by the reduction from the rate determined under Sec. 2605(b)(2) to the minimum 1 percent rate are intended to be felt by tenants through rental payments.

Subtitle G—Enterprise Zone Development

The Committee adopted that part of the Administration's proposed Enterprise Zone Development legislation referred to the Committee on Banking, Finance and Urban Affairs that authorizes the HUD Secretary to designate up to 75 enterprise zones, one-third of which must be in nonmetropolitan areas or in jurisdictions with a population of less than 50,000. These designated zones are to be made from nominations by local and State governments and from HUD consultations with the Secretaries of Agriculture, Commerce, Labor, Treasury, the Director of the Office of Management and Budget, the Administrator of the Small Business Administration, and in the case of an Indian Reservation, the Secretary of the Interior.

This proposed Enterprise Zone legislation is one part of the larger Administration proposal which falls within the jurisdiction of the Committee on Ways and Means. Since the basic structure of this federal Enterprise Zone proposal requires major tax legislation, approval by this Committee of the proposal contained in this bill would not create the Enterprise Zone Program that the Administration has been recommending for the past few years.

****855 *100** The Committee has approved several initiatives as part of this year's housing authorization bill, and in approving this proposal has recognized the initiatives contained in the Enterprise Zone proposal that seek to address the economic distress and unemployment in both large and small urban communities. The Committee clearly recognized that there will be no enterprise zones created without the enactment of that part of the legislation currently pending before the Committee on Ways and Means.

The designation of Enterprise Zones by the HUD Secretary must be an area of pervasive poverty and unemployment; must be located within a local government that is a UDAG distressed area; have an unemployment rate at least 1.5 times the national unemployment rate, have a high poverty rate; have at least 70 percent of households living in the area having incomes below 80 percent of the area medium income; and have had a population decrease of 20 percent or mote between 1970 and 1980. The criteria for selection clearly sets forth that this is a program to aid severely economically distressed communities and not to prop up shaky business investment deals.

The bill requires State and local commitments and set forth priorities for zone designation based on State and local governmental and private sector contributions, high levels of economic distress, unemployment, and the probability of new job availability. This title provides generous waivers and modifications of Departmental and Agency rules to facilitate the development of enterprise zones. The designation of the enterprise zone would be for 25 years, so long as it continued to comply with program requirements, and would require HUD to provide the Congress an evaluation of the program every 4 years.

Housing Act of 1985

SECTION-BY SECTION SUMMARY

Section 2001—Short Title and Table of Contents

This Act may be cited as the 'Housing Act of 1985'.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2002(a)—Findings

Provides findings: (1) for 50 years, the Federal Government's role has enabled this Nation to be the best housed in the world: (2) the Federal Government's efforts have included a system of specialized lending institutions, favorable tax policies, construction assistance, mortgage insurance, loan guarantees, secondary markets, and interest and renal subsidies that have enabled people to rent or buy affordable, decent, safe, and santitary housing; (3) at no time since the Great Depression has the shortage of housing been more severe, and unless the production of moderately priced homes and affordable rental units is increased, the housing crisis of persons of low and moderate income will deepen; (4) the record number of homeless in urban and suburban communities dramatically demonstrates the lack of affordable housing; (5) people on the economic margins of our society—the elderly, the working poor, and the deinstitutionalized—have few available alternatives for shelter; (6) due to high interest rates and construction costs, the dream homeownership ****856 *101** is fading for many Americans; (7) through a combination of direct subsidies and tax benefits for homeowners and renters the Federal Government provided more than 4 times the amount of Federal assistance to households with annual incomes above $50,000 than to households with annual incomes below $20,000; and (8) large federal deficits are anti-housing and tend to keep interest rates high, denying many otherwise eligible home-buyers the opportunity to own a home.

Sec. 2002(b)—Purpose

Provides the purpose of this Act is: (1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing units for all Americans, particularly for persons of low and moderate income; (2) to make the distribution of direct and indirect housing assistance more equitable by providing Federal assistance for the less affluent people of the Nation; (3) to provide needed housing assistance for homeless people and for persons of low and moderate income who lack affordable, decent, safe, and sanitary housing; (4) to reform existing programs to ensure that such assistance is delivered in the most efficient manner possible; and (5) to provide opportunities through lower federal expenditures and lower federal budget deficits, and the resulting lower interest rates, for more Americans to realize the dream of owning their own homes.

Sec. 2003—Congressional policy regarding aggregate budget authority

Provides congressional findings about budget authority contained in this Act: the congressional budget process for FY 1986 has not been completed; the House Banking committee has been required to operate under new principles of budget accounting, including the inclusion of off-budget accounts; this Act establishes a new public housing capital grant program that generates substantial savings in budget authority but has no net effect on the Federal budget, since the new method of financing merely concels unmerous intragovernmental transfers that occur under the current financing system; and the Congress has established a policy of freezing authorizations of appropriations for FY 1986 at the actual level of appropriations for FY 1985.

Provides that it is congressional policy that the aggregate authorized amounts for any fiscal year not exceed the total amount of funds approved in FY 1985 appropriation Acts for similar programs.

Sec. 2004—Regulatory Authority

Requires the HUD Secretary and the Secretary of Agriculture to transmit to the House and Senate Banking Committees, under the 7(o) congressional review process, a quarterly summary (or, upon the request of the Chairman of either Committee, a copy) of each department's notice or handbooks not less than 15 days before the date of issuance and to submit a detailed summary of all changes referred by the Office of Management and Budget that prohibit, ****857 *102** modify, postpone, or disapprove a rule, regulation, notice or handbook in whole or in part.

Sec. 2005—Collection of certain data

Provides that the HUD Secretary and the Secretary of Agriculture shall collect data on the racial and ethnic characteristics of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

persons eligible for, as well as assisted under, the community development, housing assistance and mortgage and loan insurance programs of HUD and the rural housing loan and grant programs of the Department of Agriculture.

Subtitle A—Housing Assistance

PART 1—PROGRAMS UNDER UNITED STATES HOUSING ACT OF 1937

LOWER INCOME HOUSING AUTHORIZATION

Sec. 2101(a)—Aggregate budget authority

Amends sec. 5(c)(6) of the United States Housing Act of 1937, to provide $9,179,498,000 in budget authority for Sec. 8 annual contracts for contributions and for grants for public housing construction and modernization in Fiscal Year 1986.

Sec. 2101(b)—Utilization of budget authority

Amends Sec. 5(c)(7) of the 1937 Act to provide that of the additional budget authority, and any balances that become available in FY '86, not less than $418 million shall be reserved for public housing new construction, of which $108 million shall be available for Indian housing; not less than $4,830,592,000 for Sec. 8 Regular Existing housing assistance of which $43,776,000 shall be available only for use in connection with the Park Central New Community project; not less than $542,748,000 for Sec. 8 Moderate Rehabilitation; not less than $1,775,280,000 for Sec. $^{8}/_{202}$ projects of which $290.4 million shall be suitable for the Handicapped Housing Program; and $1,132,000,000 for the comprehensive improvement assistance grants, of which $200 million shall be available only for use for vacant uninhabitable dwelling units in public housing projects, and $50 million shall be available to PHAs to reduce the hazards of lead-based paint.

Also provides that Indian housing funding that is recaptured may be used only for other Indian housing and that any amount available for the conversion of a project to Sec. 8, if not required for such purpose, shall be used for Sec. 8 existing housing assistance.

TENANT RENT CONTRIBUTIONS

Sec. 2102(a)—Public housing economic rent

Amends Section 3(a) of the 1937 Act to permit public housing agencies to establish monthly rents if approved by the HUD Secretary which do not exceed the maximum allowable contribution to rent and is not more than either the average monthly debt service and operating expenses for projects of similar size owned or operated by the agency, or the Sec. 8 fair market rent in the area.

****858 *103** *Sec. 2102(b)—Adjusted income*

Amends Sec. 3(b)(5) of the 1937 Act to provide an additional exclusion in the calculation of a tenant's adjusted income: 10 percent of the earned income of the family, in the case of a family in which any member pays taxes imposed under chapter 2 or 21 of the Internal Revenue Code of 1954.

Sec. 2102(c)—Utility Allowance

Amends Sec. 3(c) of the 1937 Act to define 'rent' to mean (A) the amount payable by a family to a PHA for shelter and (B) in any case in which a family is required to make a separate utility payment, an allowance established annually based on the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

average actual utility consumption for each size and type of dwelling unit.

Sec. 2102(d)—Public Housing Rent Phase-In

Amends sec. 3 of the 1937 act to provide that in any case in which a public housing tenant obtains employment which will result in an increase in their rental contribution, the PHA involved may gradually increase the tenant's rent to the full amount over a period of not more than 6 months.

GRANTS FOR PUBLIC HOUSING DEVELOPMENT

Sec. 2103(a)—Authority to provide grants

Rewrites Sec. 5(a) of the 1937 Act to provide that the Secretary may make annual contributions to PHAs; and provides that the Secretary shall embody the provisions for such annual contributions in a contract guaranteeing their payment; limits the annual contribution not to exceed the annual amount of principal and interest payable on obligations issued by the PHA to finance the development or acquisition costs; provides that the Secretary may require that annual contributions payable shall be pledged as security for obligations issued by a PHA to assist the development or acquisition of the project to which annual contributions relate and shall be paid over a period not to exceed 40 years.

Also provides that the Secretary may make contributions in the form of grants to PHAs to cover the development cost of public housing projects and that the contributions contract shall specify the amount of capital contributions required for each project and that the terms and conditions of such contract shall remain in effect for a 40-year period.

Provides that the amount of contributions that would be established for a newly constructed project by a PHA designed to accommodate a number of families of a given size and kind may be established for a project by a PHA that would provide housing for the comparable number, sizes, and kinds of families through the acquisition and rehabilitation, or use under lease, of structures that are suitable for lower income housing use and obtained in the local market.

Sec. 2103(b)—Cancellation of outstanding loans and obligations

Amends Sec. 4 of the 1937 Act to provide that the HUD Secretary may determine that public housing loans made by the Secretary ****859 *104** shall be forgiven; that the terms and conditions of any loan shall be canceled but that the concellation shall not affect any other terms and conditions of the contract; and that this provision shall not apply to any loan, the repayment of which was not to be made using annual contributions, or to any loan, all or part of the proceeds of which are due a public housing agency from contractors or others.

Provides that on the enactment date, or on September 30, 1985, whichever occurs later, that each note or other obligation issued by the HUD Secretary to the Secretary of the Treasury shall be forgiven, and that any other term or condition specified by each such obligation shall be canceled.

Provides that on September 30, 1986, and on any subsequent September 30, each note or other obligation issued by the Secretary during the fiscal year ending that day, together with any promise to repay, shall be forgiven, and that any other term or condition specified by each such obligation shall be canceled.

Sec. 2103(c)—Conforming technical amendments

Amends applicable statutory provisions to conform with the new capital contributions public housing financing approach.

PUBLIC HOUSING CHILD CARE GRANTS

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2104(a)—Program authority

Provides grants to PHAs for a child care services demonstration designed to determine the extent to which child care services in lower income housing projects facilitates the employability of the parents or guardians of children residing in public housing; and that this demonstration program is in addition to the one authorized under section 222 of the Housing and Urban Rural Recovery Act of 1983.

Sec. 2104(b)—Eligibility for assistance

Provides that a grant may be made only if (1) the PHA does not have a prior child care services program; (2) the PHA agrees to provide suitable facilities for the provision of child care services; (3) the child care services program will serve preschool children during the day, elementary school after school, or both, in order to permit the parents or guardians of such children to obtain, retain, or train for employment; (4) the child care services program is designed, to the extent practicable, to involve the participation of the parents of children benefiting from such program; (5) the child care services program is designed to the extent practicable, to employ in part-time positions elderly individuals who reside in the lower income housing project involved; and (6) the child care services program complies with all applicable State and local laws, regulations, and ordinances.

Sec. 2104(c) Allocation of assistance

Provides that child care program grants shall (1) give priority to lower income housing projects in which reside the largest number of preschool and elementary school children of lower income families; (2) seek to ensure a reasonable distribution of the grants between ****860 *105** urban and rural areas and among lower income housing projects of varying sizes; and (3) seek to provide the grants to the largest number of lower income housing projects practicable, considering the amount of program funds available and the financial requirements of the particular child care services programs to be developed.

Sec. 2104(d)—Administrative provisions

Provides (1) that applications for grants shall be in such form, and according to such procedures, as the Secretary may prescribe; (2) that any PHA receiving a grant may use the grant only for operating expenses and minor renovations of facilities necessary to the provision of child care services; (3) that the Secretary periodically evaluate each child care services program to determine the effectiveness of the program in providing child care services and permitting the parents or guardians to obtain, retain, or train for employment; and to ensure compliance with the program provisions; and (4) that these provisions do not authorize the Secretary to establish any health, safety, educational, or other standards with respect to child care services or facilities assisted with grants.

Sec. 2104(e)—Report to Congress

Provides that 3-years following the enactment date, the Secretary shall prepare and submit to the Congress a detailed report with findings and conclusions as a result of carrying out this demonstration program; and that the report shall include any recommendations with respect to the establishment of a permanent program.

Sec. 2104(f)—Definitions

Provides that in the demonstration program the terms ‘lower income families’, ‘lower income housing project’ and ‘public housing’ have the same meanings as such terms are given in the 1937 Act; also that the term ‘Secretary’ means the HUD Secretary.

Sec. 2104(g)—Authorization of appropriations

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Authorizes to be appropriated for the child care grant program $15 million for FY 1986, which shall remain available until expended.

ADDITIONAL PUBLIC HOUSING PROVISIONS

Sec. 2105(a)—Limitations on recapture of assistance

Amends Sec. 5 of the 1937 Act to provide that 30 months from the date of the reservation of public housing development funds, the Secretary may not recapture any of the amounts of such reservation due to the failure of a PHA to begin construction or rehabilitation, or to complete acquisition, and that during such 30-month period, the PHA shall be permitted to change the public housing project site or reformulate the project, if not less than the original number of dwelling units are to be constructed, rehabilitated, or acquired. Requires the Secretary to suspend the 30-month period due to HUD caused delays, environmental requirements, ****861 *106** legal actions affecting the project, or other factors beyond the control of the PHA.

Sec. 2105(b)—New construction

Amends Sec. 6(h) of the 1937 Act to provide that the Secretary may enter into a new construction contract only if the PHA demonstrates to the Secretary's satisfaction that the new construction cost in the neighborhood where the PHA determines the housing is needed is less than the costs of acquisition or acquisition and rehabilitation in the same neighborhood.

Sec. 2105(c)—Public housing agency receivership

Amends Sec. 6 of the 1937 Act to provide that the Secretary or a public housing tenant may petition for the appointment of a PHA receiver, which may be a private management corporation, to any U.S. District Court or any state court in which the PHA is located, and is authorized to appoint a receiver, if there is a substantial default of the covenants or conditions to which the PHA is subject to. Provides that the court shall order appropriate notice of the petition for a PHA receiver to the tenants and permits tenant intervention in the court proceedings.

Provides that the court shall appoint a receiver to conduct the affairs of the PHA if there is a court determination that a substantial default has occurred, regardless of the availability of alternative remedies; that the court can provide the terms and conditions under which the receivership will occur and shall have the power to grant appropriate temporary or preliminary relief pending final disposition of the petition by the Secretary.

Provides that the appointment of a receiver may be terminated upon the petition of any party or when the court determines that all defaults have been cured and that the projects of the PHA will thereafter be operated in accordance with the subject covenants and conditions.

Sec. 2105(d)—Demolition and disposition

Amends the public housing demolition and disposition provisions in Sec. 18(a)(1) of the 1937 Act to require that in addition to determining that the project is obsolete making it unusable for housing purposes, the Secretary must also find that no reasonable program of modifications is feasible to return the project or portion of the project to useful life; amends Sec. 18(b) to further provide that the Secretary may not approve a demolition application unless the PHA has developed a plan for the addition of an equal number of public housing units and has agreed to provide funding for such plan. This one-for-one replacement requirement shall not apply if there is no local need for low-income housing; and that if funding for public dwelling units is not available, project-based Section 8 units may be substituted.

Sec. 2105(e)—Transfer of property under Indian Mutual Help Homeownership Opportunity Program

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Clarifies that each homebuyer under the Indian Mutual Help Homeownership Opportunity Program shall be entitled to transfer the dwelling unit involved to any person who complies with the eligibility ****862 *107** requirements of the program and will reside in the dwelling unit.

Sec. 2105(f)—Public Housing Management and Funding Report

Provides that not later than the expiration of the 2-year period following the date on which the public housing profession institutes voluntary professional performance standards for certifying PHAs as efficient and well-managed, the HUD Secretary shall prepare and submit to the Congress a report evaluating the feasibility of establishing a system under which PHAs are permitted to certify compliance with the standards and with other requirements established by the Secretary for purposes of substantially simplifying the procedure for receiving assistance under Sec. 9 or 14 of the 1937 Act.

SECTION 8 ASSISTANCE

Sec. 2106(a)—Sec. 8 esisting contract term

Amends Sec. 8(b)(1) of the 1937 Act to provide that Sec. 8 existing annual contributions contracts with a public housing authority shall have a 15-year term.

Sec. 2106(b)—Assistance to Sec. 17 rental rehabilitation projects

Amends Sec. 8(b) of the 1937 Act to provide that Sec. 8 assistance payments may also be made for a family residing in a rental rehabilitation project that is determined to be a lower income family at the time it initially receives assistance and whose rent after rehabilitation would exceed 30 percent of the monthly adjusted income of the family.

Sec. 2106(c)—Public housing agency fees

Amends Sec. 8(b) of the 1937 Act to require that the method of calculation for administrative fees paid to a PHA for administering a Sec. 8 contract shall be the method of calculation established by the Secretary before January 1, 1985, and in effect on such date, and shall retroactively apply to PHA activities after December 31, 1984.

Sec. 2106(d)—Fair market rentals

Amends Sec. 8(c)(1) of the 1937 Act to provide that the fair market rents shall be adjusted to be effective on October 1 of each year to reflect change based on the most recent available data trended so the rents will be current for the year to which they apply.

Sec. 2106(e)—Shared housing

Amends Sec. 8(p) of the 1937 Act to provide that the minimum habitability standards for shared housing may not require any person residing in a 1-bedroom dwelling unit to accept another person to share their dwelling unit, to move to a smaller unit, or to pay additional rent due to a refusal to accept another person to share such unit or move to a smaller unit.

****863 *108** *Sec. 2106(f)—Portability of certificates and vocuchers*

Amends Sec. 8 the 1937 Act to provide that any family receiving Sec. 8 existing or voucher assistane may continue to receive such assistance if the family moves to another eligible dwelling unit that is located within the same metropolitan statistical area as the unit from which the family moved; but the new unit may not necessarily have to be located within the same area of jurisdiction of the PHA which had jurisdiction over the previous unit from which the family moved.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

VOUCHER DEMONSTRATION PROGRAM

Sec. 2107(a)—Program operation

Amends Sec. 8(o) of the 1937 Act to remove the requirement that substantially all of the voucher authority be used in connection with the Sec. 17 Rental Rehabilitation Program and for displaces under the Sec. 17 Development Grant and the Sec. 533 Preservation Grant programs; and amends Sec. 8(o)(6) to clarify that vouchers have a 5-year term.

Sec. 2107(b)—Use of vouchers in connection with rental rehabilitation

Amends Sec. 8(o)(3) of the 1937 Act to provide that vouchers assistance payments may also be made for a family residing in a project being rehabilitated under Sec. 17 that is determined to be a lower income family at the time it initially receives assistance and whose rent after rehabilitation would exceed 30 percent of the monthly adjusted income of the family.

Sec. 2107(c)—Administrative expenses

Amends Sec. 8(o) of the 1937 Act to provide that: the percentage of voucher demonstration assistance that is retained by PHAs for administrative expenses shall be the same percentage of assistance allowed under the Sec. 8 existing housing program.

Sec. 2107(d)—Study

Amendment Sec. 8(o) of the 1937 Act to provide that for purposes of facilitating Congressional consideration of the appropriateness of additional funding for the voucher program, the HUD Secretary shall prepare and submit to the Congress a report comparing the impact of assistance under the voucher demonstration program with assistance under the regular Sec. 8 existing program. This report shall include comparisons with respect to (a) the percentage of income paid by assisted families after receiving assistance for a 3-year period; (b) the financial characteristics of assisted families; (c) the extent to which rents paid by assisted families exceed 30 percent of adjusted income; (d) the security deposits required to be paid by assisted families and the impact of such deposits on the cost of housing for these families; (e) the accounting systems used by PHAs and the impact of such systems on the administrative costs incurred by the PHAs; (f) the amount of time needed by assisted families to obtain dwelling units; (g) the extent to which families requiring dwelling units with three or more bedrooms are able ****864 *109** to obtain such dwelling units; (h) the characteristics of assisted families, including information with respect to family size, age, race, and sex; (i) the extent to which assisted families move to other dwelling units; and (j) the estent of improvement in the physical condition of dwelling units occupied by eligible families as a result of assistance.

PAYMENTS FOR OPERATION OF LOWER INCOME HOUSING PROJECTS

Sec. 2108(a)—Performance funding system

Amends Sec. 9(a) of the 1937 Act to provide that in providing operating subsidies the Secretary shall utilize a performance funding system (PFS) that is substantially based on the system defined in regulations and in effect on November 30, 1983 (as modified by this paragraph), and that establishes standards for costs of operation and reasonable projections of income, taking into account the character and location of the project and the characteristics of the families served, in accordance with a formula representing the operations of a prototype well-managed project. The PFS shall be established in consultation with PHAs and their associations, be contained in a regulation promulgated by the Secretary prior to the start of any fiscal year to which it applies, and remain in effect for the duration of such fiscal year without change.

Further provides that under the PFS: (1) changes to the allowable expense level shall be made annually to reflect actual

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

inflation rates for the most recent year for which data is available; (2) in the first year that the reductions occur, public housing agencies shall share equally with the Secretary any cost reductions due to the differences between projected and actual energy rates attributable to actions taken by the agency which lead to such reductions; (3) funds received by any public housing agency from sources other than tenant rents or other tenant payments, investment income, or income earned from commercial/leases or receipts, including any amounts recovered through litigation, shall not be counted as income in computing the allowable subsidy nor shall prior receipt of any such funds affect the allowable expense level; (4) payments to PHAs may only be ratably reduced if sufficient funds are not available, and, if excess funds are available, they shall be retained by the Secretary for use in the next fiscal year; (5) there shall be a formal review process for the purpose of providing such increases to the allowable expense level of a PHA as necessary: (a) to correct inequities and abnormalities that exist in the base year expense level of such PHA, (b) to reflect changes in operating circumstances since the initial determination of such base year expense level, and (c) to ensure that the allowable expense limit accurately reflects the higher cost of operating the project in an economically distressed unit of local government; (6) PHAs shall be reimbursed for costs incurred that were beyond their control and the full extent of which were not taken into consideration in the original distribution of funds for the fiscal year involved; (7) subsidy eligibility shall be calculated on the basis of 97 percent occupancy rate, except that a lower occupancy rate shall be permitted if (a) it is due to vacant units in projects funded for modernization activity that is on schedule; or (b) it is acceptable to the Secretary as part of the plan of the ****865 *110** public housing agency to achieve not less than a 97 percent occupancy rate over a reasonable period of years; (8) PHAs shall maintain reasonable operating reserves similar to those established by well managed, privately owned rental property; (9) the estimate of the rental income for the next fiscal year of a PHA shall be based on the actual rent for the fourth, fifth, or sixth month prior to the beginning of the new fiscal year of the PHA; (10) any revenues resulting from rental income or other income (excluding investment income) in excess of estimated revenues from such items may not be recaptured, used, or computed to reduce assistance provided under this section, unless such estimate was unreasonable according to regulations in effect when the estimate was made, or was fraudulent and deceptive; and (11) estimated investment income may be recomputed and appropriate adjustments may be made at the end of the fiscal year to reflect actual average cash availability and average interest rates during such year.

Sec. 2108(b)—Authorization of appropriations

Amends Sec. 9(c) of the 1937 Act to provide an authorization of $1,279,000,000 to be appropriated for operating subsidies for fiscal year 1986 (of which amount not more than $100 million shall be made available for purposes of increases to the allowable expense level and costs beyond control of a PHA).

Sec. 2108(c)—Time of payment

Amends Sec. 9 of the 1937 Act to provide that a PHA's operating subsidies for any fiscal year shall commence not later than the first month of the PHAs fiscal year and shall be paid by HUD to the PHA in equal monthly or quarterly installments, or as may be agreed upon by the Secretary and the PHA.

GRANTS FOR COMPREHENSIVE IMPROVEMENT ASSISTANCE

Sec. 2109(a)—Authority to provide grants

Amends Sec. 14 of the 1937 Act to provide contributions in the form of grants to PHAs for Comprehensive Improvement Assistance and that such contributions contracts shall specify the amount of contributions required for each project and that the terms and conditions of such contracts shall remain in effect for a 20-year period.

Sec. 2109(b)—Conforming amendments

Amends subsections (d)(2), (d)(4)(C), and (e) of Sec. 14 of the 1937 Act to conform to the new statutory provisions.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

ADDITIONAL COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM PROVISIONS

Sec. 2110(a)—Purposes

Amends Sec. 14(a) of the 1937 Act to additionally provide that the purpose of the CIAP program is to maintain the marketability of existing public housing projects and contribute to their long-term viability.

****866 *111** *Sec. 2110(b)—Advance architectural engineering and planning*

Amends 14(e)(3) of the 1937 Act to provide that the cost of advance architectural engineering and planning costs incurred in the year before the date of approval of a CIAP application, may be included for determining the amount of CIAP payments in any year.

Sec. 2110(c)—Vacant unit set-aside

Amends Sec. 14 of the 1937 Act to provide that any amount under the CIAP program for improving the physical condition of vacant uninhabitable dwelling units shall be made to ensure the long-term viability of such dwelling units as public housing.

Sec. 2110(d)—Rehabilitation standards

Amends Sec. 14(j)(2) of the 1937 Act to provide that CIAP assistance shall be provided in accordance with rehabilitation standards in effect on June 1, 1984.

Also amends Sec. 14(j) to provide that the HUD Secretary, not later than the expiration of the 6-month period following the date of enactment, shall issue regulations last establish a system for allocating and distributing CIAP assistance.

Sec. 2110(e)—Reports

Amends Sec. 14 of the 1937 Act to require that the HUD Secretary shall include in the Sec. 8 annual report a description of the allocation, distribution and use of CIAP assistance on a regional basis; and requires that the HUD Secretary prepare and submit to the Congress, not later than 12 months following the date of enactment a report evaluating the CIAP program, including an analysis of the current physical condition of public housing projects, an estimate of the amount of assistance necessary under the CIAP program to improve the physical condition of assisted projects and to upgrade the management and operation of such projects, a proposal for the creation of replacement reserve account for major and nonroutine repairs of public housing projects, a formula for such replacement reserve, an evaluation of the feasibility of incorporating such replacement reserve account into the performance funding system, an estimate of the total annual cost of such replacement reserve account, and a feasibility analysis of the distribution of funds under a formula basis, a description of the formula criteria and an estimate of the amount that each PHA with more than 500 public housing units could be expected to receive under a formula distribution.

Sec. 2110(f)—Resident management in public housing

Amends Sec. 14 of the 1937 Act of provide that during fiscal year 1986, the Secretary may make available to PHAs up to $1.5 million from available CIAP program amounts (not exceeding $100,000 per project) for technical assistance for the development of resident management entities, development of the management capability of newly formed or existing entities, and identification of project social support needs and for securing such support.

****867 *112** PUBLIC HOUSING COMPREHENSIVE GRANTS

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2111(a)—Findings

Provides the following Congressional findings relating to public housing: (1) the condition of many public housing projects financed under the 1937 Act; (2) the Federal Government has a responsibility to help ensure the maintenance of public housing dwelling units in decent, safe, and sanitary conditions, and to provide PHAs with funds sufficient to carry out maintenance: (3) the current Comprehensive Improvement Assistance Program has not provided PHAs the flexibility and responsibility essential for establishing priorities for capital improvement expenditure, assessing the relative needs of projects, and evaluating the relative advantages of repair, major maintenance, and capital replacement; (4) the current CIAP has made it difficult for PHAs to plan capital improvements on a multiyear basis; and (5) the current CIAP has resulted in unnecessary paperwork and delay, thereby increasing costs of capital improvements.

Sec. 2111(b)—Purpose

Provides that the purpose of these amendments are: to provide assistance on a reliable basis to PHAs to enable them to operate, upgrade, modernize, and rehabilitate public housing projects financed under the 1937 Act to ensure their continued availability as decent, safe, and sanitary rental housing at rents affordable to lower income families; to increase the reliability of federal assistance for capital improvements in public housing projects; to significantly deregulate the program of federal assistance for capital improvements in public projects; to provide increased opportunities and incentives for more efficient management of public housing projects; and to afford PHAs greater control in planning for the maintenance and improvement of public housing projects.

Sec. 2111(c)—Comprehensive grant program

Amends the 1937 Act to provide a new Comprehensive Grant Program to provide assistance to improve the physical condition of existing public housing projects and to upgrade their management and operation. Authorizes the Secretary to make available financial assistance available under this program. Provides that no financial assistance may be made available unless the Secretary approves a 5-year comprehensive plan except if it is necessary to correct immediate threats to the health or safety of tenants, that contains: (1) a comprehensive assessment of (A) the current physical condition of each public housing project; (B) the physical improvements necessary for each project to be rehabilitated to a level at least equal to the minimum property standards; and (C) the replacement needs of equipment systems and structural elements during the 5-year period covered by the comprehensive plan; (2) a comprehensive assessment of the improvements needed to upgrade the management and operation of the PHA and of each project including an identification of needs related to (A) the PHA's project management, financial, and accounting control systems; (B) the adequacy and qualifications of PHA personnel employed in the management and operation of the projects; and (C) the adequacy ****868 *113** and efficacy of (i) tenant programs and services; (ii) project security; (iii) PHA selection and eviction policies and procedures; and (iv) other PHA project policies and procedures; (3) a project-by-project analysis demonstrating that completion of the identified improvements and replacements will reasonably ensure the long-term physical and social viability of each project at a reasonable cost; (4) an action plan for making the improvements and replacements, including at least a schedule, in order of priority, of the actions that are to be completed over a period of not more than 5 years and that are necessary to make the identified improvements and replacements for each project expected to receive capital improvements or replacements, and to upgrade PHA project management and operation; (5) a statement by the chief local government official (or Indian tribal official, if appropriate), certifying that the comprehensive plan was developed by the PHA in consultation with appropriate local government officials (or Indian tribal officials, if appropriate), with public housing tenants, and that there were no less than two public hearings (one held before the PHAs adoption of the plan and another held before the submission of the plan to HUD) and the comprehensive plan is consistent with the assessment of the community of its lower income housing needs and that the unit of general local government (or Indian tribe, if appropriate) will cooperate in the provision of tenant programs and services; (6) a statement, to be signed by the chief public housing official, certifying that the PHA will carry out the comprehensive plan in conformity with the Civil Rights Act of 1964, the Civil Rights Act of 1968, and Sec. 504 of the Rehabilitation Act of 1973; (7) a preliminary estimate of the total cost of the items identified in the comprehensive plan, including a preliminary estimate of the costs that will be incurred during each year covered by the comprehensive plan; and (8) such other information as the Secretary may require. Provides that the Secretary shall not approve a comprehensive plan unless: the comprehensive plan is incomplete; the Secretary determines that the identification by the PHA of needs is plainly inconsistent with the project facts and data; that the PHA action plan is plainly inappropriate to meeting the identified needs

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

in the plan, or that the PHA has failed to demonstrate that completion of improvements and replacements identified in the plan will reasonably ensure long-term viability of public housing projects to which they relate at a reasonable cost; the Secretary has evidence that challenges, in a substantial manner, any certification contained in the comprehensive plan. Provides that the comprehensive plan shall be considered to be approved, unless the Secretary notifies the PHA in writing within 75 calendar days of submission that the Secretary has disapproved the submitted comprehensive plan, indicating the reasons for disapproval and modifications required to make the comprehensive plan approval.

Requires each PHA receiving comprehensive grant assistance to submit an annual statement of the activities and expenditures to be funded during the immediately following fiscal year of the PHA, including a certification that its proposed activities and expenditures are consistent with the comprehensive plan public housing tenants and other interested parties have had the opportunity to review and comment on the Annual Statement; any proposed ****869 *114** amendment shall be reviewed in accordance with the approval standards and schedule and shall be certified by the PHA to have been publically available for comment prior to submission; the Secretary shall approve the annual statement unless it is inconsistent with the comprehensive plan; the annual statement shall be considered to be approved, unless the Secretary notifies the PHA in writing 75 days following submission that the Secretary has disapproved the annual statement indicating the reasons for disapproval and the modifications required to make the annual statement approvable; and the annual statement shall be approved before the PHA receives any comprehensive grant assistance for the fiscal year to which the annual statement relates.

Provides that each PHA receiving comprehensive grant assistance submit a performance and evaluation report concerning the use of grant funds, including an assessment of the relationship of the use of grant funds, as well as the use of other funds, to the needs identified in the PHA's comprehensive plan. Provides that the PHA must certify that this report was available for review and comment prior to its final adoption and submission.

Provides that the Secretary shall make an annual performance and evaluation review to determine whether each PHA receiving comprehensive grant assistance has carried out its activities under the plan in a timely manner; has a continuing capacity to carry out its comprehensive plan in a timely manner; has satisfied, or has made reasonable progress towards satisfying performance standards prescribed by the Secretary, which shall include the requirement that the PHA shall maintain all occupied public housing dwelling units eligible for assistance equal to HUD public housing quality standards; has maintained at least a 97 percent occupancy rate in its projects; and has maintained an operating reserve equal to at least 20 United States of its routine expenses included in its operating budget of each year; and had made reasonable progress in carrying out modernization projects approved under the program as in effect immediately before the enactment of this bill.

Requires that grant recipients shall be subject to audit and shall provide access to all books, documents, papers, or other records that are pertinent to the activities carried out under this program.

Provides that the comprehensive plan, any amendments to it, and the annual statement shall be binding upon the Secretary and the PHA; the Secretary may order corrective action only if the PHA does not comply with the required annual performance and evaluation reports and reviews, or if the audit reveals findings that the Secretary reasonably believes require corrective action; the Secretary may withhold grant funds only if the PHA fails to take corrective action after the Secretary's notice and has a reasonable opportunity to do do; that the Secretary shall, to the greatest extent possible, respect the professional judgment of the PHA administration.

Provides program assistance may be used only: to undertake activities described in its approved comprehensive plan or its annual statement; to correct conditions that constitute an immediate threat to the health or safety of tenants, whether or not the need for such correction is indicated in its comprehensive plan or annual statement; to prepare a comprehensive plan, including reasonable ****870 *115** costs that may be necessary to assist tenants in participating in the planning process in a meaningful way, an annual statement, an annual performance and evaluation report, and an audit; and to operate public housing projects consistent with the requirements for public housing operating subsidies, except that not more than 20 percent of the public housing operating subsidies may be used for comprehensive grants.

Provides that the CIAP allocation system in effect on May 21, 1985, shall remain in effect until the Congress by law, establishes criteria for a formula or other allocation method to be used by the Secretary in determining for each PHA: the necessary amounts to address current needs for capital improvements; the future needs for capital improvements through a

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

replacement reserve; and the relative needs of PHAs of different sizes.

Provides that the Secretary shall include in the HUD annual report on Sec. 8 assistance, a description of the allocation, distribution, and use of comprehensive grant assistance on a regional basis.

Authorizes to be appropriated and remain available until expended such sums as may be necessary in fiscal years 1987, 1988 and 1989 for comprehensive grants to be used for the current needs for public housing capital improvements and provides for the reservation of 3 percent of the grant finds to correct conditions that constitute an immediate threat to the health or safety of tenants; authorizes to be appropriated such sums as may be necessary in fiscal years 1987, 1988 and 1989 for the establishment of PHA replacement reserves for future public housing capital improvements.

Provides that the Secretary may issue regulations as are necessary to carry out the provisions of the comprehensive grant program.

Sec. 2111(d)—Use of Operating Assistance

Amends Sec 9(a)(1) of the 1937 Act to provide that a PHA may use any available public housing operating subsidy amounts for the comprehensive grant program.

Sec. 2111(e)—Assistance for preparation of comprehensive plans

Provides that of the amounts approved in appropriation Acts for fiscal year 1986 for the CIAP program, the Secretary shall, not later than November 1, 1985, provide such sums as may be reasonable and necessary to PHAs that request funds to prepare comprehensive plans.

Sec. 2111(f)—Applicability

Provides that the comprehensive grant amendments made in this section shall apply only with respect to the fiscal years beginning after the enactment date of the public law which creates the comprehensive grant distribution formula; that the current CIAP program provisions shall continue to apply for any prior fiscal year before the enactment date of the law which creates the comprehensive grant distribution formula; and that at the time that the comprehensive grant distribution formula is created, a PHA may elect to use its already appropriated CIAP funds under existing CIAP provisions or under the new comprehensive grant program, as the PHA considers appropriate.

****871 *116** *Sec. 2112—Deletion of assisted housing eligibility requirements*

Deletes Sec. 16 of the 1937 Act which had required that no more than 25 percent of assisted units existing prior to 1981 and 5 percent of assisted housing units constructed after 1981 be leased to families with incomes above 50 percent but not more than 80 percent of the areas median income.

RENTAL DEVELOPMENT PROGRAM

Sec. 2113(a)—Budget authority

Amends Sec. 17(a) of the 1937 Act to provide that there are authorized to be appropriated not to exceed $150 million for fiscal year 1986 for development grants.

Sec. 2113(b)—Program requirements

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Amends Sec. 17(d)(4) of the 1937 Act to clarify that the 20 percent assisted units are occupied, or available for occupancy, by families who are lower income families on the date of inital occupancy and shall not be considered lower-income families as soon as they pay a rent equal to the lowest rent for a unit of the same size in the same project that is occupied by a family that is not a lower-income family. Also requires that the owner of each assisted structure agrees to comply with the 20 percent lower income requirement for the 20-year period required under HODAG.

Sec. 2113(c)—Rent provisions

Amends Sec. 17(d)(8)(A) of the 1937 Act to provide that the rents charged by the grantee for units available for occupancy by lower income families are not more than the amount permitted under the low rent public housing and Sec. 8 programs, and conforms the term lower-income families.

Sec. 2113(d)—Enforcement of program requirements

Amends Sec. 17(d)(7)(A) of eliminate the provision that required a reduction in the amount of assistance to be repaid by a percentage each year for a violation of the agreements.

Sec. 2214—Eligible property and availability of amounts under the Rental Rehabilitation Grant Program

Amends Sec. 17(a)(1)(A) of the 1937 Act to make eligible publicly-owned real property that will be privately owned upon the completion of its rehabilitation.

Amends Sec. 17(a)(3)(A) of the 1937 Act to provide that rental rehabilitation program funds remain available through FY 1987.

PART 2 MULTIFAMILY HOUSING MANAGEMENT AND PRESERVATION

Sec. 2121—Prepayment of Mortgages

Amends Sec. 250(a)(1) of the National Housing Act to eliminate a condition for approving the prepayment of a multifamily mortgage on the basis that the needs of lower income families can be more efficiently and effectively met through other federal housing assistance.

**872 *117 MANAGEMENT AND PRESERVATION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS

Sec. 2122(a)—Goals

Amends Sec. 203(a) of the Housing and Community Development Amendments of 1978 to provide that the Secretary shall manage and dispose of multifamily housing projects that are held by the Secretary, or whose mortgages are held by, assigned to, or being foreclosed upon by the Secretary, in a manner that is consistent with the National Housing Act and that will, in the least costly fashion among the reasonable alternatives available, further the goals of—preserving so that they are available to and affordable by low- and moderate-income persons all units in multifamily housing projects that are formerly subsidized projects and in all other multifamily housing projects, at least those units that are, on the date of assignment, occupied by low- and moderate-income persons or vacant.

Sec. 2122(b)—Management services

Amends Sec. 203(b)(2) of the Housing and Community Development Amendments of 1978 to clarify that the management and disposition provisions apply to HUD-owned projects as are referenced in subsection (a).

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2122(c)—Maintaining of projects

Amends Sec. 203(c) of the Housing and Community Development Amendments of 1978 to provide that the Secretary shall (1) to the greatest extent possible, maintain all occupied multifamily housing projects which he holds in a decent, safe, and sanitary condition; (2) to the greatest extent possible, maintain full occupancy in all such projects; and (3) maintain all such projects for purposes of providing rental or cooperative housing for the longest feasible period.

Sec. 2122(d)—Financial assistance

Amends Sec. 203 of the Housing and Community Development Amendments of 1978 to provide that the Secretary shall, to the extent provided in appropriations Acts, take one or both of the following actions: (1) Enter into 15-year Sec. 8 contracts with owners of multifamily housing projects that are acquired at foreclosure or after sale by the Secretary to assist all units that are occupied by eligible lower income families or that are vacant. In order to make available any units that are occupied by persons not eligible for Sec. 8, but that subsequently become vacant, the contract shall also provide that when any such vacancy occurs the owner involved shall apply to the Secretary for additional assistance. The Secretary shall provide such contracts at fair market rents that provide for the required rehabilitation and do not exceed the most recently adjusted fair market rents for substantially rehabilitated units. (2) Provide purchase-money mortgages to the owners of multifamily housing projects that are acquired at foreclosure or after sale by the Secretary on terms that will ensure that the projects will remain available to and affordable by low- and moderate-income persons for a period of not less than 15 years.

****873 *118** *Sec. 2122(e)—Partial Claim Payments*

Amends Sec. 203(e)(1) of the Housing and Community Development Amendments of 1978 to conform with the program purposes.

Sec. 2122(f)—Limitations on Certain Transfers

Amends Sec. 203 of the Housing and Community Development Amendments of 1978 to provide that: (1) the Secretary may not approve the transfer of any mortgage insured by the Secretary on any formerly subsidized project unless such transfer is made as part of a transaction that will ensure that the project will continue to operate at least until the maturity date of the mortgage in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by such mortgage: (2) the Secretary may not approve a transfer of the physical assets of any formerly subsidized project subject to a mortgage held or insured by the Secretary unless the proposed owner agrees to maintain the low- and moderate-income character of such project for a period of not less than the remaining term of such mortgage.

Sec. 2122(g)—Formerly Subsidized Projects

Amends Sec. 203(h) of the Housing and Community Development Amendments of 1978 to provide that the term ‘formerly susidized project’ means Sec. 221(d)(5) below market interest rate mortgage project; Sec. 236 interest reduction payments projects; Sec. 101 rent supplement project; Sec. 202 direct loan project; Sec. 312 rehabilitation loan project; Sec. 23 housing assistance project; or a Sec. 8 project (other than Sec. 8 existing project).

Sec. 2123—Acquisition of Insured Multifamily Housing Projects

Amends Sec. 207(k) of the National Housing Act to provide that the HUD Secretary, in determining the amount to be bid on multifamily projects is in his inventory, shall take account the goal of preserving the project for occupancy by low and moderate income persons.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

Sec. 2124(a)—Applicability

Amends Sec. 202(a) of the Housing and Community Development Amendments of 1978 to provide that tenant participation requirements shall also apply to the Sec. 202 Elderly and Handicapped Housing Program.

Sec. 2124(b)—Notice and comment

Amends Sec. 202(b)(1) of the Housing and Community Development Amendments of 1978 to additionally provide that tenants have notice and are able to comment on an owner's request for transfer of physical assets, or application for capital improvements loan, or where the Secretary proposes to sell a mortgage securing a multifamily housing project.

****874 *119** *Sec. 2124(c)—Nondiscrimination against sec. 8 certificate holders*

Amends Sec. 202(b)(2) of the Housing and Community Development Amendments of 1978 to provide that owners agree not to unreasonably refuse to lease to a tenant any vacant dwelling unit in the project that rents for an amount not greater than the Sec. 8 fair market rent solely because the prospective tenant holds a Sec. 8 certificate.

Sec. 2125—Troubled multifamily housing projects

Amends Sec. 201(d)(1) of the Housing and Community Development Amendments of 1978 to provide that no troubled project assistance may be available unless the Secretary has determined that the owner has agreed to apply for sufficient trouble project assistance, Sec. 8 assistance, or any other appropriate assistnce to permit the owner to maintain both the financial soundness and the low- and moderate-income character of the project, except that the troubled projects agreement shall also provide that owner's agreement to maintain the low- and moderate-income character of the project for a period shall be binding only as long as sufficient assistance is available and offered to the owner.

PART 3—OTHER HOUSING ASSISTANCE PROGRAMS

HOUSING FOR THE ELDERLY AND HANDICAPPED

Sec. 2141(a)—Budget authority

Provides that not more than $601 million may be approved in appropriations Acts for Sec. 202 elderly and handicapped housing loans in FY 1986.

Sec. 2141(b)—Extension of the sec. 202 loan interest rate

Amends Sec. 223(a)(2) of the Housing and Urban-Rural Recovery Act of 1983 (HURRA) to provide that the Sec. 202 loan interest rate does not exceed 9.25 percent for loan agreements entered into during FY 1986.

Sec. 2141(c)—Community participation

Amends Sec. 202(a) of the Housing Act of 1959 to provide that to the maximum extent practicable, the Secretary shall encourage each corporation to provide appropriate community participation in the development of their Sec. 202 housing project.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Also amends Sec. 202(d)(2)(B) of the Housing Act of 1959 to specify that the term 'corporation' also means any incorporated private institution or foundantion that owns and is responsible for the operation of a Sec. 202 housing project.

HOUSING FOR THE HANDICAPPED

Sec. 2142(a)—Findings and purpose

Provides Congressional findings that: housing for nonelderly handicapped families under Sec. 202 of the Housing Act of 1959 and Sec. 8 of the 1937 Act are often inappropriate for dealing with the specialized needs of the physically impaired, the developmentally disabled, and the chronically mentally ill; housing is often ****875 *120** more expensive than necessary for nonelderly handicapped; housing can be made more efficient and less costly by the adoption of standards and procedures applicable only to housing for nonelderly families; the use of Sec. 8 housing for nonelderly handicapped families is time consuming and unnecessarily costly and, in some areas of the nation, prevents the development of such housing and should be replaced by a more appropriate subsidy mechanism; Sec. 202 elderly and handicapped housing projects will benefit from an increased emphasis on supportive services and a greater use of state and local funds; and an improved program for nonelderly handicapped families will assist in providing shelter and supportive services for mentally ill persons who might otherwise be homeless.

The purpose of this housing for the handicapped program is to improve the Sec. 202 direct loan program to ensure that such program meets the special housing and related needs of nonelderly handicapped families.

Sec. 2142(b)—Housing for handicapped families

Amends Sec. 202(h) of the Housing Act of 1959 to provide that of the amounts made available in appropriation acts for Sec. 202 loans for any fiscal year commencing after September 30, 1985, not less than 15 percent or $100 million whichever amount is greater, shall be available for loans for the handicapped families, however, funds may be used for other Sec. 202 projects if there are insufficient approvable handicapped applications.

Provides that funds meet the needs of nonelderly handicapped through a variety of options, including small group homes, and independent living complexes; and an assured range of program services, including opportunities for independent living and access to the community at large and to suitable employment opportunities.

Provides that the Secretary shall adopt distinct standards and procedures, for fund allocations, loan application processing, and in providing assistance payments, as he determines appropriate.

Provides for a demonstration to determine the feasibility of prototype handicapped designs. Limits this to the 3-years, and for projects whose sponsors consent to participation, and calls for a report to the Congress following its completion.

Provides that the Secretary shall enter into contracts with owners of handicapped projects to make monthly payments to cover the costs of units occupied or held for occupancy by lower income families that is not met from project income.

Limits contracts to the sum of the initial annual project rentals for all units and any initial utility and services allowances; amounts shall remain available until the contract expiration. The contract term shall be 240 months; contract amounts may be adjusted if the sum of the project income and the amount of assistance payments are inadequate to provide for reasonable project costs. In the case of an intermediate care facility project income shall include the same amount as if such families were being assisted under title XVI of the Social Security Act.

Provides that the Secretary shall approve initial project rentals for any project based on actual necessary and reasonable costs, taking into consideration the need to contain costs and the purposes of the project and this program.

****876 *121** Provides that all units in a project shall be made available for occupancy by lower income families, and that the gross income of a family occupying an intermediate care facility assisted under Supplemental Security Income under the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Social Security Act shall be the same amount as if the family were being assisted under Medicaid under the Social Security Act.

Provides that the Secretary shall coordinate the processing of a program loan application and assistance payments under this program.

Amends Sec. 202(d) of the Housing Act of 1959 to provide that the term 'housing for handicapped families' means housing and related facilities to be occupied by handicapped families who are primarily nonelderly handicapped families and the term 'nonelderly handicapped families' means elderly or handicapped families, the head of which (and spouse, if any) is less than 62 years of age at the time of initial occupancy of an assisted project.

Amends Sec. 202(c)(3) of the Housing Act of 1959 to extend Davis-Bacon wage restrictions for these projects designed for dwelling use by 12 or more elderly or handicapped families.

Sec. 2142(c)—Supportive services for elderly and handicapped families

Amends Sec. 202(f) of the Housing Act of 1959 to provide that each program loan application include a supportive services plan describing the category or categories of families that such housing and facilities are intended to serve; the range of necessary services to be provided to tenants; the manner in which such services will be provided to tenants and the extent of state and local funds available to assist in providing such services.

Sec. 2142(d)—Termination of section 8 assistance

Provides for the termination of Sec. 8 asistance in Sec. 202 handicapped projects (primarily non-elderly) when appropriation acts provide contract funding under the new Housing for Handicapped Families program.

Sec. 2142(e)—Implementation

Provides that the HUD Secretary, no later than 120 days after enactment, shall publish a notice of fund availability, to the extent program amounts are approved in appropriations acts for FY 1986, to implement the provisions of this program and provides that the Secretary shall issue such rules as may be necessary to carry out the program provisions for fiscal year 1987 and thereafter.

Sec. 2142(f)—Effective date and applicability

Provides that these program provisions shall become effective on October 1, 1985, but shall not apply retroactively to Sec. 202 projects with loans or loan reservations approved before October 1, 1985, and provides that the Secretary may apply these program provisions to any project in order to facilitate the development of such project in a timely manner.

****877 *122** CONGREGATE SERVICES

Sec. 2143—Budget authority of the Congregate Services Program

Amends Sec. 411(a) of the Congregate Housing Services Act of 1978 to provide not to exceed $8 million in FY '86 for the Congregate Services program.

SEC. 235 HOMEOWNERSHIP PROGRAM

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2144(a)&(b)—Contract and budget authority

Amends Sec. 235(h)(1) of the National Housing Act to provide $7.5 million in contract authority and $75 million in budget authority for the Section 235 homeownership program in FY 1986.

Sec. 2144(c)&(d)—Assistance payments and insurance authority

Amends sec. 235(h)(l) and (m) to extend the HUD Secretary's authority to enter into contracts for assistance payments and income loans through FY 1986.

Sec. 2144(e)—Housing stimulus authority

Amends Sec. 235(q)(1) of the National Housing Act to extend the housing stimulus program for one year.

TASK FORCE ON FAMILY HOUSING NEEDS

Sec. 2145(a)—Establishment of the task force

Establishes a Task Force on Family Needs in Assisted Housing which shall examine: (1) the problems of families with children living in HUD assisted highrise buildings; (2) the problems of such families who are on HUD waiting lists; and (3) the need for construction of additional dwelling units for such families.

Sec. 2145(b)—Members

Provides that the task force shall consist of not less than 20 members appointed by the HUD Secretary as follows: 5 HUD officials; 5 PHA directors; 5 assisted housing tenant representatives; and 5 local government representatives.

Provides that task force members shall not receive pay, allowances, or benefits except reimbursement for actual expenses, including travel exenses, incurred in the course of performing the task force duties.

Sec. 2145(c)–(d)—Meetings, staff and offices

Provides that the task force shall meet as necessary, at the call of the HUD Secretary and that the HUD Secretary and the HUD Secretary shall provide the task force with staff and office facilities.

Sec. 2145(e)—Report

Provides that no later than one year following the enactment date of this bill, the task force shall submit to the Secretary and the Congress a report with its findings and recommendations for actions to resolve the problems identified in its study.

****878 *123** ENERGY CONSERVATION IN ASSISTED HOUSING

Sec. 2146(a)—In general

Provides that any housing project, which development is assisted under the 1937 Act or Sec. 202 of the 1959 Act and commences after the one-year period following the enactment date of this bill, shall be developed in accordance with life-cycle cost-effective energy conservation performance standards established by the HUD Secretary and designed to ensure the lowest total construction and operating costs over the estimated life of the building.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2146(b)—Construction cost limits

Provides that the Secretary shall revise the cost limits applicable to the development of housing assisted under the 1937 Act and Sec. 202 of the 1959 Act in order to take into consideration life-cycle costs of the structure and major heating and cooling consuming appliances.

Sec. 2146(c)—Regulations

Provides that the HUD Secretary shall, not later than the expiration of the one-year following the enactment date, issue regulations establishing the standards and revising the construction cost limits referred to above.

ANNUAL REPORT ON CHARACTERISTICS OF FAMILIES IN ASSISTED HOUSING

Sec. 2147(a)—In general

Provides that the HUD Secretary shall include, in the HUD Sec. 8 annual report, descriptions of the characteristics of assisted families under the public housing, Sec. 8 (other than vouchers), vouchers, and Sec. 202 programs.

Sec. 2147(b)—Specific requirements

Provides that the descriptions shall include information with respect to: family size, including the number of children; amount and sources of family income; the age, race, and sex of family members; and whether the head of the family or their spouse is a member of the armed forces.

PROCEDURES AND POLICIES FOR MANDATORY MEALS PROGRAMS IN ASSISTED HOUSING FOR THE ELDERLY

Sec. 2148(a)—In general

Provides that the HUD Secretary, in consultation with, owners, managers, and tenants of housing projects for the elderly which are assisted under Sec. 202, Sec. 236 and Sec. 8 programs and which have mandatory meals programs, shall develop and implement, within one year following this bill's enactment, procedures and policies governing the operation of their programs to facilitate the sound and equitable administration of all mandatory meals programs and to assure that these program meals are at the least possible cost to all tenants.

****879 *124** *Sec. 2148(b)—Specific requirements*

Provides that the procedures and policies on mandatory meals shall include rules to (1) require sponsors of mandatory meals programs to accept Food Stamps toward payment for meals; (2) requires that a mandatory meals contract must be separate from the lease for the dwelling unit and that tenants will not be evicted for failure to participate in a mandatory meals program; (3) require exceptions from participation in mandatory meals programs where such programs cannot satisfactorily accommodate a tenants's special dietary or health needs, as certified by the tenant's physician, or the special diet or food practice tenets of a tenant's religion, or where such programs substantially interfere with a tenant's employment; (4) require sponsors of mandatory meals programs to provide refunds or otherwise excuse tenants from meals not eaten during periods of temporary absence from their housing facility due to a tenant's confinement in a hospital, nursing home or other health care or rehabilitative facility, or, where a tenant has provided prior notification to the sponsor of their periods of extended absence from the facility; and (5) encourage sponsors of mandatory meal programs to make meals available to tenants who are confined to units within the facility due to tenants who are confined to units within the facility due to illness or other

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

temporary incapacitation that prevents participation in congregate dining or otherwise to compensate tenants for meals not eaten during such temporary incapacitation.

Sec. 2148(c)—Limit on tenant payments

Provides that the HUD Secretary shall prescribe rules requiring sponsors of mandatory meals programs to exempt from participation in their programs tenants for whom participation in the programs constitutes an unbearable financial hardship, especially for the very lowest income tenants, or to provide these tenants with financial assistance towards the cost of participation in the meals programs.

Provides that the Secretary in determining whether the cost of the meals program presents unbearable financial hardship to a tenant, shall take into consideration the cost to tenants of meals not covered by the program and other necessary living costs remaining after the payment of charges for the mandatory meals program.

Sec. 2148(d)—Study

Provides that the Secretary shall, not later than the expiration of 18 months following this bill's enactment date, in order to facilitate congressional consideration of the appropriateness of the meals program for the elderly in assisted housing, submit to Congress a report reviewing the operation of mandatory meals programs and department actions implementing the provisions made in this section. This report shall include information on (1) the cost effectiveness of mandatory meals programs in comparison to comparable meals programs offered on a voluntary basis; (2) the benefits to tenants provided by mandatory participation in these meals programs; (3) the extent of compliance among sponsors of mandatory ****880 *125** meals programs with rules required in this section; (4) the extent to which tenants of assisted housing projects with mandatory meals programs have been required to participate in these programs against their wishes due to limited availability of alternative assisted housing projects for the elderly; (5) the appropriateness of tying meal service programs to tenant leases; and (6) the availability of funding under the Congregate Services Program, the Older Americans Act or other federal programs for facilitating the conversion of current mandatory meals programs to voluntary participation by tenants.

Sec. 2148(e)—Moratorium on new mandatory meal programs

Provides that the Secretary, during the 18-month period following this bill's enactment, shall only permit the establishment of voluntary meals programs in assisted housing projects for the elderly for which assistance is reserved by the Secretary after September 30, 1985, and shall not permit the conversion of a voluntary meals program in existence as of September 30, 1985, to a mandatory meals program.

Sec. 2149—Modification of restriction on use of assisted housing

Amends Sec. 214 of the Housing and Community Development Act of 1980 to provide that the HUD Secretary may not make financial assistance available for the benefit of any nonimmigrant student-alien.

Defines 'financial assistance' to mean financial assistance made available under the 1937 Act, Sections 235 or 236 of the National Housing Act, or Section 101 of the Housing and Urban Development Act of 1965; 'nonimmigrant student-alien' means any alien who has a residence in a foreign county that the alien has no intention of abandoning; is a bona fide student qualified to pursue a full course of study; and is admitted to the United States temporarily and solely for purposes of pursing a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the U.S. Department of Education, which has agreed to report to the Attorney General the termination of the attendance of each nonimmigrant student (and if any institution of learning or place of study fails to make such reports promptly, the approval shall be withdrawn); and the alien spouse and minor children of any alien described above.

Also provides conforming amendments by deleting Sec. 329(b) of the Housing and Community Developments of 1981.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2150—Exclusion of housing assistance as income

Provides that the value of any federal housing assistance may not be considered as income or a resource for purposes of determining eligibility or benefit amounts under any State program receiving payments under Part A of title IV of the Social Security Act.

Sec. 2151—Use of certain excess rental charges

Extends the authority in Sec. 236(f)(3) to utilize the excess rents collected in Sec. 236 projects for troubled projects purposes.

****881 *126** *Sec. 2152—Housing demonstration project*

Amends Sec. 225(h) of the Housing and Urban-Rural Recovery Act of 1983 to eliminate the requirement for an interim report and to provide for a final report by October 1, 1986, which shall include focus on the lack of coordination between HUD housing assistance programs and HHS shelter assistance and to evaluate approaches for coordination between the two Departments.

Amends Sec. 225(i) of the Housing and Urban-Rural Recovery Act of 1983 to authorize the appropriation of $10 million for the Housing Demonstration Project in FY 1986, which shall remain available until expended.

FLEXIBLE SUBSIDY ASSISTANCE FOR CERTAIN HOUSING PROJECTS FOR ELDERLY OR HANDICAPPED FAMILIES

Sec. 2153(a)—Purposes

Amends Sec. 201(a) of the Housing and Community Development Amendments of 1978 to provide that operating assistance for troubled multifamily housing projects shall also apply to assisted housing programs under the 1959 Housing Act.

Sec. 2153(b)—Eligibility for assistance

Amends Sec. 201(c)(1)(A) of the Housing and Community Development Amendments of 1978 to extend flexible subsidy assistance to Sec. 202 projects receiving their loan before October 1, 1970.

Sec. 2154—Housing assistance technical amendments

Provides clarifying technical amendments.

Subtitle B—Rural Housing

PROGRAM AUTHORIZATIONS

Sec. 2201(a)—Insurance and guarantee authority

Amends Section 513(a)(1) of the 1949 Housing Act to provide an overall total for insured and guaranteed loans during FY 1986 of not to exceed $2.266 billion. $1.328 billion is provided for Section 502 subsidized homeownership loans; $20 million for Section 514 farm-worker rental housing loans; $900 million for Section 515 for low income and elderly subsidized rental housing loans; $17 million for Sec. 504 low income repair loans; and $1 million for Sec. 524 site loans.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2201(b)—Authorization for appropriations

Amends Section 513(b) of the 1949 Housing Act to provide authorization for appropriation in FY 1986 of $20 million for Section 504 home repair grants; $2 million for compensation of construction defects payments; $15 million for Section 516 grants for farmworker rental housing projects; such sums as necessary to meet notes and obligations issued by the Secretary of Agriculture for credit on loan principal and interest due; $15 million for Section 523(f) mutual and self-help housing grants; $20 million for housing preservation grants under Sec. 533 and such sums as necessary to ****882 *127** administer HUD Sec. 235, 236 and such sums as necessary to administer HUD Sec. 235, 236 and Sec. 8 activities.

Sec. 2201(c)—Rental assistance payment contracts

Amends Sec. 513(c) of the 1949 Housing Act to provide for fiscal year 1986 rental assistance payment contracts under Sec. 521(a)(2)(A) aggregating $198 million.

Sec. 2201(d)—Rental housing loan authority

Amends Section 515(b)(4) of the 1949 Housing Act to extend the loan insuring authority for rental housing for FY 1986.

Sec. 2201(e)—Mutual and self-help housing

Amends Sec. 523(f) and (g) of the 1949 Housing Act to extend authority for Mutual and Self-Help Housing Technical Assistance Grants and Mutual and Self-Help Housing site loans one year through FY 1986

Sec. 2202—Income levels for family eligility

Amends Sec. 501(b)(4) of the Housing Act of 1949 to provide that the maximum income levels established for rural housing programs for families and persons in the Virgin Islands shall be the same as the levels established for families and persons in American Samoa, Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and provides that this provision shall apply to any eligibility determination for assistance made on or after the enactment date.

Sec. 2203—Plans for allocation of financial assistance

Amends Sec. 501 of the 1949 Housing Act to provide that not later than 30 days after the allocation to any State office of any rural housing assistance, each FmHA State, county and district office shall make available to the public a statement of the amount of FmHA housing assistance available within their respective area of jurisdiction.

Sec. 2204—Rural housing escrow accounts

Amends Sec. 501(e) of the Housing Act of 1949 to provide that the Secretary shall, not later than 60 days after the bill's enactment date, establish procedures under which borrowers shall make periodic payments for the purposes of taxes, insurance, and other necessary expenses as the Secretary determines to be appropriate.

Amends Sec. 501(a)(1) of the Housing Act of 1949 to provide that the borrower shall repay to the Secretary as escrow agent, on terms and conditions prescribed by the Secretary, such taxes, insurance, and other expenses as are required in the escrow procedures.

Sec. 2205—Rural housing guaranteed loans

Amends Sec. 502 of the Housing Act of 1949 to provide that of the total Sec. 502 loans made for any fiscal year beginning

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

after September 30, 1985, the following percentage shall be made in guaranteed loans for moderate income persons (those persons whose income is less than 115 percent of the area median income, as determined by the Secretary with adjustments for smaller and ****883 *128** larger families): 10 percent in FY 1986; 20 percent in FY 1987; and 30 percent in FY 1988 and each succeeding fiscal year.

Sec. 2206—Study of procedures for appeals of adverse decisions

Provides that not later than 180 days after the enactment date, the Agriculture Secretary shall conduct a study, and submit to the Congress a report, evaluating the procedures established by the Secretary for the FmHA assistance programs. The study and report shall include an analysis of the advantages of providing an impartial hearing of any appeal of an adverse decision and any additional recommendations of the Secretary for improving the appeals procedures.

USE OF FEE INSPECTORS AND APPRAISERS

Sec. 2207(a)—In general

Amends Sec. 510(j) of the 1949 Housing Act to include the Agriculture Secretary's determination under Sec. 532 as to the need to utilize fee inspectors and appraisers in application processing.

Sec. 2207(b)—Determination of Secretary

Amends Sec. 532 of the 1949 Housing Act to provide that each FmHA county or district office shall immediately notify the Secretary when it is unable to process any housing loan or grant application within a 30-day period following the application's receipt. This notification shall include a statement of the reason for the delay in application processing and upon the receipt of any notification, the Secretary shall determine whether the application processing delay by the county or district office involved is likely to continue without the use of the services of fee inspectors and fee appraisers. If the Secretary determines that the delay is likely to continue without the use of such services, the Secretary shall require the office to utilize fee appraisers until the office is able to expeditiously process loan and grant applications without them.

Sec. 2208—Rehabilitation standards of rural rental housing

Amends Sec. 515(1) of the 1949 Housing Act to require the Secretary shall, not later than 90-days following the date of enactment, issue regulations to establish rural rental rehabilitation standards.

MANAGEMENT OF INSURED AND GUARANTEED LOANS

Sec. 2209(a)—Sale of insured and guaranteed loans to public

Amends Sec. 517(c) of the Housing Act of 1949 to provide that any insured or guaranteed rural housing loan made by the Secretary or by other lenders after the enactment date shall be sold to the public and may not be sold to the Federal Financing Bank, unless such sale to the Federal Financing Bank is required to service transactions between the Secretary and the Federal Financing Bank occurring on or before the bill's enactment date.

****884 *129** *Sec. 2209(b)—Interest subsidy on insured and guaranteed loans offered for sale to public*

Amends Sec. 517(d) of the Housing Act of 1949 to provide that each rural housing loan made by the Secretary or other lenders that is insured or guaranteed in accordance with this section shall, when offered for sale to the public, be accompanied by an agreement by the Secretary to pay to the holder of such loan (through an agreement to purchase such loan or through such other means as the Secretary determines to be appropriate) the difference between the rate of interest paid by

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

the borrower of the loan and the market rate of interest (as determined by the Secretary) on obligations having comparable maturity periods on the sale date.

Sec. 2209(c)—Protection of borrowers under loans sold to public

Amends Sec. 517(d) of the Housing Act of 1949 to provide that each rural housing loan made by the Secretary or other lenders that is insured or guaranteed in accordance with this section shall, when offered for sale to the public, be accompanied by agreements for the benefit of the borrower under the loan that provides that the purchaser or any assignee of the loan shall not diminish any substantive or procedural right of the borrower arising under the loan program provisions; upon any default of the borrower, the loan shall be assigned to the Secretary for the purpose of avoiding foreclosure; and following any loan assignment because of borrower default and before commencing any action to foreclose or otherwise dispossess the borrower, the Secretary shall afford the borrower all substantive and procedural rights arising under the loan program provisions, including consideration for interest subsidy, moratorium, reamortization, refinancing, and appeal of any adverse decision to an impartial officer.

Sec. 2209(d)—Use of rural housing insurance fund

Amends Sec. 517(j) of the Housing Act of 1949 to provide that the Secretary may additionally utilize the Rural Housing Insurance Fund to make payments and take other actions in accordance with agreements entered into for interest subsidy an insured and guaranteed loans offered for sale to the public as provided above.

Sec. 2209(e)—Eligibility for guaranteed loans

Amends Sec. 517 of the Housing Act of 1949 to eliminate the provision which previously limited guaranteed loans only for moderate or above-moderate income borrowers.

Sec. 2209(f)—Regulations

Requires the Secretary to issue regulations 90 days after enactment to facilitate the marketability and competitiveness of these loans in the secondary market.

Sec. 2210—Definition of rural area

Amends Sec. 520 of the 1949 Housing Act to extend the rural area classification for those areas whose population is between 10,000 to 20,000 until the next decennial census.

****885 *130** *Sec. 2211—Rules and regulations for the rural housing preservation grant program*

Amends Section 533(h) of the 1949 Housing Act to require that the Agriculture Secretary shall, not later than 90 days following this bill's enactment date, issue regulations to carry out the Rural Housing Preservation Grants program with regard to rental or co-operative housing, including multifamily dwellings.

Sec. 2212—Limitation of restrictions on tax-exempt financing

Amends title V of Housing Act of 1949 to provide that in addition to the limitations on withholding or the conditioning of assistance established in Sec. 817 of the Housing and Community Development Act of 1984, the Secretary may not issue any regulation or take any other action that may have the effect of prohibiting or preventing the issuance of tax-exempt bonds or other obligations to provide financing for use in connection with rural housing assistance.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

TASK FORCE ON HOUSING NEEDS OF RURAL AMERICA

Sec. 2213(a)—Establishment

Provides for the establishment of the Task Forces on Housing Needs in Rural America, which shall examine (1) the problems of supplying low and moderate income families in rural areas with adequate housing through existing federal programs; (2) the access to affordable credit for housing for low and moderate income families in rural areas; (3) the availability of housing stock in rural areas suitable for rehabilitation; (4) the feasibility of assisting low and moderate income families in rural areas with existing programs, new programs, or a combination of such programs; and (5) the need for new construction and additional dwelling for low and moderate income families in rural areas.

Sec. 2213(b)—Members

Provides that the task force shall consist of not less than 8 members appointed by the Secretary of Agriculture as follows: 2 officials from the Department of Agriculture; 2 representatives from for-profit and non-profit organizations and agencies engaged in housing development in rural areas; 2 tenants in assisted rural housing; and 2 representatives from units of general local government in rural areas.

Provides that each task force member shall serve without pay, allowances, or benefits by reason of their service; but shall be reimbursed for actual expenses, including travel expenses, incurred in the course of performing the duties vested in the task force.

Sec. 2213(c)&(d)—Meetings

Provides that the task force shall meet as necessary at the call of the Secretary and requires the Secretary to provide the task force with staff and office facilities as the Secretary, following consultation with the task force, considers necessary to permit the task force to carry out its functions.

****886 *131** *Sec. 2213(e)—Report*

Provides that the task force shall submit to the Secretary and the Congress, within one year following the date of enactment, a report setting forth its findings as a result of its study which shall include the task force's recommendations for actions to resolve the problems identified in their study. Provides that the Task Force shall cease to exist after filing the report.

Sec. 2213(f)—Definitions

Provides that the term 'rural area' has the same meaning as given in Sec. 520 of the Housing Act of 1949; the term 'Secretary' means the Secretary of Agriculture; and the term 'task force' means the Task Force on Housing Needs in Rural American established in this section.

Sec. 2214(a)–(g)—Rural housing technical amendments

Provides conforming technical amendments to sections of the rural housing provisions of the Housing Act of 1949.

Subtitle C—Program Amendments and Extensions

PART 1—FEDERAL HOUSING ADMINISTRATION MORTGAGE INSURANCE PROGRAMS

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

EXTENSION OF FEDERAL HOUSING ADMINISTRATION MORTGAGE INSURANCE PROGRAMS

Sec. 2301—Program extensions

Subsection (a)—Title I Insurance—Extends through fiscal year 1986 Section 2(a)—property improvement and manufactured home loan insurance programs.

Subsections (b)–(h)—General and Special Insurance Authorities.—Extends through fiscal year 1986 all FHA mortgage insurance and co-insurance programs under the authority of the HUD Secretary.

Sec. 2302—Amount to be insured under the National Housing Act

Extends through fiscal year 1986 the authority for FHA to enter into insurance commitments up to an aggregate principal amount of $50.9 billion.

Sec. 2303—Negotiated interest rates on mortgages insured by Federal Housing Administration

Amends Sec. 232(i)(2)(B) and Sec. 810(h) of the National Housing Act to provide that interest rates for the Nursing Home Fire Safety Equipment Insurance and Armed Services Housing Insurance programs shall be negotiated between mortgagor and the mortgagee under each respective program.

Sec. 2304(a)–(b)—Study of voluntary standards for modular homes

Provides that in order to facilitate the construction of less costly housing, the HUD Secretary shall prepare and submit to the Congress not later than 6 months after the enactment date a report describing feasible alternative systems for implementing a voluntary pre-emptive national code for modular housing, including the ****887 *132** method for inspecting the structures to ensure compliance with the recommended code. Such code shall provide for the development of modular housing standards for construction, design, and performance that ensure quality, durability, and safety and are in accordance with life-cycle cost-effective energy conservation standards established by the HUD Secretary and designed to ensure the lowest total construction and operating costs over the estimated life of such housing; and defines the term, modular housing, to mean factory-built single family housing not subject to the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974.

Sec. 2305—Limitation on certain premium charges

Amends Sec. 530 of the National Housing Act to provide that no loan or mortgage insurance premium charge under the FHA insurance programs may exceed 3.8 percent.

Sec. 2306(a)–(b)—Mortgage insurance on Hawaiian home lands or Indian reservations

Amends Secs. 247 and 248 of the National Housing Act to permit the use of the General Insurance Fund instead of the Mutual Mortgage Insurance Fund in carrying out the insuring authority on Hawiian home lands or Indian reservations.

Sec. 2307—Repeal of requirements to publish prototype housing costs for one-to-four family dwelling units

Amends Sec. 904 of the 1977 Housing and Community Development Act to repeal the requirement for the Department to publich prototype housing costs for one-to-four family dwelling units.

Sec. 2308—Authority for increased mortgage limits for multifamily projects in high-cost areas

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Amends Sec. 207, Sec. 213, Sec. 220, Sec. 221, Sec. 231, and Sec. 234 of the National Housing Act to permit increased limits on the amount of a mortgage that may be insured: not to exceed 110 percent in high cost areas and up to 140 percent on a project-by-project basis. In no case, however, may any increase exceed 90 percent for mortgages purchased or to be purchased by the Government National Mortgage Association under its special assistance functions.

Sec. 2309—Permissible annual interest rate adjustment for adjustable rate mortgages

Amends Sec. 251(a) of the National Housing Act to provide that FHA adjustable rate mortgages may be adjusted no more than 2 percent on the outstanding loan balance for any single interest rate increase in any year.

Sec. 2310—Double damages remedy for unauthorized use of multifamily housing project assets and income

Sec. 2310(a)—Action to recover assets or income

Authorizes the HUD Secretary to request the Attorney General to bring an action in a United States district court to recover any ****888 *133** assets or income used by any person in violation of (A) a regulatory agreement that applies to a multifamily project whose mortgage is insured or held by the Secretary under title II of the National Housing Act, or (B) any applicable regulation.

Provides for purposes of a mortgage insured or held by the Secretary under title II of the National Housing Act, 'any person' shall mean any person or entity which owns a project, as identified in the regulatory agreement, including but not limited to any stockholder holding 25 percent or more interest of a corporation that owns the project; and beneficial owner under any business or trust; any officer, director, or partner of an entity owning the project; and any heir assignee, successor in interest, or agent of any owner.

Sec. 2310(b)—Initiation of proceedings and temporary relief

Provides that the Attorney General, upon the Secretary's request, shall have the exclusive authority to authorize the initiation of proceedings under this section. Provides that the court, pending final resolution of any action under this section, may grant appropriate temporary or preliminary relief, including restraining orders, injunctions, and acceptance of satisfactory performance bonds to protect the Secretary's interests and to prevent use of assets or income in violation of the regulatory agreement and any applicable regulation, and to prevent the loss of value of the realty and personality involved.

Sec. 2310(c)—Amount recoverable

Provides that in any judgment favorable to the U.S, the Attorney General may recover double the value of the project's assets and income that the court determines to have been used in violation of the regulatory agreement or any applicable regulation, plus all costs relating to the action, including reasonable attorney and auditing fees. Provides that the Secretary may apply any portion of the recovery to the project or to the applicable insurance fund under the National Housing Act.

Sec. 2310(d)—Time limitation

Provides that the Secretary may request the Attorney General to bring an action under this section at any time up to 6 years after the latest date that the Secretary discovers any violation.

Sec. 2310(e)—Other remedies

Provides the remedy provided by this section is in addition to any other remedies available to the Secretary or the Attorney General.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2311—Administrative improvements in single-family mortgage insurance program

Amends the National Housing Act by adding a new section making administrative improvements in the mortgage insurance program which require the Secretary to (a) annually prepare and submit to the Congress a comprehensive report on the non-subsidized single-family mortgage insurance programs carried out by the Secretary under title II in metropolitan cities and urban counties. Each report shall describe the types of dwellings insured, the ****889 *134** individual income eligibility, the delinquency and foreclosure rates, the condition of the dwellings, and the status of the homeowners (including whether homeowners are first-time homeowners or single-parent families) and shall be made available to the public in all HUD regional and local offices; (b) establish procedures to ananlyze in detail and conduct scrutinized oversight of the single-family mortgage insurance operations of HUD under title II, with specific attention to Milwaukee, Camden, and other cities having recent single-family mortgage foreclosure difficulties; (c) review the fee appraisal standards used under title II with respect to single-family dwellings, and develop a higher appraisal standard for fee appraisers of such dwellings in predominately low and moderate income neighborhoods; (d) not use the fee appraisers services if they are not FHA employees for appraising single-family dwellings insured under title II and located in any metropolitan city or urban county; (e) require each HUD regional and local office to provide on a priority basis, to PHAs and community advocacy groups located within the area of its jurisdiction, adequate and timely information regarding the single-family mortgage insurance activities of such office under title II; and (f) take such actions as may be necessary, including improved marketing and advertising practices, to publicize the availability of single-family mortgage insurance under title II.

Sec. 2312—Refinancing mortgage insurance for hospitals, nursing homes, intermediate care facilities, and board and care homes

Amends Sec 223(f)(4)(D) of the National Housing Act to additionally provide that the Secretary, in the refinancing of an existing hospital, shall assure that the existing hospital has received a certification from the state in which the hospital is located which is comparable to the certification required for hospitals under Sec. 242, the Hospital Mortgage Insurance program.

Amends Sec. 223(f) of the National Housing Act to extend refinancing insurance to existing nursing homes, existing intermediate care facilities, or existing board and care homes.

Provide that the HUD Secretary shall issue, within 90 days following this bill's enactment date, regulations as may be necessary to carry out the provisions made in this section.

Sec. 2313—Mortgage insurance for nursing homes, intermediate care facilities, and board and care homes

Amends Sec. 232(b)(1) of the National Housing Act to extend mortgage insurance for public nursing homes.

Amends Sec. 232(d)(4)(A) to require that nursing homes and intermediate care facilities have received whatever approval is required by their State in order to receive mortgage insurance.

Provides that the HUD Secretary shall issue, within 90 days following this bill's enactment date, regulations as may be necessary to carry out the provisions made in this section.

****890 *135** *Sec. 2314—Requirement of State approval for mortgage insurance for hospitals*

Amends Sec. 242(d)(4) of the National Housing Act to require that hospitals meet whatever needs approval is required by their State in order to receive mortgage insurance.

Provides that the HUD Secretary shall issue, within 90 days following this bill's enactment date, regulations as may be necessary to carry out the provisions made in this section.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2315(a)–(d)—Mortgage insurance technical amendments

Makes conforming and technical amendments.

PART 2—FLOOD AND CRIME INSURANCE PROGRAMS

FLOOD INSURANCE

Sec. 2321(a)—General authority

Amends Sec. 1319 of the National Flood Insurance Act of 1968 to extend flood insurance through FY 1986.

Sec. 2321(b)—Emergency implementation

Amends Sec. 1336(a) of the 1968 National Flood Insurance Act to provide emergency implementation of flood insurance coverage through FY 1986.

Sec. 2321(c)—Flood studies

Authorizes to be appropriated and remains available until expended, $36.9 million for flood studies in fiscal year 1986.

Sec. 2321(d)—Flood insurance premiums

Provides that the premium rates charges for flood insurance under any program established pursuant to the National Flood Insurance Act of 1968 may not be increased during the period beginning on the enactment date and ending on September 30, 1986.

Sec. 2321(e)—Premium rates for community making adequate progress

Provides that for the purposes of determining premium rates for flood insurance, the flood protection system in Winfield, Kansas, shall be considered to comply with the requirements and conditions of adequate community progress on the construction of a flood protection system as required in Sec. 1307(e) of the National Flood Insurance Act of 1968.

CRIME INSURANCE

Sec. 2322(a)–(b)—General authority and continuation of existing contracts

Amends Sec. 1201(b)(1) of the National Housing Act to extend crime insurance through FY 1986 and amends Sec. 1201(b)(1)(A) to provide continuation of existing crime insurance contracts through FY 1987.

****891 *136** *Sec. 2322(c)—Crime insurance premiums*

Provides that the premium rates charged for crime insurance under any program established pursuant to part C of title XII, involving Burglary and Theft Insurance, may not be increased during the period beginning on the enactment date and ending on September 30, 1986.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2323(a)–(e)—Flood and crime insurance technical amendments

Provides conforming technical amendments.

PART 3—SECONDARY MORTGAGE MARKET PROGRAMS

Sec. 2341—Government National Mortgage Association Mortgage-Backed Securities Program

Amends Sec. 306(g)(2) of the Federal National Mortgage Association Charter Act to extend the GNMA Mortgage-Backed Securities Program through FY 1986 at $68.25 billion guarantee commitment level.

PROHIBITION OF FEES ON FNMA, GNMA, FHLMC

Sec. 2342(a)—FNMA

Amends Sec. 304 of the FNMA Charter Act to provide that except for fees paid pursuant to sec. 309(g), no fee or charge may be assessed or collected by the United States (including any executive department, agency or independent establishment of the United States) on or with regard to the purchase, acquistion, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, trust certificate of beneficial interest, or other security by the corporation. Purchases of obligations by the Treasury under subsection (c) shall not be affected by this subsection.

Sec. 2342(b)—Government National Mortgage Association

Amends Sec. 306(g) of the Federal National Mortgage Association Charter Act to provide that no fee or charge may be assessed or collected by the United States in or with regard to GNMA guarantees unless such fee or charge is not more than the applicable percentage amount in effect on June 1, 1985.

Sec. 2342(C)—Federal Home Loan Mortgage Corporation

Amends Sec. 306 of the Federal Home Loan Mortgage Association Act to provide that except for fees paid pursuant to Sec. 303(c), no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, or other security by the Corporation.

Sec. 2343—Secondary mortgage market technical amendments

Provides a technical amendment.

****892 *137** PART 4—REGULATORY AND OTHER PROGRAMS

Sec. 2361—Solar Energy and Energy Conservation Bank

Amends Sec. 522(a) of the Solar Energy and Energy Conservation Bank to authorize $15 million in FY 1986 for the Solar Bank.

Sec. 2362—Counseling

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Amends Sec. 106(a)(3) of the Housing and Urban Development Act of 1968 to authorize $4 million to be appropriated for the Housing Counseling Program in FY 1986.

Sec. 2363(a)–(e)—Home Mortgage Disclosure Act as (HMDA)

Amends Sec. 303(2) of the Home Mortgage Disclosure Act of 1975 (HMDA) to extend applicability of HMDA provisions to mortgage banking subsidiaries of a bank holding company or savings and loan holding company, or savings and loan service corporations that originate or purchase mortgage loans.

Amends Sec. 304 of the Home Mortgage Disclosure Act of 1975 to provide the HMDA requirements for maintenance of records and public disclosure shall not apply to mortgage loans that are insured under titles I and II of the National Housing Act that are made by any mortgage banking subsidiary of a bank holding company or savings and loan holding company, or by any savings and loan service corporation that originates or purchases mortgage loans.

Amends Sec. 311 of HMDA to provide that the Secretary shall continue to report on those mortgages insured under the National Housing Act which are issued by the mortgage banking affiliates included in this amendment.

Provides that the provisions provided in this section shall apply to the calendar years beginning after December 31, 1985.

Amends Sec. 304(a)(2)(B) of the Home Mortgage Disclosure Act of 1975 to provide that each report shall include data, including numbers and amounts for each mortgage loan, on a state-by-state basis for those areas outside Metropolitan Statistical Areas of each State.

Amends Sec. 304(f) of the Home Mortgage Disclosure Act of 1975 to provide that disclosure statements are made available from depository institutions no later than June 1 of the year following the calendar year on which the statements are based.

Deletes Sec. 312 of the Home Mortgage Disclosure Act of 1975 to provide for a permanent disclosure program.

Provides that the Federal Financial Institutions Examination Council shall submit to the Congress, not later than the 36 months following the enactment date, a report assessing: HMDA costs, usage, and obstacles to usage and calls for recommendations for action to be taken by the Federal financial institutions regulatory agencies to increase public awareness about the availability of HMDA.

Sec. 2364—Research authorization

Amends Sec. 501 of the Housing and Urban Development Act of 1970 to authorize the appropriation of $17 million for HUD Research in FY 1986.

****893 *138** *Sec. 2365—Timely payment of subcontractors*

Provides that it is the policy of the United States that each prime contractor of HUD should establish procedures to ensure that there is timely payment of amounts due pursuant to the terms of the subcontracts of such prime contractor.

Sec. 2366—Median area income

Provides that in calculating the median income for any area that is not within a metropolitan statistical area (as established by the Office of Management and Budget) for programs under title I of the Housing and Community Development Act of 1974, the 1937 Act, the National Housing Act, or title V of the Housing Act of 1949, the HUD Secretary or the Agriculture Secretary shall use whichever of the following is higher: (1) the median income of the county in which the area is located; or (2) the median income of the entire nonmetropolitan area of the state.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2367—Report regarding manufactured housing fees

Provides that the HUD Secretary shall submit to the Congress, within 6 months after this bill's enactment date, a detailed report describing the fees collected by the Secretary during the 4-year period preceding this bill's enactment date regarding inspection of manufactured homes under Sec. 614 of the National Manufactured Housing Construction and Safety Standards Act of 1974. This report shall include the amount of the fees collected, the allocation of expenses, the costs of the program, and any available reserves.

Sec. 2368—Removal of maximum fee for interstate land sales registration

Permits the Secretary to establish a reasonable filing fee in the Interstate Land Sales Full Disclosure Act program.

PREVENTING FRAUD AND ABUSE IN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS

Sec. 2369(a)—Disclosure of social security number

Provides that as a condition of initial or continuing eligibility for participation in any HUD program involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, and to ensure that the level of benefits under each program is proper the Secretary may require that an applicant or participant (including members of an applicant's or participant's household) disclose his or her social security number or employer identification number to the Secretary.

Sec. 2369(b)—Verification of information

Provides that as a condition of initial or continuing eligibility for participation in any HUD program involving initial and periodic review of an applicant's or participant's income, and to ensure that the level of benefits provided under these programs is proper, the Secretary may require that an applicant or participant (including members of an applicant's or participant's household) sign a consent form approved by the Secretary authorizing (1) the Secretary, ****894 *139** or the public housing agency or owner responsible for determining eligibility or level of benefits, to verify the information furnished by the applicant or participant, and (2) any Federal, State, or local agency or private person or entity to release information related to the determination of eligibility and benefit level. The information may include, but is not limited to, data concerning wages, unemployment compensation, benefits made available under the Social Security Act, and veterans benefits. Any individually identifiable information received by the Secretary under this section shall be subject to the requirements of Sec. 552(a) of title 5, U.S.C. An applicant or participant shall have the right to obtain, examine, and correct any information which the Secretary, public housing agency or owner responsible for determining eligibility or level of benefits has received under this section before the Secretary, PHA, or owner takes any action on the basis of such information, unless a criminal investigation is pending. An applicant or participant shall also have the right to file a statement disputing or augmenting any such information and to have the statement included in any information records.

Sec. 2369(c)—Definitions

Provides that the term 'applicant' and 'participant' shall be defined in regulation, but shall not include persons acting in an official capacity; 'public housing agency' means an agency described in the 1937 Act; and 'Secretary' is the HUD Secretary.

FAIR HOUSING

Sec. 2370(a)–(c)—Fair housing initiatives program

Authorizes the HUD Secretary to make grants to State or local governments or their agencies, public or private nonprofit

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

organizations of institutions, or other public or private entities that are carrying out programs to prevent or eliminate discriminatory housing practices, to develop, implement, carry out, or coordinate (1) program or activities designed to obtain enforcement of the federal civil rights laws or state or local antidiscrimination laws through appropriate and available judicial or administrative proceedings, and (2) education and outreach programs designed to inform the public concerning their civil rights and obligations.

Provides that the Secretary shall notify both the House and Senate Committees on Banking, Housing and Urban Affairs, within 30 days of issuance, of any proposed fair housing grant, contract or cooperative agreement and also provide to both Committees a quarterly report summarizing the funded program activities. Both the notification and quarterly report shall contain a description of the geographic distribution of program funding.

Provides that the Secretary shall issue regulations governing applications for program assistance, which shall include (A) a description, the estimated costs and schedule for completion of the proposed assisted activities to be undertaken by the applicant; (B) a description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices; (C) available information, including studies made by or available to the applicant, indicating the nature and extent of discriminatory ****895 *140** housing practices occurring in the general location where the applicant proposes to conduct its assisted activities, and the relationship of the proposed activities to the discriminatory practices; (D) an estimate of other public or private resources that may be available to assist the proposed activities; and (E) a description of proposed procedures that will be used by the applicant for monitoring conduct and evaluating results of the proposed activities. Provides that these program regulations shall not become effective until 90 days after the Secretary sends the regulations intended to be published to both the House and Senate Banking Committees and that the Secretary shall not obligate or expend any program amounts until the effective date of the regulations.

Authorizes to be appropriated and remain available until expended to carry out the Fair Housing Initiatives Program, including any program evaluations; $10 million for fiscal year 1986.

Sec. 2371(a)&(b)—Lead-based paint poisoning prevention procedures and regulations

Amends Sec. 302 of the Lead-Based Paint Poisoning Prevention Act to provide that the Secretary shall appropriate to eliminate lead-based paint on the interior and exterior surfaces of assisted housing structures.

Provides that the Secretary shall make a periodic determination of whether housing constructed during or after 1950 presents hazards of lead-based paint; and shall apply the procedures established if there are immediate lead-based paint hazards.

Provides that the Secretary shall take such actions as may be necessary to ensure compliance with the procedures established under this section.

Provides that within 90 days following the date of enactment, the HUD Secretary shall issue regulations.

Sec. 2372—Makes regulatory and other programs technical amendments

PART 5—COMMUNITY AND NEIGHBORHOOD DEVELOPMENT AND CONSERVATION PROGRAMS

COMMUNITY DEVELOPMENT BLOCK GRANT METROPOLITAN CITY AND URBAN COUNTY CLASSIFICATIONS

Sec. 2381(a)—Central cities

Amends Sec. 102(a)(4) of the Housing and Community Development Act of 1974 to provide that any central city classified as a metropolitan city for purposes of CDBG assistance shall retain such classification until the city is determined to no longer qualify as a metropolitan city on the basis of data obtained in a decennial census conducted after the end of fiscal year

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

1985.

Sec. 2381(b)—Other cities

Amends Sec. 102(a)(4) of the 1974 Housing and Community Development Act to provide that any other city with a population of 50,000 or more, classified as a metropolitan city for purposes of CDBG assistance, shall retain such classification notwithstanding a ****896 *141** decrease in population below 50,000 if the population of such city is not below 50,000 in two consecutive decennial censuses, including the 1980 census.

Sec. 2301(c)—Urban counties

Amends Sec. 102(a)(6) of the 1974 Housing and Community Development Act to include in the definition of an urban county a county which has a current population in excess of 177,000, with more than 50 percent of the housing units of the area unsewered and with the unsewered housing units contributing to the degradation of an aquifer that has been declared a sole source aquifer by the Environmental Protection Agency.

Sec. 2382—Statement of activities and review

Amends Sec. 104(a)(1) of the Housing and Community Development Act of 1974 to eliminate the requirement that CDBG recipients include in their statement of activities and review, a description of the use of funds.

Sec. 2383—Housing assistance plans

Amends Sec. 104(c)(1)(A) of the 1974 Housing and Community Development Act to provide that communities include in their housing assistance plan surveys the assessment of housing assistance needs of homeless persons.

Sec. 2384—Limited new construction of housing under the community development block grant program

Amends Sec. 105(a) of the Housing and Community Development Act of 1974 to provide as an eligible activity under the CDBG program, new construction or substantial rehabilitation of existing homes in those instances where persons of low and moderate income own and occupy a home that the grantee determines is not suitable for rehabilitation.

Sec. 2385—Community development block grant public service activities

Amends Sec. 105(a)(8) of the Housing and Community Development Act of 1974 to permit the Secretary to authorize the use of more than 15 percent, but not more than the highest amount permitted to be used in FY 1982 or 1983 for public services by another unit of general local government located in the same metropolitan area of CDBG assistance for public service activities if the applicant determines the activities are appropriate to support the proposed CDBG activities and the applicant requests authority to use more than 15 percent of the assistance.

Sec. 2386—State certification for receiving CDBG assistance for nonentitlement areas

Amends Sec. 106(d)(2) to clarify that the State rather than the Governor make the required certifications.

Sec. 2387—Secretary's discretionary fund

Amends Sec. 107(a) of the 1974 Housing and Community Development Act to provide that not more than $5 million shall be made ****897 *142** available for the Park Central New Community project from the CDBG Secretary's Discretionary Fund in FY 1986.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2388(a)—Community development block grant loan guarantees

Amends Sec. 108(a) of the Housing and Community Development Act of 1974 to provide that the Secretary may not enter into any commitment to guarantee a note or obligation under this section during Fiscal Year 1986.

Sec. 2388(b)—Prohibition of fees on loan guarantees

Amends Sec. 108 of the Housing and Community Development Act of 1974 to provide that no fee or charge may be assessed or collected by the Secretary or any other Federal agency on or with respect to a Sec. 108 loan guarantee made by the Secretary.

URBAN DEVELOPMENT ACTION GRANT SELECTION CRITERIA

Sec. 2389(a)—Project quality selection

Amends Sec. 119(d)(1) of the 1974 Housing and Community Development Act to provide that of the aggregate amount awarded for UDAG grants for any fiscal year, 40 percent shall be awarded for grants made solely on the basis of the project merit selection criteria which shall be evaluated first. The remaining applications shall be evaluated under all three of the selection criteria, including in the primary criteria, economic distress and impaction.

Sec. 2389(b)—Modifications in selection criteria relating to project quality

Amends Sec. 119(d)(1)(A)(iii) of the 1974 Housing and Community Development Act to provide that the Secretary shall award points in the criteria for project merit to take into account the failure of a city or urban county to receive a UDAG grant on or after December 21, 1983.

Amends Sec. 119(d)(1) of the 1974 Housing and Community Development Act to provide that in determining the score to be awarded for each grant application for primarily involving housing activities, the Secretary shall compare these applications only with other such applications in determining the values used for assigning scores for each criterion included in the project merit selection criteria.

Provides that an application shall be considered an application for a grant for housing activities if the application proposes to use not less than 51 percent of all funds available for the project for housing activities and not less than 20 percent of all funds available for the project for dwelling units to be available for occupancy by persons of low and moderate income, or to make available for occupancy by persons of low and moderate income not less than 20 percent of all dwelling units made available for occupancy through the use of all such funds, whichever results in the availability of more dwelling units for occupancy by persons of law and moderate income.

Amends Sec. 119(r) of the 1974 Housing and Community Development Act to permit the treatment of housing applications herein ****898 *143** provided without violating the provisions prohibiting discrimination among programs.

Sec. 2389(c)—Modification in selection criteria relating to urban counties

Amends Sec. 119(d)(1) of the Housing and Community Development Act of 1974 to provide that the Secretary, in determining the score to be awarded each of the criteria provided above for urban county UDAG applications, shall compare UDAG county grant applications only with other applications in a manner similar to that which is now provided for housing UDAG.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2389(d)—Number of competitions for grants

Amends Sec. 119(d) of the Housing and Community Development Act of 1974 to provide that the Secretary shall hold three competitions each for UDAG grants for the large and small city programs in each fiscal year and that each completion shall be for an amount equal to approximately one-third of the funds available for grants for the fiscal year, funds available from prior competitions but not awarded and funds recaptured from prior UDAG competitions.

Sec. 2389(e)—Reports to Congress

Provides that not later than the expiration of the 6-month period following the enactment date and each year thereafter, the HUD Secretary shall prepare and submit to the Congress a comprehensive report evaluating the eligibility standards and selection criteria applicable under Sec. 119 of the Housing and Community Development Act of 1974. Such report shall evaluate in detail the standards and criteria specified in such section that measure the level of comparative degree of economic distress of cities and urban counties.

Provides that this report also evaluate in detail the currency and accuracy of the economic and social data utilized by HUD in awarding grants, and shall compare the data used by HUD with other available data. HUD shall make recommendations to the Congress on whether or not other data should be collected by the government in order to fairly and accurately distribute grants based on the level or comparative degree of economic distress. The Department shall also make recommendations on whether or not existing data should be collected more frequently in order to ensure that timely data is used to evaluate grant applications. This report shall also describe in detail the standards and criteria utilized by HUD to evlauate project quality.

Also provides that not later than the expiration of the 3-month period following the date of the final competition for grants for fiscal year 1986 under Sec. 119 of the Housing and Community Development Act of 1974, the HUD Secretary shall prepare and submit to the Congress a comprehensive report describing the effect of the amendments made by this section on the targeting of grant funds to cities and urban counties having the highest level or degree of economic distress; the distribution of grant funds among regions of the United States; the number and types of projects receiving ****899 *144** grants; and the per capita funding levels for each city receiving a UDAG.

Sec. 2389(f)—Regulations

Provides that the Secretary shall issue such regulations as may be necessary to carry out the amendments made by this section. Such regulations shall be published for comment in the Federal Register not later than 60 days after the date of the enactment of this Act.

Sec. 2389(g)—Applicability

Provides that the amendments made by this section shall be applicable to the making of urban development action grants that have not received the preliminary approval of the HUD Secretary before the date on which final regulations issued by the Secretary under subsection (f) become effective. For the fiscal year in which the amendments made by this section become applicable, such amendments shall only apply with respect to the aggregate amount awarded for such grants on or after such date.

Sec. 2390—Prohibition on use of urban development action grants for business relocations

Amends Sec. 119(h) of the 1974 Housing and Community Development Act (1) to restrict the existing prohibition to only speculative projects that do not have identified intended occupants; (2) to additionally provide that no assistance may be provided or utilized for any UDAG project with identified intended occupants that is likely to facilitate a relocation of any operation of a industrial or commercial plant or facility or other business establishment from a distressed city to another eligible distressed city, urban county or identifiable community or an expansion of any industrial or commercial operations plant or facility or other business establishment that results in a reduction of any such operations in a distressed city, county or community; (3) to provide that the restrictions of Section 119(h) shall not apply unless the Secretary determines that the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

relocation or expansion does not significantly and adversely affect the employment or economic base of the city; (4) to provide a definition of the term 'operation' to mean any plant, equipment, facility, position, employment opportunity, production capacity, or product line; and (5) to require the Secretary to issue regulations, including those concerning the significant and adverse affect finding the Secretary is required to make in approving UDAG applications.

Sec. 2391—Consideration of certain counties as cities under urban development action grant program

Amends Sec. 119(n)(1) of the Housing and Community Development Act of 1974 to make eligible for the UDAG program, the counties of Kauai, Maui, and Hawaii in the State of Hawaii.

Sec. 2392—Urban development action grant loan guarantees

Amends Sec. 119 of the Housing and Community Development Act of 1974 to provide that the HUD Secretary shall, to the extent provided in appropriation Acts, guarantee the repayment of loans ****900 *145** made under the UDAG program to neighborhood-based nonprofit organizations. These guarantees may be made only if: the organization is based in a neighborhood in which activities financed with UDAG funds are being or will be carried out; the funds from the UDAG loans are to be used to finance neighborhood revitalization activities that are designed to meet housing and other related needs of persons of low and moderate income in the neighborhood and that have been developed with the approval of the city or urban county receiving the grant; the amount guaranteed at any time does not exceed 90 percent of the outstanding unpaid principal balance of the loan; the loan amount does not exceed 95 percent of the cost of the neighborhood revitalization activities financed by the loan; the organization meets requirements established by the Secretary; there is reasonable assurance of loan repayment; the guarantee is requested by a financial institution in the manner and form required by the Secretary; the loan is not available from financial institutions without the guarantee; and the guarantee meets terms and conditions prescribed by the Secretary with respect to the interest rate and amortization of the loan, security required for the loan, proceedings in the event of default, and other matters defined by the Secretary.

Provides that the Secretary shall, in making available guarantees, give a priority to assisting neighborhood revitalization activities designed primarily to mitigate the displacement of low and moderate income persons that is likely to occur as a result of commercial or other activities in the neighborhood.

Provides that the aggregate loan amount that may be guaranteed during FY 1986 may not exceed an amount equal to 10 percent of the UDAG amount approved in appropriation Acts during FY 1986.

Provides that the full faith and credit of the United States is pledged to the payment of all UDAG guarantees. Any guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee, and the validity of any guarantee so made shall be incontestable in the hands of a holder of the guaranteed loan.

Provides that for any UDAG loan guarantees default proceedings, the Secretary shall have the same authority to foreclose, sell and exchange property.

URBAN HOMESTEADING

Sec. 2393(a)—Conveyance of property by State and local government for consideration

Amends Sec. 810 of the 1974 Housing and Community Development Act to permit transfers of properties to families or individual that are not lower income for amounts agreed upon by both parties; but porhibits any State or local government from conveying property to higher income persons if there are qualified lower income applicants and from excluding special priority applicants because of the amounts the entity wishes to charge for the property. Also provides that the Urban Homesteading funds shall be collected by the HUD Secretary and deposited in the U.S. Treasury.

****901 *146** *Sec. 2393(b)—Increased assistance for communities having high rates of foreclosures*

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Amends Sec. 810 of the 1974 Housing and Community Development Act to provide that any local government which has a single-family mortgage foreclosure rate of more than 20 percent during the past year may apply to the Secretary for an increase in its urban homesteading assistance. The local government must provide to the Secretary documentation, including the foreclosure rate, the local government's administrative capabilities for the homesteading program, and the likely effect of the use of the additional funds on the foreclosure rate. The Secretary may not approve requested increases in assistance that exceed 50 percent of the amount requested by the local government in its original homesteading program applications.

Sec. 2393(c)—Authorization of appropriations

Amends Sec. 810(1) of the 1974 Housing and Community development Act to provide $12 million for the Urban Homesteading program in FY 1986.

SEC. 312 REHABILITATION LOANS

Sec. 2394(a)—Loan authority

Amends Sec. 312(h) of the 1964 Housing Act to extend the Rehabilitation Loan Program through FY 1986.

Sec. 2394(b)—Prohibition of fees on rehabilitation loans

Amends Sec. 312(g) of the 1964 Housing Act to provide that no risk premium or loan fee may be assessed or collected by the Secretary or any other Federal agency on a Sec. 312 loan.

Sec. 2395—Neighborhood Reinvestment Corporation

Amends Sec. 608(a) of the Neighborhood Reinvestment Corporation Act to authorize the appropriation of $15.5 million for the Neighborhood Reinvestment Corporation in FY 1986.

Sec. 2396—Neighborhood Development Demonstration Program

Amends Sec. 123(g) of the Housing and Urban-Rural Recovery Act of 1983 to authorize the appropriation of $10 million for the Neighborhood Development demonstration Program in FY 1986.

Sec. 2397—Use of urban renewal land disposition proceeds

Provides that notwithstanding any other provision of law or other requirement, the City of Boston, Massachusetts, is authorized to retain any land disposition proceeds from the financially closedout Government Center Urban Renewal Project not paid to HUD and to use the proceeds in accordance with the CDBG program requirements. The proceeds shall be retained in a lump sum and shall be entitled to retain and use all past and future earnings from these proceeds, including any interest.

****902 *147** *Sec. 2398—Limitation on recapture of certain reservations of assistance*

Provides that the HUD Secretary shall not recapture any of the previously reserved assistance under the Sec. 312 Rehabilition Loan Program or the Sec. 810 Urban Homesteading Program, due to the failure of a person or governmental entity, for which the assistance has been reserved, to utilize, obligate, or expand the assistance during the fiscal year in which the amount is received or during the succeeding fiscal year.

Sec. 2399(a)—Community development block grant program

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Amends Section 103 of the Housing and Community Development Act of 1974 by authorizing to be appropriated for purposes of assistance under sections 106 and 107 not to exceed $2,980,000,000 for fiscal year 1986.

Sec. 2399(b)—Urban development action grant program

Amends Section 119(a) of the Housing and Community Development Act of 1974 by authorizing to be appropriated to carry out the provisions of this section not to exceed $352,000,000, for fiscal year 1986. Any amount appropriated under this subsection shall remain available until expended.

Sec. 2399A—Community development technical amendments

Amends 123(e)(3) of the 1983 HURRA to provide clarifying technical amendments.

Subtitle D—Shelter Assistance for the Homeless and Displaced

PART 1—NATIONAL BOARD OF CHARITIES PROGRAM

Secs. 2401–2402—Authorization of appropriations; eligible activities; program administration

Authorizes to be appropriated $66 million in FY 1986 to the Federal Emergency Management Agency to continue the emergency food distribution and shelter program established in the Second Supplemental Appropriations Act, 1984, to remain available until expended. These funds, however, may not be used for activities for which other funding has been provided under the second stage homeless demonstration and the emergency shelter grant program.

PART 2—SECOND STAGE HOUSING FOR THE HOMELESS AND DISPLACED

ESTABLISHMENT OF DEMONSTRATION PROGRAM

Sec. 2411(a)—In general

Authorizes the HUD Secretary to carry out a demonstration program to determine the effectiveness of assisting nonprofit organizations in providing housing and supportive services for homeless persons.

Sec. 2411(b)—Purposes

Provides that the demonstration program shall be designed to determine: 1) the cost of acquisition, rehabilitation, or acquisition and ****903 *148** rehabilitation of existing structures for housing homeless persons; 2) the cost of operations and supportive services; and 3) the social, financial, and supportive services as an alternative to continued institutionalization of handicapped persons and as a means of assisting homeless persons.

ASSISTANCE TO NONPROFIT ORGANIZATIONS

Sec. 2412(a)—General provisions

Provides that the HUD Secretary may provide the following assistance to any eligible nonprofit organization: a non-interest bearing advance equal to the aggregate cost of acquisition, rehabilitation, or acquisition and rehabilitation of an existing

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

structure for use in housing and supportive services for homeless persons; annual payments for operating expenses of housing, not to exceed 80 percent of the annual operating expenses of housing; and technical assistance in establishing and operating housing and providing supportive services to the residents.

Sec. 2412(b)—Nonrepayment of advances

Provides that any non-interest bearing advance shall not be required to be repaid if the nonprofit organization uses the structure, as housing for homeless persons for not less than ten years following initial occupancy.

Section 2412(c)—Assistance contracts

Provides that the HUD Secretary shall, to the extent approved in appropriation Acts, enter into a contract, for not more than ten years, with each nonprofit organization receiving program assistance.

PROGRAM REQUIREMENTS

Section 2413(a)—Applications

Provides that the HUD Secretary shall establish application forms and procedures.

Section 2413(b)—Selection criteria

Provides that in selecting nonprofit organizations for program participation, the Secretary shall consider: the ability to develop and operate housing for homeless persons and to provide or coordinate supportive services; the need for homeless housing and supportive services in the area to the served; and other factors as the Secretary determines.

Section 2413(c)—Required agreements

Provides that each nonprofit organization shall agree to conduct an assessment of the supportive services required by the residents; to employ a full-time residential supervisor with sufficient expertise to provide supportive services to the residents; to utilize the structure as housing for homeless persons for not less than five years following initial occupancy; to comply with the terms and conditions as the Secretary may establish.

****904 *149** *Section 2413(d)—Occupant rent*

Provides that each homeless person residing in the program's housing shall pay as rent an amount determined in accordance with the provisions of Section 3(a) of the 1937 Act.

REGULATIONS

Sect. 2414(a)—General provisions

Provides that not later than the expiration of 180 days following the enactment date, the HUD Secretary shall issue regulations as may be necessary to carry out this demonstration program.

Section 2414(b)—Advance consultation

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Before issuing regulations, the HUD Secretary shall consult with persons and entities having expertise and experience with the problems and needs of homeless persons.

Section 2415—Congressional reports

Provides that the Secretary shall submit to the Congress, not later than 3 months after the end of FY 1986, an interim report summarizing the activities carried out during the fiscal year and setting forth any preliminary findings or conclusions as a result of the activities; and not later than 6 months after the end of FY 1987, a final report summarizing all activities carried out as well as findings, conclusions or recommendations.

Section 2416—Definitions

Defines the following terms for the purposes of this demonstration program:

(1) The term 'elderly person' means an individual who is not less than 62 years of age.

(2) The term 'handicapped person' means an individual having a physical, psychological, or other impairment that impedes ability to live independently without supportive services.

(3) The term 'homeless person' means an individual who (A) is a lower income person, elderly, or handicapped person; (B) lacks permanent housing; and (C) cannot live independently without supportive services.

(4) The term 'housing for homeless person' means a single- or multifamily structure suitable for housing and supportive services for not more than 12 homeless persons.

(5) The term 'lower income person' means an individual whose income does not exceed 80 percent of the area median income.

(6) The term 'nonprofit organization' means any governmental or private nonprofit entity that is approved by the Secretary for financial responsibility.

(7) The term 'operating costs' means expenses incurred by a nonprofit organization operating housing for homeless persons under this program with respect to (A) the administration, maintenance, repair, and security of the housing; (B) utilities, fuel, furnishings, and equipment for the housing; (C) conducting of the supportive assessment services of the homeless residents; ****905 *150** and (D) the provision of supportive services to the homeless residents.

(8) The term 'Secretary' means the HUD Secretary.

(9) The term 'supportive services' means assistance in obtaining permanent housing, medical and psychological counseling and supervision, employment counseling, nutritional counseling, and other such services essential for maintaining independent living as the Secretary determines to be appropriate. Supportive services also means the provision of assistance to homeless residents in obtaining other Federal, State, and local assistance available for such persons, including mental health benefits, employment counseling, and medical assistance.

Section 2417—Limitation on budget authority

Provides that the aggregate amount of non-interest bearing advances and annual payments for operating expenses made by the HUD Secretary under this program in FY 1986 may not exceed $50 million. This amount shall remain available until expended.

PART 3—EMERGENCY SHELTER GRANTS

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 2421—Grant Assistance

Provides that the HUD Secretary shall, to the extent approved in appropriation Acts, make grants to states and units of local government (and to private nonprofit organizations providing assistance to the homeless, in the case of grants made with reallocated amounts).

ALLOCATION AND DISTRIBUTION OF ASSISTANCE

Section 2422—Ingeneral

Provides that the Secretary shall allocate program assistance to metropolitan cities, urban counties, and states (for distribution to local governments in both entitlement and nonentitlement areas of the states) in accordance with and allocation and distribution provisions of the CDBG program. Also provides that the distribution of shelter grant funds be the same as the percentage of the total that local formula allocations.

Section 2422(b)—Minimum allocation requirement

Provides that grants of less than $30,000 be allocated by the state.

Section 2422(c)—Distributing to nonprofit organizations

Provides that any unit of general local government may distribute all or a portion of its program assistance to private nonprofit organizations.

Section 2422(d)—Reallocation funds

Provides that the Homeless Assistance Council established in this section shall reallocate any unused or returned assistance at least twice during each fiscal year and makes eligible recipients for fund reallocations, units of general local government demonstrating ****906 *151** extraordinary need, or large numbers of homeless and private nonprofit organizations.

Sec. 2433—Eligible activities

Provides that program assistance may be used for the following activities relating to emergency shelter for the homeless: renovation of buildings to be used as emergency shelters; provision of essential services, including services concerned with employment, health, drug abuse, or education, if (A) such services have not been provided by the local government during the immediately preceding 12-month period; and (B) not more than 15 percent of the program assistance to a local government may be used for these services; and maintenance, operation (other than staff), utilities, and furnishings.

RESPONSIBILITIES GRANTEES

Sec. 2424(a)—Submission of homeless assistance plan

Provides that each state, metropolitan city, and urban county shall submit to the Secretary, following notification of eligibility for program assistance, a plan describing the proposed use of program assistance and the Secretary shall provide the assistance to a state, metropolitan city, or urban county not later than 60 days after submission of its plan unless before the expiration of the period that the plan is found not to comply with program requirements.

Sec. 2424(b)—Matching amounts

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Provides that each program grantee be required to provide a matching amount of funds from source other than this program, shall certify to the Secretary that it has complied with this requirement and include a description of the sources and amounts of its matching supplemental funds. Provides that a grantee may include, in its calculation of matching funds, the value of any donated material or building, the value of any lease on a building, any staff salary paid to carry out the program, and the value of the time contributed by volunteers to carry out the program (calculated at a rate of $5 per hour).

Sec. 2424(c)—Administration of assistance

Provides that each grantee shall act as the fiscal agent of the Secretary for the grantee's program amount.

Sec. 2424(d)—Certifications on use of assistance

Provides that each grantee shall certify to the Secretary that (1) it will maintain a homeless shelter for at least 3 years or for not less than 7 years if program assistance is used for substantial rehabilitation of a building; (2) any renovation carried out shall be sufficient to ensure that the building involved is safe and sanitary; and (3) it will assist supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living and (B) other Federal, State, local and private assistance available for homeless individuals.

****907 *152** *Sec. 2424(e)—Use of interest on assistance*

Provides that any interest accrued by a grantee on program assitance shall be used in accordance with program requirements or returned to the Secretary for reallocation.

Sec. 2425—Homeless Assistance Council

Provides for the establishment of a Homeless Assistance Council which shall be composed of nine members as follows: the HUD Secretary, or designee; one individual appointed by the HUD Secretary from among individuals recommended jointly by the National League of Cities, the National Conference of Mayors and the National Association of Counties and the National Association of Towns and Townships; one individual appointed by the HUD Secretary from representatives of the servive providers to the homeless; three individuals appointed by the HUD Secretary who are members of, and are recommended by the members of, the national board of charities constituted under the emergency food and shelter program; one individual appointed by the HUD Secretary recommended by the Speaker of the House of Representatives; and one individual appointed by the HUD Secretary recommended by the Majority Leader of the Senate.

Provides that each Council member shall be appointed for a two year term, any Council vacancy occurring before the expiration of a term shall be fill in the same manner in which the original appointment was made, and any member appointed to fill a vacancy shall be appointed only for the remainder of such term.

Provides that Council members shall not be considered to be officers or employees of the Federal Government because of their Council membership.

Provides that each Council member shall serve without pay, allowances, or benefits by reason of their service, but may receive travel expenses, including a per diem if the member is a government employee, while attending Council meetings, while engaged in duties relating to such meetings or in other Council activities.

Provides that the Council powers are: to review plans submitted by recipients of emergency shelter grants; to reallocate unexpended emergency shelter grant funds; to recommend to the Secretary that action be taken against recipients of emergency shelter grants who use their grants improperly; to call meetings of the Council, elect a chairperson of the Council, and to empower the chairperson to convene the Council; and to request additional temporary staff from the Secretary.

See. 2426—Administrative provisions

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Provides that the Secretary shall by notice, within 30 days of the enactment date, establish requirements necessary to carry out this program and shall issue regulations based on the initial program notice within 12 months of the enactment date. These regulations shall not be subject to the administrative rulemaking requirements of Sec. 553 of title 5, U.S. Code, or the congressional review requirements under Sec. 7(o) of the HUD Act.

Provides that the Secretary shall notify each state, metropolitan city, and urban county of its allocation of program assistance by ****908 *153** not later than 30 days after the enactment of an Appropriations Act providing program funds. Such assistance shall be allocated and may be used notwithstanding any failure of the Secretary to issue program regulations.

Provides that the Secretary shall provide the Council with staff and office facilities as the Secretary, following consultation with the Council, considers necessary to permit the Council to carry out its functions.

Provides that the Secretary shall recapture any program assistance that is not used by the grantee within a reasonable period of time.

Sec. 2427—Definitions

Provides that the term 'Council' means the Homeless Assistance Council and the Term 'Secretary' means the HUD Secretary.

Sec. 2428—Authorization of appropriations

Authorizes to be appropriated to carry out the Emergency Shelter Grant program, $100 million for fiscal year 1986 and such sums as may be necessary for 1987 and provides that appropriated program amounts shall remain available until expended.

Subtitle E—Nehemiah Housing Opportunity Grants

Sec. 2501—Purpose

Provides that the purpose of the Nehemiah Housing Opportunity Grant Program is to encourage homeownership by families in the United States who are not otherwise able to afford homeownership; undertake a concentrated effort to rebuild the depressed areas of cities and to create sound and attractive neighborhoods; and to increase the employment of neighborhood residents.

Sec. 2502—Definitions

Defines the following program terms:

(1) The term 'Fund' means the Nehemiah Housing Opportunity Fund.

(2) The term 'home' means any one- to four-family dwelling. Also includes any dwelling unit in a condeminium or cooperative project consisting of not more than four dewelling units, any townhouse, and any manufactured home.

(3) The term 'lower income families' has the meaning as given in Sec. 3(b)(2) of the 1937 Act.

(4) The term 'metropolitan statistic area' means a metropolitan statistical area as established by the Office of Management and Budget.

(5) The term 'nonprofit organization' means a private nonprofit corporation, or other private nonprofit legal entity, that is approved by the HUD Secretary for financial responsibility.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

(6) The term 'Secretary' means the HUD Secretary.

(7) The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

****909 *154** (8) The term 'substantial rehabilitation' means rehabilitation involving costs in excess of 60 percent of the maximum sale price of a home assisted under this program in the applicable market area; or the rehabilitation of a vacant, uninhabitable structure.

(9) The term 'unit of general local government' means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

ASSISTANCE TO NONPROFIT ORGANIZATIONS

Section 2503—Program assistance and applications

Provides that the Secretary may provide grant assistance to nonprofit organizations to carry out a Nehemiah housing opportunity program and provides that the Secretary may prescribe the form and procedures for program applications.

USE OF ASSISTANCE

Section 2504(a)—In general

Provides that any nonprofit organization receiving program assistance shall use the assistance to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved Nehemiah Housing Opportunity Program.

Section 2504(b)—Specific requirements

Provides that each loan made to a family under this program be secured by a second mortgage held by the HUD Secretary on a property involved; not exceed $15,000; bear no interest; and be repayable to the Secretary upon the sale or any other transfer of the property.

PROGRAM REQUIREMENTS

Section 2505(a)—In general

Provides that program assistance may be used only for the construction or substantial rehabilitation of homes.

Section 2505(b)—Family income and prior homeownership provisions

Provides that each family purchasing a home under this program shall have a family income on the date of purchase that is not more than whichever of the following is higher; 115% of the area median income for a family of four persons in the MSA involved, or the national median income for a family of four persons; and that the purchaser has not owned a home during the 3-year period preceding the purchase.

Section 2505(c)—Downpayment

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

(1) Provides that each family purchasing a home under this program shall make a ten percent downpayment of the sale price of the home, or of a greater amount determined by the nonprofit organization involved.

(2) Provides that any downpayment shall accrue interest from the date on which the downpayment is made through the date of ****910 *155** settlement, at a rate not less than the passbook rate. The interest shall be paid by the nonprofit organization involved to the family purchasing the home for which the downpayment was made.

Section 2505(d)—Leasing prohibition

Provides that no family purchasing a home under this program may lease their home.

TERMS AND CONDITIONS OF ASSISTANCE

Section 2506(a)—Local consultation

Provides that no proposed Nehemiah housing opportunity program may be approved by the Secretary unless the nonprofit organization demonstrates to the Secretary's satisfaction that: it has consulted with and received the support of the neighborhood residents where the program is to be located; and it has the approval of each local government where the program is to be located.

Section 2506(b)—Program schedule

Provides that each nonprofit organization applying for program assistance shall submit to the Secretary an estimated completion schedule for its proposed Nehemiah housing opportunity program, which must be agreed to by each local government where the program is to be located.

Section 2506(c)—Minimum participation

Provides that no nonprofit organization receiving program assistance may start any construction or substantial rehabilitation, except with respect to display homes, until 25 percent of the homes to be constructed or substantially rehabilitated have sales contracts and the required downpayment.

Section 2506(d)—Financial feasibility

Provides that the HUD Secretary may not provide any program assistance to any nonprofit organization unless the organization demonstrates the financial feasibility of its proposed Nehemiah program, including the availability of non-Federal public and private funds.

Section 2506(e)—Home quality and location

Provides that (1) the number of homes in a program will not be less than the greater of 50 homes or .25% of the number of existing dwelling units in the unit of general local government that provides the most assistance to the program, or 250 homes; (2) each home constructed or rehabilitated comply with: applicable local building code standards or where there is not such a code, a nationally recognized model building code mutually agreed upon by the sponsoring nonprofit organization and the HUD Secretary; and the energy performance requirements of the National Housing Act; (3) all homes will be located in census tracts or identifiable neighborhoods within census tracts which have a median family income that is not more than 80 percent of the area median family income where the program is to be located; (4) all homes will be concentrated in a single neighborhood and located on contiguous parcels ****911 *156** of land, but if local governments certify that the project does not meet program size requirements, an approvable program may provide for the construction or substantial rehabilitation of 20%

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

of the lots in a single identifiable neighborhood; and (5) sales contracts will require repayment of any program loan upon the sale or transfer of the home involved, unless the Secretary approves a transfer of the home without repayment (in which case the second mortgage held by the Secretary on the home shall remain in force until the loan is fully repaid).

Section 2507—Program selection criteria

Provides that the Secretary, in selecting eligible Nehemiah programs, shall make the selection on the basis of the extent to which:

(1) non-Federal public or private entities will contribute land necessary to make each program feasible;

(2) non-Federal public and private financial or other contributions (including tax abatements, waivers of fees related to development, waivers of construction, development, or zoning requirements, and direct financial contributions) will reduce the cost of homes constructed or substantially rehabilitated under each program;

(3) each program will produce the greatest number of units for the least amount of assistance provided, taking into consideration the cost differences among different market areas;

(4) each program is located in a neighborhood of severe physical and economic blight and in determining the degree of physical blight, the Secretary shall consider the condition (but not age) of the neighborhood housing, other buildings and infrastructure;

(5) each program uses construction methods that will reduce the cost per square foot below the average construction cost in the market area involved; and

(6) each program provides for local resident involvement in the planning, and construction or substantial rehabilitation, of homes.

Provides that in evaluating proposed Nehemiah programs, the HUD Secretary shall not consider local government land contributions or other financial assistance in cases where the local government is specifically prohibited by State law from contributing such assistance.

DISTRIBUTION OF ASSISTANCE TO NONPROFIT ORGANIZATIONS

Sec. 2508(a)—Reservation of amounts

Provides that following the selection of any Nehemiah housing opportunity program, the Secretary shall reserve sufficient amounts in the Nehemiah Housing Opportunity Fund for such assistance.

Sec. 2508(b)—Distribution of assistance

Provides that following the sale of any home constructed or substantially rehabilitated under a Nehemiah program, the Secretary shall provide to the sponsoring nonprofit organization an amount equal to the loan made to the family purchasing the home. This ****912 *157** amount shall be provided not more than 30 days after the sale of the home.

Sec. 2508(c)—Maximum assistance

Provides that the assistance provided to any nonprofit organization in the program may not exceed $15,000 per home.

NEHEMIAH HOUSING OPPORTUNITY FUND

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2509(a)—Establishment

Provides for the establishment of a revolving fund in the Treasury of the United States to be known as the Nehemiah Housing Opportunity Fund. The Fund shall be available to the Secretary, to the extent approved in appropriation Acts, in order to provide Nehemiah program assistance.

Sec. 2509(b)—Assets

Provides that the Fund shall consist of any amount appropriated under Section 2512; any amount received by the Secretary under Section 2504(b)(4); and any amount received by the Secretary under subsection (c).

Sec. 2509(c)—Administration

Permits the Secretary to invest excess amounts in the Nehemiah Fund, those not required to carry out the program, in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any U.S. agency.

Sec. 2510—Annual report

Provides that the HUD Secretary shall annually submit to the Congress a comprehensive report setting forth the program activities. This report shall include:

(1) an analysis of the characteristics of the families assisted under the program during the preceding year, including family size, number of children, family income, sources of family income, race, age, and sex;

(2) an analysis of the market value of homes purchased under the program during the preceding year;

(3) an analysis of the non-Federal public and private financial or other contributions made during the preceding year to reduce the cost of homes constructed or substantially rehabilitated under each program;

(4) an analysis of the home sale prices under the program during the preceding year;

(5) an analysis of the grant amounts made to Nehemiah programs during the preceding year; and

(6) any recommendations for program modifications in order to ensure the effective implementation of the program.

Sec. 2511—Regulations

Provides that the Secretary shall issue regulations as may be necessary to carry out the program. These regulations shall be issued in accordance with ****913 *158** Section 553 of Title 5, United States Code, notwithstanding the provisions of subsection (a)(2) of such section.

Sec. 2512—Authorization of appropriations

Provides that there is authorized to be appropriated to carry out the Nehemiah program $100 million for FY 1986. Any amount appropriated under this section shall be deposited in the Nehemiah Housing Opportunity Fund, and shall remain available until expended.

Subtitle F—Multfamily Housing Preservation Loans

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sec. 2601—Purpose

Provides that the purpose of the Multifamily Housing Preservation Loan program is to provide loans to the owners of certain HUD-assisted multifamily housing projects to permit to make capital improvements required to maintain their projects as decent, safe, and sanitary housing and to maintain the low-and moderate-income character of such projects.

Sec. 2602—Definitions

Defines the following terms:

(1) The term 'capital improvement' means any major repair or replacement of a capital item in a multifamily housing project, including any repair or replacement required as a result of deferred or inadequate maintenance. This term does not include maintenance of these items.

(2) The term 'Fund' means the Multifamily Housing Preservation Fund.

(3) The term 'lower income families' has the same meaning given in Sec. 3(b)(2) of the United States Housing Act of 1937.

(4) The term 'low- and moderate-income character' means the character of a multifamily housing project which has tenant admission and rental charges that have been agreed to by the project owner and the Secretary in connection with HUD assistance or insurance.

(5) The term 'Secretary' means the HUD Secretary.

Sec. 2603—Authority to provide loans and program applications

Provides the Secretary's authority to make loans to owners of rental or cooperative housing projects meeting the program requirements in order to assist them in making capital improvements to their projects. Provides that the Secretary may prescribe the application form and procedures.

ELIGIBILITY FOR LOANS

Sec. 2604(a)—Project requirements

Provides that owners are eligible for a program loan only if their project is assisted under Sec. 236, Sec. 221(d)(3) BMIR or Sec. 101, without regard to whether the project is insured under the National Housing Act; Sec. 8, following conversion from Sec. 236(f)(2) or Sec. 101 assistance; Sec. 23 as in effect before January 1, 1975; or an assisted project before its acquisition by HUD, and sold by the ****914 *159** Secretary subject to a mortgage insured or held by the Secretary and subject to an agreement that provides that the low-and moderate-income character the project will be maintained.

Sec. 2604(b)—Loan and borrower requirements

Provides that no program loan may be made unless the Secretary determines that:

(1) The loan is necessary to make capital improvements on project items that have failed, or are likely to seriously deteriorate or fail in the near future;

(2) The owner agrees to contribute assistance to the project the Secretary determines to be appropriate, except that (A) the contribution shall not be less than 20 percent of the total estimated cost of the capital improvements involved, unless the Secretary, upon the owner's application, determines that the contribution is financially infeasible and waives or reduces the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

contribution to the extent necessary; (B) the Secretary may not require a contribution of more than 50 percent of the project owner's capital reserve account, and (C) the Secretary shall waive the requirements if the owner is a private nonprofit corporation or association;

(3) The owner agrees to maintain the project's low- and moderate-income character for a period of not less then the remaining term of the project mortgage;

(4) The project management is conducted by persons who meet levels of competency and experience prescribed by the Secretary and are approved by the Secretary;

(5) The project is structurally sound, or will be made structurally sound as a result of the capital improvement involved;

(6) The loan, when considered with other resources available to and financially feasible for the project, will maintain the project's financial soundness;

(7) The project is operated and managed in accordance with a management improvement and operating plan approved by the Secretary and that includes: (A) a detailed maintenance schedule; (B) a schedule for correcting past deficiencies in maintenance, repairs, and replacements; (C) a plan to upgrade the capital items being improved, and any other capital items determined by the Secretary to be associated with the capital items being improved and to require upgrading, to meet cost-effective energy efficiency standards prescribed by the Secretary; (D) a plan to improve or maintain financial and management control systems; (E) a detailed annual operating budget taking into account the standards for operating costs in the area as may be determined by the Secretary to be appropriate; (F) other items as the Secretary may determine to be appropriate;

(8) The capital reserve account established by the project owner is insufficient to finance both the capital improvements and other capital improvements that are reasonably expected to be required in the near future, and the insufficiency is not the result of the failure of the owner to comply with any standard established by the Secretary for management of the reserve escrow; and

****915 *160** (9) The loan will be less costly to the Federal Government than other reasonable alternatives available to the Secretary for maintaining the low- and moderate-income character of such project.

Sec. 2604(c)—Priorities in providing loans

Provides that the Secretary shall give priority in making program loans to (1) the extent to which the capital improvements are immediately required; (2) the extent to which the projects serve as the residences of lower income families, and the extent to which other suitable housing is unavailable for these families in the areas in which the projects are located; (3) the extent to which the capital improvements involve the life, safety, or health of the project residents or involve major capital improvements in the projects; and (4) projects that demonstrate the greatest financial distress, while continuing to meet the requirements of subsection (b)(6).

AMOUNT OF CONDITIONS OF LOANS

Sec. 2605(a)—Principal amount of loans

Provides that subject to loan eligibility requirements in Section 2604(b)(2) the principal amount of any program loan to a project owner shall not exceed 80 percent of the sum of:

(1) The amount necessary to make capital improvements for items that have failed, or are likely to seriously deteriorate or fail in the near future;

(2) The amount necessary to carry out a plan to upgrade the capital items being improved, and any other capital items

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

determined to be associated with capital items being improved and upgraded, to meet cost-effective energy efficiency standards prescribed by the Secretary; and

(3) The amount determined by the Secretary to be necessary to comply with the requirements of the Rehabilitation Act of 1973 prohibiting discrimination against the handicapped.

Sec. 2605(b)—Conditions of loans

Provides that the term of the loan not exceed the remaining term of the mortgage on the project; loans bear interest at a rate determined by the Secretary but not be less than 6 percent or more than the rate established by the Secretary of Treasury for the purposes of multifamily housing loans under Sec. 221; loans shall be considered to be a liability of the project involved, and shall not be dischargeable in any bankruptcy proceeding; the Secretary may establish such additional conditions; the Secretary may provide more than one program loan to any project, if each loan complies with the program provisions.

Sec. 2605—Minimization of rent increases

Provides that in order to minimize any increases in rental payments as a result of a loan provided under this title by residents of the project no more than allowable in Sec. 3(a) of the United States Housing Act of 1937, the Secretary may: provide assistance with respect to such project under Sec. 8; reduce the rate of interest charged on such loan to a rate of not less than 1 percent; increase ****916 *161** the term of such loan to a term that does not exceed the remaining term of the mortgage; and increase the amount of assistance to be provided by the owner of such project under Sec. 2604(b)(2) to an amount not to exceed 30 percent of the total estimated cost of the capital improvements.

MULTIFAMILY HOUSING PRESERVATION FUND

Sec. 2606(a)—Establishment of fund

Provides the establishment of a revolving fund to be known as the Multifamily Housing Preservation Fund in the Treasury of the United States. The Fund shall, to the extent approved in appropriation Acts, be available to the Secretary for purposes of carrying out the program provisions.

Sec. 2606(b)—Assets of fund

Provides that the fund shall consist of (1) any amount appropriated for the Multifamily Housing Preservation Fund; (2) any amount repaid on a loan provided under this title; and (3) any other amount received by the Secretary under this title.

Sec. 2606(c)—Management of fund

Provides that amounts in the Fund determined to be in excess of the amounts currently required to carry out the provisions of this title shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

Sec. 2607—Regulations

Provides that the Secretary shall, not later than 180 days following the enactment date of this bill, issue program regulations.

Sec. 2608—Authorization of appropriations

Authorizes to be appropriated $60 million for fiscal year 1986 to remain available until expended.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Subtitle G—Enterprise Zone Development

DESIGNATION OF ENTERPRISE ZONES

Sec. 2701(a)—Designation of zones

Defines 'enterprise zone' to mean any area that is nominated by a local government or State to be designated as an enterprise zone; and an area that the HUD Secretary designates, after cnsultation with the Secretaries of Agriculture, Commerce, Labor and the Treasury, the Director of the Office of Management and Budget, the Administrator of the Small Business Administration and the Interior Secretary.

Limits the designation of enterprise zones until the HUD Secretary prescribes, within four months of the enactment date, regulations which contain nominating procedures, size and population characteristics and comparison criteria for required State and local commitments and designated priorities. Requires the HUD Secretary ****917 *162** to designated enterprize zone within 36 months of the effective regulation date or July 1, 1985.

Provides that the HUD Secretary may not designate more than 75 enterprise zones and must designate at least 25 of these zones in rural areas.

Restricts the HUD Secretary from designating enterprise zones unless: local governments and the State have the authority to nominate zones, require State and local commitments and provide assurances that these commitments will be fulfilled; nominations contain the necessary information as prescribed in regulation; HUD determines that the information is reasonably accurate; and the State and local governments certify that none of the proposed zone area is part of another designated area.

Provides that the Indian reservation governing body, as determined by the Interior Secretary, shall have the authority to nominate zones in their reservation.

Sec. 2701(b)—Period for which designation is in effect

Provides that any enterprise zone designation shall remain in effect until December 31st of the 24th calendar year after the designation date, the termination date provided by the state and local governments in their zone nomination, or the date that the HUD Secretary revokes designation.

Provides that the HUD Secretary, after consultation with the appropriate officials, may revoke the enterprise designation if the local government or the state is not substantially complying with their commitments.

Sec. 2701(c)—Area and eligibility requirements

Provides that the HUD Secretary may designate any nominated area if it meets area and eligibility requirements.

Provides the following are requirements: the area is located within a local government; the area boundary is continuous; and the area's population, as determined by the most recent census data available, has a population of at least 4,000 for the metropolitan statistical areas with a population of 50,000 or greater; or 1,000 in any case; or is entirely within an Indian reservation.

Provides the following eligibility requirements, subject to HUD, local government and state certifications that: the area is one of pervasive poverty, unemployment, and general distress; the area is located wholly within a local government which is eligible for UDAG; and the area meets one of the following criteria: the unemployment rate was at least 1.5 times the national rate; the proverty rate was a least 20% at last 70% of the households have incomes which are below 80% of the area

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

median income; or there has been at least a 20% population decrease between 1970 and 1980.

Sec. 2701(d)—Required State and local commitments

Requires local governments and states to follow a specific course of action to reduce burdens of employers and employees.

Provides that the course of action may be implemented by local and state government and private non-governmental entities and may include: tax or fee reductions; increases in local service efficiency; ****918 *163** streamlining of governmental requirements; and involvement by private entities to provide jobs and training.

Sec. 2701(e)—Priority of designation

Provides that the HUD Secretary shall give special preferences to those nominations with: the strongest and highest quality of state and local government commitments; the quality of the other contributions; the most effective and enforceable guarantees that the course of action will be carried out; the areas with high levels of poverty, unemployment, and general distress, particularly those areas close to concentrations of disadvantaged workers or longterm unemployed individuals and where there is a strong likelihood that area residents will receive jobs; a size and location which will stimulate new economic activity and minimize unnecessary federal tax losses, substantial private commitments; areas that best exhibit other factors consistent with the enterprise zone intent and minimizing unnecessary federal tax losses.

Sec. 2701(f)—Definitions

Defines: 'government' to mean all governments; 'local government' as any county, city, town, township, parish, village, or other general purpose political subdivision of a state, any political subdivision combination recognized by the HUD Secretary and the District of Columbia; 'state' to include Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and other U.S. possessions.

Sec. 2702—Evaluation and reporting requirements

Requires the HUD Secretary to submit within four years after the first zone designation and every four years a report to Congress on the effects of enterprise zone designations in accomplishing program purposes.

Sec. 2703—Interaction with other federal programs

Provides that any state and local tax reductions under this program shall be disregarded in determining eligibility under any other federal program, including meeting the National Environmental Policy Act requirements. Also provides that a zone designation under this program does not constitute approval or entitle persons to receive Uniform Relocation Assistance.

Sec. 2704—Waiver or modification of certain agency rules in enterprise zones

Authorizes an agency, upon local or state request, to waive or modify any rule to further job creation, community development or economic revitalization in the zone; but limits any rule waiver or modification which prohibits discrimination. Also provides that the request for a waiver or modification shall describe why the proposed rule change would promote job creation, community development or economic revitalization. Provides that the agency in considering a rule change shall consider its effect upon the rule's underlying purposes in the geographic area and shall approve the change if the proposed benefits outweigh the continuation of the rule. But, the agency shall not approve a rule change if it violates ****919 *164** a statutory requirement or present a significant public health risk. Provides agencies 90 days to consider rule change requests and requires agencies to provide a written notice of disapproval. Provides that agencies may seek public comment on the proposed rule changes and shall publish a notice in the Federal Register. Provides that rule change shall not constitute a rule, rulemaking or regulation. Provides that subsequent rule amendments shall not effect rule changes. Provides

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

that rule changes shall remain in effect until zone expiration. Defines the term 'agency' to mean the Department of Housing and Urban Development and the Department of Agriculture and defines 'rule' to mean any rule under sec. 551(4), Administrative Procedures, and hearings and decisions on rules under sections 556 and 557 of Title 5 of the U.S. Code.

Sec. 2705—Coordination of housing and urban development programs in enterprise zones

Amends Sec. 3 of the Department of Housing and Urban Development Act to provide that the HUD Secretary shall coordinate HUD programs, consolidate HUD program applications, and consolidate periodic reports with one summary report for designated zones.

* * * * *

***269** CBO COST ESTIMATES

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1985.

Hon. FERNAND J. ST GERMAIN,
Chairman, Committee on Banking, Finance and Urban Affairs, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the September 23 reconciliation amendments to H.R. 1, the Housing Act of 1985. The attached tables display the estimated changes relative to the budget resolution baseline, with the legislation extrapolated through 1988.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

TABLE 1.—COST OR SAVINGS (-) OF H.R. 1 RECONCILIATION AMENDMENT RELATIVE TO B U DGET RESOLUTION BASELINE—wITH LEGISl a t i ON EXTRAPOLATED THROUGH 1988

[By fiscal year, in millions of dollars]

Difference	Budget authority			Outlays		
	1986	1987	1988	1986	1987	1988
Section 8/public housing contracts	-2,0 39	-2,128	-2,218	-936	-1,014	-272
Public housing loan fund	-728	-907	-1,8 24	-728	-906	-1,841
Public housing childcare demonstration	15	16	16	6	15	16
Public housing operating subsidies	-288	-327	-360	-144	-307	-342
Rental development grants (HoDAG)	30	31		3	18	31
Rental rehabilitation grants	-157	-164	-171	-39	-120	-164

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Elderly and handicapped loans	-22	-23	- 25		-3	-10
Congregate housing services	4	3	4	3	4	4
Section 235 homeownership assistance	75	78	82	4	11	19
HUD/HHS housing demonstration	10	10	11	4	10	11
Rural housing loans (on-budget, include s rental assistance on existing units)	389	212	132	648	376	329
Rural housing loans (off-budget)	-1,809	-2,120	-2,141	-1,809	-2,120	-2,141
Rural rental assistance—newly built uni ts	-55	-57	-59	-1	-4	-13
Rural housing grants	44	46	48	11	25	27
Flood insurance studies	-2	-1	-1		-1	-1
Solar bank	-1		-1			-1
Housing counseling assistance						
HUD research	-1	-1	-1	-1	-1	-1
Fair housing initiative	10	10	11	4	11	1 0
Urban homesteading	-1		-1			
Community development block grants	-88	-91	-95	-4	-22	-45
Neighborhood reinvestment corporation		-1	-1		-1	-1
Neighborhood development demonstration	10	10	11	5	10	11
National Board of Charities	66	69	72	59	69	72
Second stage homeless assistance	50	52	55	20	51	53
Emergency shelter grants	100	104	109	2	40	94
Nehemiah grants	100	104	109		8	53
Multifamily preservation loans	60	62	66	24	60	60
Sec. 108 community development loan gua rantees	-4	-14	-60	-12	-3	-15
Total—budget functions 370, 450, othe r	-4,720	-5,534	-6,744	-2,891	-3,991	- 4,514

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Interest payments to treasury (function 900)[1]	1,884	2,285	2,708	1,884	2,2 85	2,708
Total	-2,836	-3,249	-4,036	-1,007	-1, 706	-1,806

Note.—H.R. 1 would provide fiscal year 1986 authorizations only. At the reque st of the Budget Committee staff, the se authorizations were projected throu g h 1988 with allowances for inflatio n a t b aseline rates of increase.

FN1 The budget impact shown in the table for public housing debt forgiveness an d rural housing loans includes effect s on payments of interest by the agen c ies to the Treasury. These are intra g o v er nmental transactions, and this e nt ry sh ows the offsetting effects of the se pa y ments (which appear in func tion 9 00).

TABLE 2.—ESTIMATED CHANGES FROM THE BASELINE FOR SELECTED PROVISIONS OF THE RECONCILIATION AMENDMENTS TO H.R. 1—WITH LEGISLATION EXTRAPOLATED THROUGH 1988

[By fiscal year, in millions of dollars]

Change from baseline	**Budget authority**			**Outlays**		
	1986	**1987**	**1988**	**1986**	**987**	**1988**
Public housing debt forgiveness	-728	-906	-1,842	-,807	-2,106	-3,157
Public housing operating subsidies	-288	-327	-360	-144	-307	-342
Sec. 108 community development loans	-4	-14	-60	-12	-3	-15
Rural housing loans	-1,420	-1,908	-2,009	-1,161	-1,744	-1,812
Total-functions 370, 450 and 600	-2,440	-3,155	-4,271	-3,124	-4,160	-5,326
Interest payments to Treasury (function 900)[1]	1,884	2,285	2,708	1,884	2,285	2,708
Total	-556	-870	-1,563	-1,240	-1,875	-2,618

Note.—At the request of the Budget Committee staff, this table changes from the baseline for certain specified program affected by the bill. H.R. 1 would provide fiscal year 1986 authorizations only. At the request of the Budget Committee staff, these authorizations were projected through 1988 will allowances for inflation at baseline rates of increase.

FN1 The budget impact shown in the table for public housing debt forgiveness and rural housing loans includes effects on payments of interest by the agencies to the Treasury. There are intragovernmental transactions, and this entry shows the offsetting effects of these payments (which appear in function 900).

***271 **921** TITLE III—COMMITTEE ON EDUCATION AND LABOR

COMMITTEE ON EDUCATION AND LABOR,
HOUSE OF REPRESENTATIVES,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Washington, DC, October 2, 1985.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reconciliation instructions contained in the First Concurrent Resolution on the Budget for Fiscal Year 1986, I am transmitting the recommendations of the Committee on Education and Labor, approved in our mark-up on September 19, together with cost estimates submitted by the Congressional Budget Office. Also enclosed are Members' Supplementary and Additional Views.

If you desire any other materials or explanations in support of our Committee's recommendations, please contact me or the Committee staff.

Sincerely,

AUGUSTUS F. HAWKINS,
Chairman.

Enclosures

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON EDUCATION AND LABOR

Subtitle A—Amendments to the Higher Education Act

S. Con. Res. 32, the First Concurrent Resolution on the Budget—Fiscal Year 1986, includes reconciliation instructions and assumptions which require that the Committee on Education and Labor achieve $800 million in savings in the Guaranteed Student Loan (GSL) program over the next three fiscal years. The savings are to ****922** be distributed as follows: $100 million in FY 1986; $250 million in FY 1987; and $450 million in FY 1988.

The Reconciliation proposal adopted by the full Committee on September 19, 1985 contains the following items which result in $868 million in savings for FY 1986 through 1988:

[In millions]

	Fiscal year—			**3-year total**
	1986	**1987**	**1988**	
Limit program eligibility to study with assessed financial need under current formulas	10	105	220	335
Recall $50 million in state agency advances in FY 1988			50	50
Extend the state agency period for collecting on delinquent loans	160	15	15	190
Require multiple disbursement of loans and only pay lenders subsidies on disbursed amounts		110	115	225
Allow for third-party preclaims effort	19	18	17	54
Adopted provisions of the Coleman collections bill H.R. 2150	11	17	20	48

The savings by fiscal year are $201 million in FY 1986, $252 million in FY 1987 and $415 million in FY 1988. The cumulative savings ***272** are less than straight addition of each of the single items for a given year because of the interactive

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

effects of the proposals.

Additionally, there are five non-cost items in the reconciliation recommendations which help to ensure that the savings do not adverserly affect the smooth and continuous operation of the GSL program.

COMMITTEE EXPLANATION OF THE RECONCILIATION PROPOSALS

The Committee's budget recommendations contain three proposals which directly affect the financing of guaranty agencies: a return of $50 million in advances in FY 1988; mandatory payment of the administrative cost allowance by the Secretary of Education; and the collection of a three per cent insurance premium per loan from students.

The first of these provisions requires that $50 million in advances made by the Secretary tro guaranty agencies to establish reserve funds and to pay insurance costs be repaid in fiscal year 1988. However, the Secretary must take into consideration the solvency and maturity of the agency as determined by the Comptroller General and any State which established a guaranty agency less than five years prior to the recall of the advances is exempt from repaying their advances.

The Committee expects that the Comptroller General, in making his determination of the solvency and maturity of the reserve and insurance funds of the guaranty agencies will work closely with ****923** guaranty agencies, through the National Council of Higher Education Loan Programs, Inc., in establishing the standards for such determinations.

The Committee does not intend that the Secretary attempt to recover any funds from agencies for which the Comptroler General has not made a determination, or from any agency for which the Comptroller has found that the solvency and maturity of the reserve and insurance funds are insufficient to sustain such recovery. The advances, which are to be recovered, were made in accordance with sections 422(a) and 422(c) of the Higher Education Act. As of December, 1984 there were $120.7 million in advances outstanding.

The second guaranty agency financing provision mandates that the Secretary pay the administrative cost allowance for each year beginning in fiscal year 1985. The allowance has not been paid in fiscal year 1985 and, as a result, the operations and financing of several state guaranty agencies have been severely disrupted. This is not a cost item because the Congressional Budget Office (CBO) assumes payment of the administrative cost allowance in its baseline projections for the GSL program. The administrative cost allowance has been paid in every year from its establishment until FY 1985. Requiring the Secretary to pay the followance provides greater stability and predictability in financing the agencies.

Although the Committee is strongly convinced that it is essential that the Secretary pay the administrative cost allowance, it is concerned about the interaction of the provision and receipt proposals from the Secretary related to reimbursing state agencies for their assistance in collection of GSL defaults under the provisions of the tax laws. The Deficit Reduction Act of 1984 authorizes the offset ***273** against personal tax refunds of any debts, such as defaulted student loans debts, owed to the Federal government. In implementing this provision for the 1985 tax year, the Secretary has proposed to reimburse guaranty agencies for their costs in acting as agents for the Federal government in:

(a) sending out the 60-day warning to borrowers potentially subject to tax offsets;

(b) responding to inquiries from recipients of such letters and instituting repayment plans for those who wish to avoid having their tax refunds offset against their loan debt; and

(c) certifying those accounts to be assigned to the Federal government for transmission to IRS.

For this undertaking, which must be completed by the first week in December, the Secretary has agreed to reimburse guaranty agencies at the rate of $5 per account certified for the first 10,000 defaulted accounts and $2 per account for each one thereafter. This appears to the Committee to be an acceptable rate of reimbursement for a substantial amount of paperwork to be achieved in an extremely short time period.

****924** However, the Committee is concerned that the Secretary has chosen to make this reimbursement agreement an amendment to the basic agreement entitling the guaranty agency to administrative cost payments. The Higher Education Act

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

limits the amount of administrative cost payments any guaranty agency can receive to a total of 1% of the principal amount of loans insured for the fiscal year. Under the Committee bill, such amount would be paid to eligible agencies.

Therefore, such agencies will be unable to receive additional compensation for their participation in the tax offset provisions of the Deficit Reduction Act, as they will have received their statutory ceiling of 1%.

The Committee believes that it would be unfortunate if guaranty agencies were dissuaded from participating in the tax offset program, which holds great promise of recovering large sums from defaulters on student loans, because of their inability under the law to receive any reimbursement for the costly demands of their participation in the program. The Committee strongly urges the Secretary to find a vehicle other than the administrative cost allowance agreement for entering into agreements with guaranty agencies for participating in the tax offset program.

The Committee recommendation further requires all state agencies to charge student an insurance fee of three per cent per loan collected proportionately on each disbursement of the loan. By 'proportionately' the Committee means that the percentage of the insurance premium that is charged must be equal to the percentage of the loan that is disbursed.

Current practice in most states is to charge students an insurance premium of one per cent per year for the in-school period and grace period. Thus, a first year student in a four-year program would be charged an insurance premium of 4 ½ percent and a first year student in a two year program would be charged 2 ½ percent. The flat three per cent insurance fee per loan results in a slightly higher permium for students in shorter programs, who are the most likely to default, and the same premiums for students in fouryear ***274** programs, who are less likely to default. This provision also enhances the national uniformity of the GSL program while providing a short term increase in state guaranty agency financing. In part, this provision will offset the recall of advances. The provision takes effect on October 1, 1986.

A second major area addressed by the Committee recommendation is collection of loans. While the Committee is well aware that the default rate on student loans is low and over the past few years has fallen, it is still important that every action be taken to reduce it even further. Therefore, three provisions in the proposal will have the effect of reducing defaults.

****925** The first of these requires that collection attempts on a defaulted loan continue for 210 days before a state guaranty agency can file with the Federal government for reinsurance. Currently, defaulted loans can be turned in for reinsurance after 120 days. Thus, the state guaranty agencies are required to spend an additional 90 days attempting to get a defaulted loan into repayment status before they can file for reinsurance.

Reimbursement to state agencies or lenders for the costs of supplemental preclaims assistance, in addition to the statutorily required due diligence efforts, is permitted. The amount of the reimbursement is limited to 2 percent of the loan or $100, whichever is less.

During full Committee mark-up, the Committee also adopted modified provisions of the Coleman collection bill, H.R. 2150, which was introduced on April 22, 1985. These amendments are designed to improve debt collection activities and default recoveries and to reduce the costs of loan programs administered by the Department of Education. The amendments contain the following provisions:

Provides that GSL checks be sent directly to the educational institution but are to be endorsed by the student;

Provides that the six year Federal statute of limitations be applied to the collection of NDSL and GSL defaults whenever an otherwise prevailing State statute provides a shorter time period for the student's liability;

Requires the borrower to become liable for certain collection costs borne by the Department of Education in trying to collect on defaulted student loans;

Requires guaranty agencies and the Department to report all GSLs made to consumer credit bureaus, requires credit bureaus to provide information concerning the borrower to the guaranty agency or Department of education to assist in payment recovery and establishes a time limit for credit bureaus to keep default reports;

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Allows the Department to impose civil penalties of up to $25,000 on lenders and guaranty agencies found to be in noncompliance with the Higher Education Act, with liability limited to situations were the violation is wilful or the result of gross negligence;

Eliminates the requirement under NDSL that a loan must be in default for two years before it can be referred or assigned to the Department for collection purposes;

Authorizes the Secretary to require the assignment of individual NDSLs for which institutions have failed to maintain an ***275** acceptable collection record, affording the institutions some flexibility in meeting collection criteria. The Secretary is expected to develop reasonable criteria established through regulation, but it is not intended that technical violations would result in assignment;

****926** Provides that when an NDSL is disbursed, the educational institution must provide student with information regarding any penalties for which the student would be held liable in the case of default;

Requires the Department of Education attempt to collect on an assigned or referred NDSL until all appropriate collection efforts have been expended;

Provides that a student owing a refund under Pell, SEOG, CWS, GSL, PLUS or GSL be ineligible for any further Title IV student aid;

Clarifies that any interst or earnings received by an institution aid programs be used solely for the purpose of providing student assistance.

The Committee recommendations further require that students receive a determination of their eligibility or ineligibility for Pell Grants before being eligible for a Guaranteed Student Loan. This provision takes effect July 1, 1986 and is not a cost item. It prevents unnecessary borrowing by low-income students who are eligible for Pell Grants and helps ensure that Pell Grants achieve their basic purpose as the foundation of Federal student aid.

The Committee does however, understand that there are at times significant delays in processing Pell Grant applications. Therefore, it is expected that the initial determination of eligibility for purposes of certifying eligibility for a Guaranteed Student Loan may be made by student financial aid administrators (using the Pell methodology) prior to submitting the application to the Pell Grant central processor. Any institution which knowingly misrepresents a student's eligibility will be subject to the penalties provided for in Section 490 of the Act. Furthermore, the Committee expects that Pell Grant applications will be subsequently processed through the Central Processor and any student initially determined to be eligible for a Pell Grant will not apply for or receive a loan for an amount which when added to the anticipated Pell amount and other student aid exceeds the cost of attendance at the institution.

All students are also required to undergo a needs analysis and their Guaranteed Student Loan must be limited to their 'remaining need.' Current law requires such a needs analysis only for students from families with incomes of $30,000 or more. The recommendation also includes a related provision which extends the current needs analysis for GSL through FY 1989.

All lenders must multiply disbursed Guaranteed Student Loans. Loans made for enrollment periods of one semester, two quarters, 600 clock hours or less or for amounts of $1,000 or less need not be multiply disbursed. Lenders will receive the in-school interest subsidy and special allowance only on the portion of the loan actually disbursed. The student's loan origination fee is charged proportionately on each disbursement. This provision takes effect on July 1, 1986.

****927 *276** The proposal extends the GSL program for two years, fiscal years 1987 and 1988. Since the program expires at the end of FY 1986 but the Committee is adopting provisions to make savings in FY 1987 and 1988, it is logical to extend the program through the years in which the savings are to be achieved. This is not a cost item because the CBO baseline projections assume the continuation of the program beyond 1986.

Two additional amendments were adopted in full Committee which do not affect costs. The first of these (introduced by

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

representative Gunderson) allows the Student Loan Marketing Association (SLMA) to increase its investment in tax-exempt student loan revenue bonds to support the GSL program without the necessity of owning a financial institution.

Many states issue student loan bonds to enable them to make loans to students, or to finance secondary markets in student loans. SLMA is authorized under Section 439 of current law to invest in such student loan bonds to help provide a favorable market for states which issue student loan bonds. SLMA assists this market by its willingness to invest in student loans bonds, thereby bringing strength and stability to the market when states attempt to issue such bonds. At present SLMA's investments in these bonds have reached the maximum level currently allowed. The committee proposal will allow SLMA to increase its investment levels.

Under present law SLMA is limited by a Revenue Procedure from investing more than 2% of its assets in student loan bonds. When SLMA reached this level of investment last year, it purchased First Capital Corporation (FCC), a North Carolina savings and loan association. The ownership of FCC, because it is a financial institution, allows SLMA to invest up to 15% of the institutions assets in student loan bonds. Thus, SLMA can by this indirect method increase its investment in student loan bonds. While the purpose of the acquisition was laudable, further support for the GSL program. The purchase of a financial institution raises numerous questions about other activities in which financial institutions are normally engaged. SLMA has repeatedly stated that the purpose of the savings and loan was only to facilitate its investment in student loan assets. However, it is obvious that a financial institution is a different business venture than the Committee has ever seen from SLMA.

There has been considerable concern about SLMA's purchase of this financial institution, even though it has a very limited purpose. These concerns prompted SLMA to suggest a resolution of this question by allowing the corporation to do directly what it now needs the savings and loan to do. The Committee proposal would accomplish that result.

It would create a new rule for SLMA's investments in student loan revenue bonds that allows those investments to be limited by its paid-in equity capital rather than by a percentage of assets. The original purpose of the 2% limitation was to insure that it was not possible to arbitrage investments in tax-exempt securities. The Committee proposal will prevent any arbitrage by prohibiting SLMA from borrowed funds for investment in these bonds by tying the investment limit to their equity capital, consisting of shareholders' investments and retained earnings. However, the amendment ****928 *277** will allow SLMA a realistic investment amount without the need for the savings and loan.

The second amendment (offered by Rep. Tauke) and adopted in full Committee includes a provision directing the Secretary to promulgate regulations to permit, in the computation of family contributions for the Pell Grant and GSL programs, the exclusion from family income of any proceeds from a sale of farm or business assets of that family, if such sale results from a foreclosure, forfeiture, or bankruptcy. The provision is effective for academic years beginning on or after July 1, 1985.

The provision is necessary to correct an inequity caused by current law and regulations which require that proceeds from the sale of assets be included in the computation of the family contribution, regardless of the outstanding debt or financial insolvency of the family. The Committee believes that denying student aid to families facing farm or business foreclosure or bankruptcy misconstrues the intent of Congress and should be addressed as soon as possible.

The Committee recommends that the regulations implementing this provision allow for students who are currently enrolled to file a correction to their existing application to recompute expected family contribution and redetermine their Pell Grant or GSL eligibility. For furture academic years, the Committee recommends that this change be reflected on the special condition form. The regulations should also reflect that this exception be made at the discretion of the student financial aid advisor after taking into account the overall financial situation of the family involved.

III REQUIREMENTS OF RULES X, XI, XII AND COST ESTIMATES

A. Oversight statement

In compliance with clause (2)(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no findings or recommendations of the Committee on Government Operations were submitted to the Committee with respect to

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

matters covered by the bill. The findings and recommendations of the Committee on Education and Labor have been previously described herein, and are based on hearings of the Committee on the reauthorization of the Higher Education Act and budget oversight hearings.

B. Inflationary impact statement

Pursuant to clause 2(1)(4), rule XI of the Rules of the House of Representatives, the Committee believes that the net effect of the enactment of the provisions of this legislation amending the Higher Education Act of 1965 will achieve budgetary savings which should serve to reduce inflation.

C. Congressional budget office cost estimate

The Committee on Education and Labor agrees with the following report submitted by the Congressional Budget Office in accordance with rule XI of the Rules of the House of Representatives.

****929 *278** *Subtitles B and C—Amendments to ERISA*

I. SYNOPSIS

The purposes of subtitles B and C as favorably reported by the Committee are:

1. to foster and facilitate interstate commerce,

2. to encourage the maintenance and growth of single-employer defined benefit plans,

3. to increase the likelihood that participants and beneficiaries under single-employer defined benefit plans will receive their full benefits; and

4. to provide for the transfer of unfunded pension liabilities onto the single-employer pension plan termination insurance system only in cases of severe hardship so as to keep the premium costs of such system at a reasonable level, and

5. to assure the prudent financing of current funding deficiencies and future obligations of the single-employer pension plan termination system by increasing termination insurance premiums.

The purpose of subtitle D as favorably reported by the Committee is to improve access to affordable health insurance for widows and their dependent children, divorced spouses and their dependent children, and spouses of Medicare-eligible workers.

II. BACKGROUND AND REASONS

A. Overview

Single-employer defined benefit pension plans provide retirement income to about 30 million American workers and retirees. In 1974, the Congress passed, and President Gerald Ford signed into law, the Employee Retirement Income Security Act of 1974 (‘ERISA’), to safeguard the benefits earned by these workers. An important protection under ERISA was the creation of the Pension Benefit Guaranty Corporation (‘PBGC’), a wholly owned, self-financing government corporation, charged with guaranteeing the payment of certain benefits in terminated single-employer and multiemployer defined benefit pension plans.

As of the end of its tenth fiscal year, September 30, 1984, the PBGC was responsible for the payment of benefits to about 68,000 retirees and beneficiaries and about 84,500 deferred vested participants in about 1,100 terminated single-employer

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

plans with assets that are insufficient to provide the level of benefits guaranteed by the PBGC.

The number of insufficient terminations and the magnitude of the insufficiencies in the single-employer program have exceeded all projections. The current premium rate of $2.60, which was set by the Congress in 1977 with the expectation that it would be adequate for a five-year period (an increase from the original rate of $1.00 set in 1974), has proven to be far below the level needed to fund the program. As a result, $462 million (30 percent) of the $1,525 million in program liabilities are unfunded, and will have to be financed by future premiums.

****930 *279** Steps must be taken to assure that the single-employer insurance program is put back on a fiscally sound basis so that it will continue to be able to fulfill its statutory purpose.

First, it is necessary to increase immediately the PBGC's single-employer premium to $8.50 per participant per year. This level of premium, while a sizable percentage increase over the current premium of $2.60, is nonetheless a modest cost for the protections it would afford. Subtitle B authorizes this increase.

Second, certain changes in the terms and conditions of single-employer plan insurance are needed to protect premium payers against avoidable or unwarranted claims. Subtitle C contains the structural reforms adopted by the Committee on Education and Labor.

Most of the claims against the insurance program have been associated with business failures. However, a significant portion of claims has come from ongoing companies or as a result of the transfer of underfunded plans from stronger to weaker companies that subsequently fail. The Committee believes that the law should be revised to prevent claims against the insurance program from ongoing companies that are financially able to fund the guaranteed benefits in their plans. Legislation is also needed to provide an explicit prophylactic rule to protect the insurance program from companies that transfer large amounts of unfunded benefits to a weaker company or that otherwise attempt to evade liability for their pension promises.

In addition, a significant portion of claims experienced by the single-employer insurance program has been attributable to the sponsoring company's failure to make contributions to the plan, generally because of the granting of funding waivers that were never repaid. Failure to make these contributions has also resulted in the loss of nonguaranteed benefits promised to participants under the plan. The Committee believes that legislation is necessary to better protect the insurance program and plan participants from such losses.

Steps must also be taken to close loopholes in existing law that permit profitable companies to avoid responsibility for the payment of certain benefits that are not guaranteed by the PBGC. The Committee believes that the law should be revised to assure, whenever possible, that participants and beneficiaries receive all benefits to which they are entitled under the terms of the plan.

The basic policy of the legislation is to limit the ability of plan sponsors to shift liability for guaranteed benefits onto other PBGC premium payers and to avoid responsibility for the payment of certain nonguaranteed benefits, to cases of severe business hardship. However, the bill assures that a plan sponsor will be able to terminate and close out a plan that is sufficient to pay all benefit entitlements earned by participants. It also clarifies that plan sponsors can limit the cost of an ongoing plan by ceasing further benefit accruals.

B. Premium needs

The PBGC's single-employer program has operated at a loss in all but two years of its ten-year existence. Table 1 shows the revenues, ****931 *280** expenses and net income/loss for the program for each year of operation.

TABLE 1.—REVENUE, EXPENSES, AND RESULTS OF OPERATIONS, SINGLE-EMPLOYER PROGRAM FISCAL YEAR 1975–84

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

[In millions of dollars]

	Revenue [1]	Expenses [2]	Results of operations income (loss) [1–2]
FY75 (10 months)	$19.4	$35.1	($15.7)
FY76 (15 months)	36.7	62.0	(25.3)
FY77	30.8	85.1	(54.3)
FY78	57.0	99.4	(42.4)
FY79	87.4	96.0	(8.6)
FY80	93.4	41.6	51.8
FY81	69.6	163.8	(94.2)
FY82	175.8	319.8	(144.4)
FY83	269.8	460.3	190.5)
FY84	110.2	48.8	61.3

As the table shows, the magnitude of PBGC's annual losses in the single-employer program generally has escalated dramatically since inception. ERISA originally set the premium rate paid by covered single-employer plans at $1.00 per participant per year. By the end of the second fiscal year following enactment, it was already clear that the $1.00 premium level was not adequate. At that time, the single-employer program had a deficit of $41 million which was projected to grow to almost $170 million by the end of calendar 1981 without a premium increase. In December, 1977, Congress approved a premium increase to $2.60 per participant for plan years beginning on or after January 1, 1978.

Since that time, the PBGC has requested the Congress three times to grant another premium increase. Beginning in May, 1982, the PBGC sought an increase to $6.00 per participant, effective January 1, 1983, in order to fund future annual claims on a current basis, pay administrative expenses and retire the fiscal 1982 year-end deficit—then projected to be $236 million—over a 5-year period.

Because of record high claims in 1982 and 1983, the PBGC in 1984 revised its premium request to $7.00, effective for plan

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

years beginning on or after January 1, 1984. One of the factors the PBGC cited as a basis for the increased request was the loss of premium revenue in 1983 because of Congress' failure to approve a $6.00 premium rate. Testimony of the United States General Accounting Office (GAO) before the House Ways and Means Committee, Subcommittee on Oversight, on March 20, 1984, criticized the financial condition of the single-employer program as inconsistent with sound insurance principles:

> In the private sector, such deficits are avoided because state insurance departments require insurance companies to maintain assets at least equal to their liabilities.

and

> ****932 *281** The funding of the program contrasts with general insurance industry standards which do not permit private insurers to operate at a deficit. In order to comply with state regulatory standards, private insurers must report their financial condition annually to state insurance departments. If a private insurer's financial condition does not meet state statutory requirements, a state may take action to protect policyholders, including possible revocation of the insurer's operating rights.

With respect to the PBGC's request for a $7.00 premium, the GAO testimony concluded:

> We recognize that there are substantial uncertainties in arriving at a premium rate and believe that the $7.00 premium proposed by the Corporation is the lowest that should be provided.

Early in 1985, the Administration submitted a new premium increase request for a $7.50 premium effective for plan years beginning on or after January 1, 1985. The PBGC has informed the Committee that if the effective date of the premium increase were delayed one year to January 1, 1986, the equivalent amount needed would be $8.10. In testimony in June, 1985, before the House Committee on Ways and Means' Subcommittee on Oversight, the GAO supported the Administration's request as the lowest premium rate that would be reasonable while expressing concern that the administration's request might, in fact, be too conservative in light of past PBGC experience.

The Administration request provides for amortization of the $462 million deficit as of the end of FY 1984 over a 15-year period and funding of future claims and administrative expenses as they are incurred. Expected future claims underlying the premium request are based on the PBGC's experience to date. Combining the extremely high claims for 1982 and 1983 ($264 million and $189 million, respectively) and the extremely low claims of 1984 ($36 million) with the PBGC's prior experience, results in future claims expected to average $185 million over the next 15 years. The PBGC estimates that a $4.96 premium will be needed to fund these future claims. An additional premium of $1.62 is needed to amortize the existing deficit of $462 million over 15 years. Finally, administrative expenses add $1.00. The total of the three components is $7.58, which has been rounded to $7.50.

The Committee believes that the Administration's request is not adequate and that a more realistic figure of $8.50 should be enacted. The occurrence of claims in excess of projected levels, unfavorable investment experience or mortality losses, for example, are not taken into account in the PBGC's projection. Nor does the PBGC's calculation include a reserve for any extraordinary large claims. Developments since submission of the Administration's $7.50 request also suggest that a higher premium is needed; Allis-Chalmers has filed termination notices for some of its plans and plans maintained by Wheeling-Pittsburgh are in very serious trouble.

****933 *282** In the Committee's view, it would be imprudent to delay further favorable action on a premium increase for this critically important benefits insurance program. Although the PBGC does not face an immediate cash crisis, the prospects are bleak. During FY 1984, cash flow in the single-employer program turned negative, and this trend is continuing in FY 1985 and will accelerate in future years, unless the premium is increased. The PBGC projects that by 1990, the single-employer revolving fund (the fund provided by premium dollars) will no longer be adequate to pay the insured portion of benefit payments when they are due and that the program's ratio of assets to liabilities will have declined to 54 percent, and the deficit will have climbed to $5.5 billion, unless a premium increase is enacted.

It is clear both from the PBGC's operating statistics and the GAO's testimony that the PBGC's current financial condition is untenable. If the present trend is allowed to continue, the PBGC will find itself in a similar disastrous condition with the same

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

attendant policy predicament as the Congress recently faced with the Social Security system. The Committee believes that a premium increase this year is essential to the long range survival of the single-employer insurance program.

C. Need for structural reforms

The single-employer termination insurance system faces the two-fold problem of eliminating the existing deficit and of controlling the level of claims in the future. The $8.50 premium rate is an essential component of the solution. In order to control the level of future claims, there is a need to close loopholes in ERISA which can lead to unwarranted or abusive claims against the insurance system—claims which must eventually be paid by other PBGC premium payers. There is also a need for certain structural reforms to title IV to prevent profitable employers from avoiding responsibility for payment of certain benefits to participants and beneficiaries that are not guaranteed by the PBGC.

1. The insurable event and the net worth cap

Under current law, the plan sponsor of a single-employer plan can terminate its plan at any time absent other contractual obligations. If the terminated plan does not have sufficient assets to pay guaranteed benefits, the PBGC is responsible for paying those benefits. The employer is liable to the PBGC for the shortfall in assets; however, this liability is limited to 30 percent of the employer's net worth. Thus, the plan sponsor controls the incidence of the claim against the insurance program and, to some extent, the amount of that claim.

The Committee believes that the law should limit the occurrence of claims against the PBGC premium fund to situations of extreme need. The bill contains objective criteria for employer distress ('distress termination'). The bill also contains provisions to increase the amount of liability to the PBGC above the current 30 percent of net worth limit in the case of companies that survive a period of financial distress and later become profitable. Both of these provisions ****934 *283** will help close the door to abusive claims against the termination insurance program.

In order to provide increased benefit security in plans maintained by companies that do not qualify for a distress termination, the bill provides that a plan may close out and make a final distribution of assets only if it has sufficient assets to provide all benefit entitlements ('standard termination').

In addition, even in situations in which companies do qualify for a distress termination, the companies are liable to the section 4049 trust for five percent of their pre-tax profits (if any) for a period of up to ten years. Further, the section 4049 trustee must make annual distributions to participants and beneficiaries (to the extent that funds are in the trust) to pay for any benefit entitlements not guaranteed by the PBGC.

2. Transfer of unfunded pension liabilities

The intent of ERISA is that solvent employers pay for the benefits promised to their employees and that termination not end this responsibility. III Legislative History of ERISA of 1974 at 4741–42 (remarks of Sen. Williams); *Nachman Corp.* v. *PBGC,* 592 F.2d 947 (7th Cir. 1979), *aff'd.* 446 U.S. 359[2] (1980). Under current law, if a company transfers unfunded pension benefits to an entity that does not have a reasonable chance of paying for those benefits, the transferor is liable under section 4062 in the event of plan termination.

Nonetheless, it has been contended in the past that a transfer of pension benefits, albeit to a very weak entity, insulates the transferor and that the burden of paying for those benefits on termination therefore falls on the PBGC premium payers. In fact, about 11 percent of termination claims against the PBGC's single-employer premium fund have resulted from transfers of pension liabilities to weak transferees. Although the Congress never intended that companies be permitted to dump pension liabilities onto the premium system in this way, challenges to the law and attendant litigation costs are likely to continue.

For example, a company may sell a division or subsidiary to another company or spinoff a division or subsidiary as an independent company and transfer unfunded pension liabilities as part of the transaction. The transferee may be much weaker

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

than the transferor as, for example, in a highly leveraged or thinly-capitalized buyout, and there may be little chance that the transferee will be able to continue the business successfully. If its pension plan terminates, and a principal purpose of the transaction is to evade liability to the PBGC, the PBGC should not have to bear the expense and risk of complex litigation to establish the transferor's obligations with respect to the plan's unfunded liabilities. The bill would assure that liability is imposed on the person attempting to escape liability if a distress termination occurs within five years after an evasion transaction.

In addition, the bill would prevent companies from engaging in such transactions in order to avoid liability for nonguaranteed benefits. The bill assures that the transferor company remains liable ****935** for any nonguaranteed benefits, as though it were still a contributing ***284** sponsor (or controlled group member) of the plan as of the termination date.

3. Minimum funding waivers

Another important problem under current law relates to waivers of the minimum funding standards and extensions of amortization periods under those standards. While the Committee recognizes that in many situations waivers and extensions may be an appropriate means of ameliorating business hardship, many plan sponsors have used the waiver process as a means of obtaining credit from a captive 'lender', the plan they control. Since the waived amounts need only be repaid at the plan's interest rate, ordinarily far less than commercial lending rates, the plan is used as a bank of first resort, to the detriment of plan participants and beneficiaries, who have relied on contributions being made to fund their promised benefits.

In effect, a minimum funding waiver may be viewed simply as a low interest loan from the plan to the employer, given without security, to be paid back over 15 years. At best, the outstanding balance of waived contributions becomes due at plan termination. However, since insufficient terminations often occur in a liquidation or reorganization context, the plan's claim for unpaid contributions will be a general unsecured claim. Since other creditors of a plan sponsor in obvious financial trouble will already have taken steps to secure or otherwise protect themselves, few assets are normally left for the plan for the PBGC, and claims for unpaid contributions are rarely satisfied in full.

Waivers accounted for about 30 percent of the PBGC's losses in termination cases with waivers. The PBGC estimates that the single-employer fund has absorbed about $93 million or more in losses due to the granting of minimum funding waivers. About $75 million of this amount is associated with funding waivers in which the outstanding balance of waived contributions becomes due on plan termination.

The bill clarifies that, under certain circumstances indicating substantial risk of loss to participants and the PBGC insurance fund, security may be required to be provided to a single-employer plan as a condition for the granting of a funding waiver or extension of amortization period, and that providing such security does not constitute a prohibited transaction. The bill also requires the Secretary to consider the views of the PBGC and affected parties in deciding whether to grant waivers and extensions, and in setting the terms and conditions (including possible security requirements) of waivers and extensions.

D. History of committee action

On May 18, 1982, the Executive Director of the PBGC, Edwin M. Jones, wrote to the Chairman of the Committee, the late Carl D. Perkins, to request (on behalf of the Administration) that Congress approve a revised premium schedule for the single-employer termination insurance program. The requested premium was $6.00 per participant per year, effective for plan years beginning on or after January 1, 1983. In addition, Mr. Jones indicated the need for corrective ****936 *285** legislation to remedy certain structural flaws in the current law. Similar letters were sent to the Chairman of the House Committee on Ways and Means and the Senate Committee on Labor and Human Resources and Finance.

The Chairman of the Subcommittee on Labor-Management Relations, the late Phillip Burton, was urged at the time by Representative John Erlenborn, representatives of the business community, and the PBGC itself to defer immediate consideration of the premium increase request until some consensus could be reached on the structural reforms. The representatives of organized labor supported the need for both the premium increase and reforms but were not as adament as the aforementioned as to the need to link the reforms to the premium increase.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Therefore, the Committee did not take action on the recommended premium increase in the 97th Congress. Rather, the Chairman of the Subcommittee urged interested parties to assist the Subcommittee in fashioning reforms to close certain loopholes, thereby strengthening the long-term self-financing nature of the single-employer program. The aim of this effort was to develop a reform package which could be enacted together with the premium increase.

In the 98th Congress, the Subcommittee on Labor-Management Relations, under the leadership of its Chairman, William L. Clay, held hearings on September 28, 1983, to consider comprehensive bipartisan legislation. H.R. 3930. H.R. 3930, introduced by Chairman Clay and Representative Erlenborn, was designed to strengthen the operation of the single-employer program by increasing the PBGC premium and adopting structual reforms to close obvious loopholes in the law which, if left unattended, could jeopardize the PBGC's long-range financial stability. In addition, the legislation was designed to make it more likely that participants would receive their full promised and earned benefits after plan termination. Witnesses representating business and labor supported the general principles of the bill and pledged to work with the Subcommittee to produce consensus legislation.

On October 6, 1983, the Subcommittee on Labor-Management Relations ordered reported a revised version of H.R. 3930. While significant progress had been made in fashioning acceptable legislation incorporating reasonable solutions to the problems faced by the PBGC and plan participants, it was clear that additional work remained to be done before the consensus necessary for full Committee action on H.R. 3930 could be reached.

On March 20, 1984, in testimony before the Oversight Subcommittee of the Committee on Ways and Means, PBGC Executive Director Charles Tharp indicated that, because its previous request for a premium increase had not been granted and the financial conditions of the PBGC was continuing to deteriorate, while the Administration supported comprehensive legislation, it had revised its premium increase request to Congress to $7.00 (effective retroactively for plan years beginning after December 31, 1983) and urged quick action. In addition, Mr. Tharp testified that if no increase were to be effective until January 1, 1985, PBGC's request would likely exceed $7.50.

****937 *286** In light of that testimony and subsequent meetings with the PBGC and other interested parties, on June 12, 1984, the Committee adopted, as an amendment to two bills relating to pension plans of state and local governments (H.R. 5143 and 5144), a provision which authorized a premium of $8.50 per participant per year for plan years beginning after December 31, 1983. At the time, the Committee indicated that despite the decoupling of the premium increase and the reforms for purposes of the amendment, it has not set aside its efforts to achieve the necessary comprehensive reforms in H.R. 3930. It was the Committee's strongly held view then, as it is now, that the premium increase alone is insufficient to safeguard participant's rights and the fiscal soundness of the PBGC.

In the 99th Congress, work on comprehensive reforms continued. Three new bipartisan bills were introduced by Chairman Clay and the ranking minority member of the Subcommittee, Representative Marge Roukema, in order to provide the greatest procedural flexibility for the Committee to assure passage of legislation this Congress. H.R. 2812 authorized a premium increase only ($8.50 effective for plan years beginning after December 31, 1985). H.R. 2811 contained both the premium increase and the total reform package. Both H.R. 2811 and 2812 were jointly referred to this Committee and to the Committee on Ways and Means. H.R. 2318 contained only reforms and was referred solely to this Committee. Unlike H.R. 3930, these bills did not contain provisions with respect to security for plans when funding waivers are granted or explict rules governing transferor liability. In addition, virtually all of the provisions of H.R. 3930 which had engendered controversy were either dropped completely or significantly revised.

In addition, on April 9, 1985, the Acting Executive Director of the PBGC, David M. Walker, by letter to Chairman Augustus F. Hawkins, relayed the Administration's new premium request of $7.50 per participant per year, retroactive to plan years beginning after December 31, 1984, and indicated that reform legislation would be submitted shortly by the Administration for the Committee's consideration. In the backup material which accompanied the request, the PBGC noted that if the premium increase were effective only prospectively, the $7.50 would have to be $8.10. The Administration legislation was introducted by Representative Roukema and Representative James Jeffords, ranking minority member of the full Committee, as H.R. 2995 on July 15, 1985.

On July 16, 1985, the Subcommittee on Labor-Management Relations held hearings on H.R. 2811, 2812, and 2813. Witnesses representing organized labor, and participant and retiree groups strongly supported the bills and urged quick

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

action. Witnesses representing business commended the Subcommittee on its progress in fashioning acceptable reforms but still had some reservations with respect to some concepts in the bills, even through they supported some of these same concepts and the need for comprehensive legislation in the past. They acknowledged the need for a premium increase but questioned the amount suggested in the bills. The PBGC continued to press for immediate action both on the premium increase and the structural reforms.

On July 31, 1985, the Subcommittee favorably reported all three bills, as amended, by voice vote. Among the amendments adopted ****938 *287** by the Subcommittee were: 1) limitations with respect to time and amount of the liability for persons who enter into transactions, a purpose of which is to evade liability for plan termination, and 2) authorizing the Secretary to require security for the plan when certain large funding waivers are granted and requiring the Secretary to consult with the PBGC before certain waivers are granted or security required.

On September 11, 1985, the Committee unanimously adopted an amendment in the nature of a substitute for the bills adopted by the Subcommittee on Labor-Management Relations. It unanimously ordered reported all three bills (H.R. 2811, 2812, and 2813) as amended. In addition, the Committee unanimoulsy adopted an amendment in the nature of a substitute (identical in substance to H.R. 2811 as reported by the Committee) for section 505 of H.R. 3128, the Deficit Reduction Amendments of 1985, a bill which was sequentially referred to the Committee on July 31, 1985, for a period ending on September 11, 1985. Section 505 of the bill, as reported by the Committee on Ways and Means on July 31, 1985, authorized a temporary increase in the single-employer premium to $8.00 for plan years beginning after December 31, 1985 and before January 1, 1989.

On September 19, 1985, the Committee considered proposed legislation to be reported to the House Budget Committee for inclusion in the Budget Reconciliation bill. The Committee unanimously adopted provisions incorporating the substance of H.R. 2812 (as ordered reported on September 11, 1985) as subtitle B to this legislation and provisions incorporating the substance of H.R. 2813 (as ordered reported on September 11, 1985) as subtitle C to this legislation. In addition, the Committee unanimously adopted as subtitle D, amendments to title I of ERISA dealing with the continuation of private health insurance at group rates for family members of deceased, divorced or medicare-eligible workers.

III. REQUIREMENTS OF RULES X, XI, XII AND COST ESTIMATES

A. Oversight statement

In compliance with clause (2)(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no findings or recommendations of the Committee on Government Operations were submitted to the Committee with respect to matters covered by the bill. The oversight findings and recommendations conducted by the Committee on Education and Labor have all been previously described herein.

B. Inflationary impact statement

Pursuant to clause 2(l)(4), rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of subtitles B, C, and D will have a net salutory impact with respect to the operation of the national economy. To the extent that increased premiums required to be paid to the Pension Benefit Guaranty Corporation as well as the reforms to the system which limit access to the termination insurance program to companies in financial hardship serve to reduce the deficit of the Federal government, ****939 *288** the Committee believes that the enactment of this legislation will serve to reduce inflation.

C. Congressional Budget Office cost estimate

The Committee on Education and Labor disagrees with the following report submitted by the Congressional Budget Office in accordance with rule XI of the Rules of the House of Representatives. The Committee believes that the premium increase and the reforms taken together (subtitles B and C) will yield the full savings assumed by the Office of Management and Budget in the President's FY 1986 budget as submitted to Congress.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

IV. COMMITTEE VIEWS: OBJECTIVES OF THE MAIN PROVISIONS OF SUBTITLES B AND C

Single-employer defined benefit pension plans directly affect the well being and retirement income security of millions of workers. A sound termination insurance program is essential to that security. The Committee on Education and Labor is mindful of the original purposes of title VI, and ERISA in general, to encourage the establishment and maintenance of defined benefit plans while providing for the security of promised pension benefits. The Committee believes, after intensive study, that continued achievement of these goals requires structural reforms to the single-employer termination insurance program. The structural reforms adopted by the Committee are found in subtitle C.

The Committee also recognizes that structural reforms, by themselves, will not be sufficient to restore the program to a sound financial condition. As of the end of FY 1984, the program had a $462 million deficit. Projected future claims, if realized, would only increase this deficit unless a premium increase is put into effect. The longer action on the increase is delayed, the larger will be the increase needed to retire the existing deficit and to cover future costs as they are incurred. The authorization of a premium increase adopted by the Committee is found in subtitle B.

A. Premiums for single-employer plans

Subtitle B increases the annual per capita premium from $2.60 to $8.50, effective January 1, 1986, in order to allow the PBGC to retire its unacceptably high deficit over a reasonable period of time and to provide for future claims at a realistic level. The $8.50 premium in this bill is slightly higher than the premium requested by the Administration ($7.50 beginning January 1, 1985, which is equivalent to $8.10 beginning January 1, 1986). However, the Committee believes that the Administration's proposal does not provide sufficient protection against the development of new deficits.

In addition, the process by which Congress may adopt any future premium increases is changed from a concurrent to a joint resolution procedure, in response to the decision of the U.S. Supreme Court in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919[3] (1983).

The bill also incorporates certain former provisions in section 4006(a) in lieu of the cross reference thereto. This provision is ****940 *289** simply a technical correction and is not intended to make any substantive change.

B. Frozen plans

Under current law and under the bill, if a plan amendment is adopted and the sole effect of the amendment is to provide that some or all service performed on or after a specified date will not be taken into account for purposes of determining the benefits accrued on or after such date, the plan is considered to be frozen and not terminated. Similarly, a frozen plan may also keep constant some or all of the relevant factors used to determine the amount of benefits based on service prior to the specified date. For example, for pay-related plans, the pay level for a participant may be frozen as of the date specified in the plan amendment.

On the other hand, if a plan is amended to provide that some or all service performed after the specified date will not be taken into account for purposes of determining nonforfeitability of benefits accrued before the specified date or determining satisfaction of any other eligibility requirements with respect to those accrued benefits, the plan will be considered terminated. In contrast, under frozen plans, participants are permitted 'to grow into' eligibility for benefits and continue to earn vesting credit.

Under current law and under the bill, a frozen plan is subject to all the same requirements of ERISA as other ongoing plans, including the vesting and funding requirements of title I of ERISA and the premium requirements of title IV of ERISA.

One new requirement for frozen plans is contained in the bill. Plan administrators must provide 60-day advance notice to affected parties before a plan can be frozen.

C. Plan termination in general

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

As under current law, the Committee intends that ERISA provide the sole and exclusive means under which a qualified pension plan may be terminated. The Committee therefore believes that a recent case before the U.S. Bankruptcy Court for the Western District of New York, *In re The Bastion Company, Inc.* (No. 83–21071, Jan. 16, 1985), which held that ERISA does not impair other Federal law, and therefore, a pension plan can be rejected as an executory contract, was incorrectly decided.

Title IV of ERISA currently recognizes two types of termination of single-employer plans: a termination instituted by the plan administrator under section 4041 and a termination instituted by the PBGC under section 4042. That general framework is continued under the bill.

Under current law, no distinction is made between types of plan terminations initiated by plan administrators under section 4041. As a result of the Committee's oversight activities over the past eleven years since the single-employer program was established, however, the Committee has concluded that it is now necessary to distinguish between different types of voluntary plan terminations based generally on the employer's financial viability on the proposed date of termination.

****941 *290** Therefore, the bill sets out two categories of voluntary plan terminations: standard terminations and distress terminations. General rules governing both standard and distress terminations are established, as well as certain specialized requirements applicable to each type of termination. None of these new rules apply to terminations initated by the PBGC under section 4042.

Currently, plan sponsors are free to terminate their single-employer pension plans at any time (subject to any contractual limitations). Whenever a plan is terminated with insufficient assets to pay for all guaranteed benefits, the PBGC is obligated to trustee the plan and to guarantee the payment of certain benefits under section 4022. The contributing sponsors of the plan and the members of their controlled groups are then liable to the PBGC for the difference between the value of the assets in the plan and the amount of guaranteed benefits, up to 30 percent of their net worth. These persons generally have no obligation to pay for any benefits beyond those guaranteed by the PBGC. This has led to two separate abuses.

First, there have been a number of situations in which profitable employers with low net worth terminated their plans in order to transfer the unfunded pension liabilities onto the PBGC. This has led to an increase in the obligations of the PBGC and upward pressure on the level of premiums paid by other plan sponsors to finance the termination insurance program.

Second, there have been situations in which profitable employers terminated their pension plans in order to evade responsibility for paying certain benefits which participants and beneficiaries had earned, but which were not guaranteed by the PBGC. At a hearing held on July 16, 1985, the Subcommittee on Labor-Management Relations heard compelling testimony from several witnesses describing situations in which participants and beneficiaries lost substantial portions of the pension benefits to which they were entitled under the terms of their pension plan upon the termination of the plan, because these benefits were not guaranteed by the PBGC. The contributing sponsors of these plans and the members of their controlled groups were able to avoid any responsibility for paying for these nonguaranteed benefits, even though they continued in business and remained highly profitable.

The bill addresses both of these abuses by establishing a distinction between 'standard terminations' and 'distress terminations'. Unless it is demonstrated that the contributing sponsors of a plan and the members of their controlled groups meet certain objective criteria of economic hardship (as described below), a pension plan can only be terminated in a standard termination.

Moreover, the bill changes the obligation of contributing sponsors and members of their controlled groups so that wherever possible, participants and beneficiaries will receive their full benefit entitlements upon plan termination. The mechanism for satisfying this obligation to provide benefit entitlements differs depending on whether the termination is a standard termination or a distress termination. For this purpose, the rules governing terminations by the PBGC under 4042 and distress terminations are the same.

The term 'benefit entitlements' means, as of any date, all benefits provided by a plan with respect to a participant or beneficiary ****942 *291** which (1) are guaranteed by the PBGC under section 4022; (2) would be guaranteed by the PBGC, but for the operation of subsection 4022(b); or (3) constitute early retirement supplements or subsidies, plant closing benefits,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

or death benefits (to the extent not guaranteed by the PBGC), if the participant or beneficiary has satisfied all of the conditions required under the terms of the plan to establish entitlement to such benefits.

Under present law, the PBGC does not necessarily guarantee all benefits to which participants and beneficiaries are entitled under the terms of a plan. In particular, the PBGC does not guarantee any benefits which are not fully 'phased in' or otherwise exceed the limitations under section 4022(b). Moreover, the PBGC provides no guarantee or only a partial guarantee for certain types of early retirement supplements, early retirement subsidies, plant closing benefits, and death benefits.

The Committee intends that the definition of 'benefit entitlements' include not only all benefits which are guaranteed by the PBGC, but also all benefits which would be guaranteed but for the operation of the phase-in rules and other limitations under section 4022(b), and all early retirement supplements and subsidies, plant closing benefits, and death benefits to which participants and beneficiaries are entitled under the terms of the plan. Thus, the Committee intends the definition of 'benefit entitlements' to be more extensive than the definition of 'guaranteed benefits.' Except as specifically provided in section 3315(c)(7) and (8) of this bill, the Committee does not intend to change existing law concerning the types of benefits which are guaranteed by the PBGC.

Benefit entitlements include early retirement supplements or subsidies, plant closing benefits, and death benefits, irrespective of whether any such benefits are guaranteed under section 4022. In determining whether benefits promised under a plan qualify as early retirement supplements or subsidies, plant closing benefits, or death benefits, and hence are benefit entitlements, the Committee intends that any determinations by plan administrators, the PBGC, section 4049 trustees (as described below), and the courts be based on the documents and instruments governing the plan, insofar as such documents and instruments are consistent with the provisions of title I and title IV of ERISA. Since the definition of benefit entitlements and the provisions of the bill relating to standard terminations and the section 4049 trustee are remedial provisions, the Committee further intends that these terms be construed in a liberal manner.

Thus, for example, the term 'early retirement supplements or subsidies' encompasses any form of subsidy or supplemental benefit that is paid to a participant or beneficiary in connection with early retirement. An example of such a benefit would be a temporary supplement payable until the attainment of the age for eligibility for Social Security benefits. Another example would be any form of subsidy that is payable to a participant or beneficiary so that benefits are not reduced on an acutarial basis for early retirement. These types of supplements and subsidies are commonly paid under so-called '30-and-out' and '85 point' early retirement provisions.

****943 *292** Similarly, the term 'plant closing benefit' encompasses any benefit payable to participants and beneficiaries in connection with the partial or total closing, shutdown, or cessation of operations by an employer at a plant or facility. In situations in which a previously closed facility is reopened, whether plant closing benefits are payable will depend on all of the facts and circumstances in each case, including the plan provisions.

The term 'death benefits' encompasses any benefit payable to a participant or beneficiary by reason of the participant's or beneficiary's death, regardless of the form of payment of the benefit.

Only those early retirement supplements or subsidies, plant closing benefits, or death benefits, which participants or beneficiaries are entitled to as of the date in question are benefit entitlements. In other words, the participant or beneficiary must have satisfied all of the conditions required under the provisions of the plan to establish his or her entitlement to the benefit. Thus, the definition does not include any benefits for which the participant or beneficiary is not yet eligible.

For example, if a participant has not, as of the termination date, satisfied the service requirements under a plan in order to be entitled to an early retirement benefit, that benefit would not be considered a benefit entitlement. If age is a requirement for entitlement to a particular benefit (as opposed to simply establishing the starting date for a benefit), a participant has no benefit entitlement to that benefit until he or she reaches that age.

Similarly, if a plant closing or disability does not occur until after the termination date, any plant closing or disability benefits would not be encompassed within the definition of benefit entitlements.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

However, in determining whether a participant or beneficiary has satisfied all of the conditions required under the terms of a plan to establish entitlement to a benefit, the submission of a formal application, retirement, the completion of a required waiting period, death, or the designation of a beneficiary will be disregarded.

D. Types of single-employer pension plan termination

1. Voluntary terminations by plan administrators

The bill contains general rules governing terminations of single-employer plans by plan administrators under section 4041. These rules apply both to standard terminations and to distress terminations, but do not apply to terminations by the corporation under section 4042.

a. General rules

Under the bill, except for involuntary terminations by the corporation under section 4042, a single-employer plan may only be terminated by the plan administrator in either a standard termination or a distress termination. The Committee intends to make it clear that these two types of terminations are the exclusive ways a plan administrator can initiate the termination of a single-employer plan.

****944 *293** Under the bill, a plan administrator must provide each affected party with 60-day advance notice of the proposed termination. In addition, certain procedures must be followed in the event there is a 'related adjudicatory proceeding' challenging a proposed termination. In the past, the PBGC has processed the termination of a plan, even though an affected party was challenging the validity of the proposed termination in another forum. Although it was subsequently determined that the termination violated the contractual rights of the affected party, the arbitrator declined to order restoration of the plan because the PBGC had already processed the termination, making any restoration impracticable.

The Committee recognizes that the PBGC is not (and should not be) in a position to determine whether a proposed termination violates the contractual or statutory rights of any affected parties. Rather this determination must ultimately rest with the appropriate adjudicative entity, government agency, or court, as the case may be. Furthermore, the decision on what the appropriate remedy should be if the termination is found to have been improper (and specifically, whether or not the plan should be restored) also rests with the appropriate adjudicative entity, government agency or court.

However, the Committee also believes that the PBGC should not, by its actions in processing a proposed termination, effectively decide a dispute and preclude other affected parties from obtaining the relief to which they may be entitled, which might include treating the plan as if no termination had occurred.

Accordingly, in the case of a standard termination, the bill provides that if, during the 60-day period prior to the proposed termination date, the plan administrator receives written notice from an affected party that a related adjudicatory proceeding is pending with respect to the proposed termination, the plan administrator may either (1) suspend processing or implementing the termination, or (2) proceed with the termination, provided that certain steps (including segregating assets and maintaining plan records) are taken to assure that the plan can be restored if the termination is later found to be invalid. The plan administrator has complete discretion as to which course of action—suspension of the termination or proceeding with the termination—to follow. The Committee intends that plan administrators should make case by case determinations, depending on all of the facts and circumstances. Of course, the plan administrator may decide to suspend temporarily the processing of the termination until there is a preliminary decision by an arbitrator, government agency, or court, and then subsequently reevaluate whether or not to proceed with the processing of the proposed termination.

The bill further provides that the same procedures shall apply whenever there is a related adjudicatory procedure with respect to a proposed distress termination. Thus, for example, if the PBGC receives timely notice that there is pending a related adjudicatory proceeding challenging the propriety of a proposed distress termination, it has the discretion as to whether to proceed with the processing of the proposed termination or to suspend processing of the proposed termination. If the PBGC decides to proceed with the termination, it too must take whatever steps are necessary and appropriate ****945 *294** so that it

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

can effectively restore the plan if the proposed termination is finally determined to have been improper and restoration of the plan is ordered. The bill applies this requirement both to plan administrators and to the PBGC (or other person serving as trustee under section 4042), since either may be responsible for administering a plan at different points during the pendency of a distress termination.

In adopting these provisions, the Committee does not intend to make any substantive change in the law governing the contractual or statutory rights of any affected parties, or the remedies which may be granted by any adjudicative entity, government agency, or court. Rather, the Committee intends to ensure that, if an adjudicative entity, government agency, or court should finally determine that the proposed termination was in violation of any contractual or statutory rights, and should order that the plan be restored, the plan administrator or the PBGC (as the case might be) will still be in a position to comply with such a remedy.

A 'related adjudicatory proceeding' includes a grievance proceeding before an appropriate adjudicative entity, an administrative proceeding before an appropriate government agency, or a civil action in a court of competent jurisdiction, in which an affected party alleges that the proposed termination would violate the contractual or statutory rights of any affected party.

For example, this would include a grievance which is filed alleging that a proposed termination would violate a collective bargaining agreement, the filing of an unfair labor practice charge with the National Labor Relations Board alleging that the termination violates the National Labor Relations Act, and the filing of a lawsuit in any court alleging that the proposed termination violates any contractual or statutory rights of any affected party.

The term 'related adjudicatory proceeding' also includes any timely appeals from grievance proceedings, administrative proceedings, or civil actions. Grievance proceedings before an appropriate adjudicative entity include the preliminary steps in a grievance procedure, as well as proceedings before an arbitrator, joint board, or other entity empowered to decide grievances.

In order to be considered a 'related adjudicatory proceeding', the proceeding must allege that the proposed termination violates the contractual or statutory rights of any affected party. If no such allegation is made in the proceeding, the plan administrator or the PBGC is not bound by the procedures set forth in the bill. Furthermore, if the challenge is to the proposed termination of only part of the plan, then the procedures (including the requirements that plan assets be segregated and that plan records be maintained) only apply to that portion of the plan in dispute. If, as part of a proposed termination, the plan sponsor is spinning off assets into a new plan, the procedures would apply to the assets in the new plan, as well as the plan being terminated.

The plan administrator and the PBGC are only required to comply with these procedures during the pendency of a related adjudicatory proceeding. The related adjudicatory proceeding shall not be considered 'pending' after there is a final determination that the proposed termination did not violate the contractual or statutory rights of any affected party, or after a preliminary determination ****946 *295** by the adjudicative entity, government agency, or court that, taking into consideration all of facts and circumstances, the affected party is not likely to prevail and the equities clearly favor discontinuing compliance with the procedures.

Whenever the plan administrator or the PBGC suspends the processing of any termination, and the termination is finally determined in the related adjudicatory proceeding not to be in violation of the contractual or statutory rights of any affected party, the termination will be effective retroactive to the original proposed termination date.

b. Requirements and procedures relating to standard terminations

Under a standard termination, the plan must contain sufficient assets to pay for the benefit entitlements of all participants and beneficiaries. That is, the plan must be made sufficient not only for all benefits guaranteed by the PBGC under section 4022, but also for the other nonguaranteed benefits encompassed within the definition of benefit entitlements. This requirement protects the PBGC, participants and beneficiaries against the types of abuses described above. Since the plan must be sufficient for all benefit entitlements, the PBGC will not be required to trustee the plan or to guarantee the payment of any benefits. Furthermore, participants and beneficiaries will receive all benefits to which they are entitled under the terms of the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

plan.

Because the PBGC and the participants and beneficiaries are protected under a standard termination, the procedures for entering into such a termination are streamlined so as to allow most of the procedures to be handled by private parties, with minimal involvement by the PBGC. This is intended to reduce the administrative burdens on the PBGC and plan sponsors. At the same time, various safeguards are included in the procedures in order to insure that the requirements for a standard termination are met, and that the interests of the PBGC and the participants and beneficiaries are, in fact, fully protected.

In order to terminate a single-employer plan under a standard termination, certain requirements must be met. The plan administrator must notify affected parties 60 days before the proposed termination date. The plan must be made sufficient for benefit entitlements before assets can be distributed.

Under the streamlined procedures, the plan administrator is required to send the PBGC a certification by an enrolled actuary of the estimated amount of assets in the plan as of the proposed date of final distribution of assets, the estimated present value of benefit entitlements of participants and beneficiaries under the plan as of such date, and a statement that the plan will be sufficient for benefit entitlements as of such proposed date of final distribution of assets based on such estimates. The Committee expects that these estimates will be based on reasonable expectations representing the actuary's best estimate of anticipated experience under the plan. The plan administrator must also send the PBGC any additional information required in regulations of the PBGC, as well as certification that all of the information on which the actuarial certification ****947 *296** and information provided to the PBGC was based is accurate and complete.

The plan administrator must also notify each participant and beneficiary of the amount of benefit entitlements (if any) to which they are entitled under the terms of the plan, expressed in terms of the normal form of benefit under the plan (*e.g.*, monthly payments, lump sum, etc.).

After receiving the information described above from the plan administrator, the PBGC has 60 days to review the information. If, based on information provided by affected parties or as a result of its own investigations, the PBGC has reason to believe that any of the requirements for a standard termination have not been met, or that the plan is not sufficient for benefit entitlements, the PBGC must issue a notice of noncompliance. The PBGC and the plan administrator may agree to extend the 60-day period. The Committee would expect the PBGC (as under the current law) to issue a notice of noncompliance in any situation in which it is unable to determine, on the basis of the information available to it, that the requirements for a standard termination have been met.

The plan administrator may commence the final distribution of assets pursuant to the standard termination after the expiration of the 60-day (or extended) period, provided the PBGC has not issued a notice of noncompliance, and the plan is sufficient for benefit entitlements. If the plan was sufficient for benefit entitlements as of the proposed termination date, but due to a decline in the value of the plan assets it no longer is sufficient for benefit entitlements as of the proposed date of final distribution of assets, the plan administrator may not proceed with the final distribution of assets, and the plan will not be considered terminated under a standard termination unless the deficiency is corrected.

In connection with the final distribution of assets, as under current law, the assets must be allocated in accordance with section 4044. The assets must always be used to provide when due all benefit entitlements under the plan. In the event there are sufficient assets to pay for benefits in excess of the benefit entitlements, the assets must be used to provide such benefits according to the priorities set forth in section 4044. Within 30 days after completing the final distribution of assets, the plan administrator must certify to the PBGC that the foregoing requirements have been met.

The Committee expressly states that nothing in this legislation changes the obligations of plan sponsors under section 411(d)(6) of the Internal Revenue Code of 1954 and 204(g) of ERISA (as amended by section 301 of the Retirement Equity Act of 1984, P.L. 98–397, August 23, 1984).

Moreover, the Committee expressly states that nothing in this legislation is intended to express its opinion on the legality or desirability of the current practice of termination of overfunded pension plans and recapture of excess assets by plan sponsors.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Under the bill, the PBGC retains its existing authority under section 4003 of ERISA to conduct audits of plans, both prior to and after the termination of a plan. Even if the plan administrator has certified to the PBGC that the assets of the plan have been distributed so as to provide when due all benefit entitlements and all other benefits to which assets are allocated under section 4044, the ****948 *297** PGBC is still obligated to guarantee the payment of benefits under section 4022 if it is subsequently determined that not all guaranteed benefits were in fact distributed under a standard termination, and the contributing sponsors of the plan and the members of their controlled groups do not promptly provide for the payment of such benefits.

c. Requirements and procedures relating to distress terminations

In order to terminate a single-employer plan under a distress termination, certain requirements must be met. The plan administrator must give 60-day advance notice to affected parties and must provide pertinent information and certifications to the PBGC. Most importantly, the contributing sponsors and the members of their controlled groups must satisfy certain tests indicative of a financial inability to continue the funding of a plan.

If all of the criteria for a distress termination are met and the plan is terminated, as under current law, all future participation, funding, accrual and vesting cease. The PBGC trustees all plans which qualify for a distress termination *and* which do not have sufficient assets to cover guaranteed benefits. Plans in which the assets are sufficient to provide guaranteed benefits are closed out as under current law. The PBGC appoints a section 4049 trustee in those situations in which plans do not have sufficient assets to provide all benefit entitlements. The section 4049 trustee in turn establishes a trust which is used to accumulate certain profits liability payments from the contributing sponsors and members of their controlled groups, and to use the accumulated funds to pay to participants and beneficiaries the difference between benefit entitlements and guaranteed benefits.

i. Distress Termination Tests.—The Committee believes that the four tests for a distress termination contained in the bill describe the types of hardship situations in which a transfer of liabilities to the insurance program is appropriate. In fashioning these tests, the Committee tried to balance the need to limit access to the insurance system to cases of genuine need against the danger of making the tests so stringent that nothing short of total liquidation would qualify for PBGC assistance.

The first distress test requires that the contributing sponsors of a terminating plan have received funding waivers in at least three of the past five years, and thereby already have demonstrated ‘substantial business hardship’ under section 303 of ERISA for each year a waiver was granted. The first distress test also requires that ‘substantial’ controlled group members have received at least one recent funding waiver for all their other single-employer plans. This assures that the entire controlled group is experiencing financial distress. Otherwise, a strong controlled group could escape responsibility for the benefits promises by a weak member with a large underfunded plan. Applying the test on a controlled group basis discourages a controlled group from shifting assets within the group in order to leave a weak member with huge pension liabilities and then attempting to transfer those liabilities onto the insurance program.

****949 *298** Similarly, the second distress test applies only when the contributing sponsor and substantial controlled group members are all in liquidation proceedings under title 11, United States Code, or a similar State law. This prevents a strong controlled group from transferring liabilities to the PBGC when a weak member liquidates. In the event the liquidation proceedings are dismissed or converted to reorganization proceedings within one year of the filing of the bankruptcy petitions, the distress termination shall be void and the plan restored to pretermination status as of the proposed termination date, unless the PBGC determines that one of the other distress criteria is satisfied.

The Committee recognizes that there may be hardhip situations which would not meet the other distress tests in the bill, but which would present an appropriate case for the use of PBGC funds to guarantee pension benefits. Accordingly, the third test would authorize a distress termination when a contributing sponsor demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the contributing sponsors and each substantial member of such sponsors’ controlled groups will be unable to pay their respective debts when due and will be unable to continue in business. This test also focuses on the financial condition of the controlled group and not just on the financial health of the contributing sponsor.

Under the fourth distress test, the entire controlled group must demonstrate that, solely as a result of a decline in the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

workforce, the costs of providing pension coverage have become unreasonably burdensome. This test is satisfied when each of two objective ratios has doubled since the last benefit increases were made. These ratios compare all required single-employer plan contributions, first, to the total annualized wages of active participants, and second, to the consolidated gross income of the controlled group. The two ratios are intended to measure the financial burden of maintaining single-employer defined benefit plans. The PBGC is given the authority to promulgate regulations with respect to this test.

This test is designed to permit a distress termination in situations in which a controlled group may have promised certain pension benefits, but due to a sudden decline in the workforce, the controlled group no longer can afford to maintain the full level of benefits under its pension plans.

For purposes of the distress tests, the term 'substantial member of a controlled group' means a person whose assets comprise 5 percent or more of the total assets of the controlled group as a whole. This term also includes controlled group members who do not meet the 5 percent test as of the termination date, but who do meet this test (1) as of the year of the first waiver, if distress is determined under the funding waiver test or (2) as of the petition filing date, if distress is determined under the court-supervised liquidation test. The Committee believes that the financial condition of a controlled group member whose assets comprise 5 percent or more of the group's total assets has a substantial impact on the financial strength of the group as a whole.

ii. Benefit Payments.—Under current law, benefit payments in some terminated plans have been made at the plan's benefit levels ****950 *299** after the termination date and before final guaranteed benefits are calculated. When guaranteed benefits are less than nonforfeitable benefits under the plan, the difference must be recouped since title IV currently provides that participants are entitled only to guaranteed benefits following termination of a plan. The Committee recognizes that recoupment of benefit overpayments can result in hardship to participants and beneficiaries. Also, lump sum distributions of plan assets in a terminated plan, either directly to participants or to purchase annuities from insurers, during the course of a termination would dilute plan assets and may adversely affect participants' benefits under title IV of ERISA and the PBGC's recovery.

Accordingly under the bill, beginning on the date the notice of intent to terminate in a distress termination is filed, the plan administrator must pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity and must not use plan assets to purchase irrevocable commitments to provide benefits from an insurer. As of the proposed termination date, the plan administrator is required to limit the payment of benefits to estimated guaranteed benefits plus the estimated level of nonguaranteed benefits to which assets are allocated under section 4044. These rules apply even during the pendency of a related adjudicatory proceeding in order to avoid overpayments. If the plan is later determined not to have terminated in a distress termination, any benefits not paid as a result of this limitation are due and payable (with interest) immediately.

2. Involuntary terminations by the PBGC

The PBGC's authority to terminate a plan involuntarily under section 4042 is generally unchanged, except that the PBGC is required to institute proceedings to involuntarily terminate a plan that does not have enough assets to pay benefits that are currently due.

E. Liability following plan termination

1. Liability to the Corporation

The bill amends section 4062 to apply to single-employer plan distress terminations and terminations by the corporation. It makes explicit the current law provisions upheld in *Pension Benefit Guaranty Corporation v. Ouimet Corp.*, that the plan sponsor(s) contributing sponsor(s) under the bill) and all members of its controlled group are liable under section 4062 and that all such persons are jointly and severally liable.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

a. Liability for unfunded guaranteed benefits

When a single-employer plan terminates under current law without sufficient assets to provide all guaranteed benefits, the employer is liable to the PBGC for the lesser of (A) the amount of unfunded guaranteed benefits in the plan at termination or (B) 30 percent of the employer's net worth. The intent of this employer liability rule was two-fold: (1) to discourage employers from terminating underfunded plans while giving financial relief to employers for whom payment of the full amount of unfunded guaranteed benefits ****951 *300** would be disastrous and (2) to defray the costs of the insurance program.

In the case of terminations because of business hardship, the PBGC has recovered little or nothing because of the 30 percent of net worth cap. The Committee believes that a better balance is needed between the cost to the employer terminating the plan and the cost to other premium payers resulting from that termination. However, the improvement in the PBGC's collections should not jeopardize the survival or recovery of struggling companies. The Committee believes that these objectives can be achieved by adjusting employer liability in excess of the net worth cap and making the resulting increase in the PBGC's claim contingent on the future profitability of the employer.

Accordingly, the bill provides, in general, that an employer is liable for the amount of unfunded guaranteed benefits as of the date of plan termination plus interest accrued from that date. Thus the bill contains an express provision underscoring the PBGC's authority under current law to assess interest commencing on the date of plan termination. The bill further provides that if the amount of unfunded guaranteed benefits as of the date of termination exceeds the 30 percent of net worth cap, the 30 percent amount is payable in cash or securities acceptable to the PBGC and the remainder of the unfunded guaranteed benefits is payable by means of up to ten annual installments equal to ten percent of the annual pre-tax profits of the contributing sponsor and its controlled group. In calculating the sum of the pre-tax profits, losses of one person do not offset profits of other persons.

The annual liability payments are required for the ten consecutive one-year periods beginning with the earlier of (A) the first one-year period beginning one year after the end of the last plan year preceding the termination date in which any liable person earns a pre-tax profit, or (B) the fourth one-year period beginning after the end of the last plan year preceding the termination date. In order to assure that employers obligated to make annual liability payments are required to pay no more than the sum of the amount of unfunded guaranteed benefits plus interest accrued from the termination date, the obligation to make such payments ceases when such sum has been paid. The bill also allows the PBGC to make alternative arrangements for payment of the amount of annual liability payments.

For purposes of the 30 percent of net worth rule, the employer's net worth is computed in the same manner as under current law; the employer's net worth is the sum of the individual net worths of each contributing sponsor who has a positive net worth and of each member of the contributing sponsor's controlled group who has a positive net worth.

b. Liability for unpaid contributions

Under current law, the plan administrator or a successor trustee must atempt to collect unpaid contributions owed to plans. Generally, the PBGC, as successor trustee, has been responsible for the collections. The Committee views this approach as unnecessarily cumbersome. Therefore, the bill makes the employer liable directly to the PBGC for the outstanding balances, as of the date of plan ****952 *301** termination, of accumulated funding deficiencies, funding deficiencies waived prior to termination, decreases in the minimum funding standard allowed by virtue of an extension of the amortization period prior to termination and pending requests for waivers and extensions. Interest accrues on these balances from the date of plan termination.

2. Liability to participants and beneficiaries

In addition to the liability to the PBGC described above, when a plan terminates in a distress termination or is terminated by the PBGC under section 4042, certain liabilities continue for the unpaid benefit entitlements which are in excess of the benefits guaranteed by the PBGC. The mechanism for payment of these liabilities is through a trust administered by the 'section 4049 trustee'. Thus, the contributing sponsors of the terminated plan and the members of their controlled groups are

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

jointly and severally liable to the section 4049 trustee pursuant to the provisions of section 4062(c).

The purpose of these provisions is to ensure that the contributing sponsors and members of their controlled groups do not evade responsibility for paying benefits which have been earned by participants and beneficiaries, but which are not guaranteed by the PBGC or otherwise paid by the plan. Under a standard termination, the plan must be sufficient for the benefit entitlements of all participants and beneficiaries. In contrast, when the PBGC trustees a plan under a distress termination, it simply guarantees the payment of certain benefits under section 4022. Thus, if there is a significant difference between the value of the guaranteed benefits and the value of the benefit entitlements, the contributing sponsors of the plan and the members of their controlled groups would have an incentive to satisfy the requirements for a distress termination in order to evade responsibility for paying for nonguaranteed benefits.

In order to close this potential loophole, the bill provides that the contributing sponsors and members of their controlled groups are also be liable to the section 4049 trustee for 5 percent of their pre-tax profits for a limited period of time in order to pay for any such nonguaranteed benefits. By adding these provisions, the Committee intends to discourage profitable employers from attempting to manipulate the distress criteria in order to evade responsibility for paying nonguaranteed benefits, and to insure to the maximum extent possible that participants and beneficiaries receive all benefits to which they are entitled under the terms of the plan.

The contributing sponsors and members of their controlled groups are liable under section 4062(c) only if the participants and beneficiaries have outstanding benefit entitlements, i.e., if there are benefit entitlements which are not guaranteed by the PBGC or otherwise paid by the plan. Furthermore, the contributing sponsors and members of their controlled groups are only liable if they earn pre-tax profits.

The amount of the liability is fixed at 5 percent of pre-tax profits with respect to the entire controlled group. In calculating the sum of the pre-tax profits, the losses of one person do not offset the profits of another person. The contributing sponsors and members of ****953 *302** their controlled groups and jointly and severally liable for 5 percent of the pre-tax profits with respect to the entire controlled group. This liability may be paid (and collected from) any of the members of the controlled group, and the entire liability for any year shall be satisfied upon the payment by any member of the controlled group of the entire 5 percent of profits liability. The duration of the liability runs for 10 years commencing with the earlier of the first year in which any member of the controlled group earns a profit or the fourth year following the termination date of the plan.

The form of the liability payments, the due date for the payments, the rules governing satisfaction of the liability and the determination of liability payment years are the same for the 5 percent of pre-tax profits liability payments to the section 4049 trustee as they are for the 10 percent of pre-tax profits liability payments to the PBGC under section 4062(b).

Section 4049 sets forth the mechanism and procedures under which the section 4049 trustee receives these liability payments and makes distributions to the participants and beneficiaries to pay for any nonguaranteed benefits. These procedures are structured in a manner so as to minimize the administrative burdens and expenses on the trustee, so that most of the liability payments from employers can be used to pay benefits to participants and beneficiaries.

The PBGC has the discretion to appoint either itself or another person to act as the section 4049 trustee. In the event the PBGC appoints another person to act as the section 4049 trustee, the Committee expects that the PBGC will appoint a bank or some other appropriate financial institution. The PBGC is required to give the section 4049 trustee certain information needed by the trustee to carry out its responsibilities under this section. Of course, under its regulatory authority, the PBGC could require the plan administrator to furnish the necessary information to it, or to the section 4049 trustee directly.

The section 4049 trustee appointed by the PBGC must establish a trust, which shall be used exclusively for receiving liability payments from contributing sponsors and members of their controlled groups, making distributions to participants and beneficiaries, and defraying the reasonable administrative expenses incurred by the trustee. However, the trust need not be established until the first year in which contributing sponsors or members of their controlled groups have profits and are required to make liability payments under section 4062(c).

The section 4049 trustee may receive liability payments from the contributing sponsors of the terminated plan and the members of their controlled groups at various times during the course of the year (depending on the fiscal year of such

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

persons). Within 30 days after the end of each liability payment year (as defined in section 4062(d)(4)), the section 4049 trustee must distribute any monies accumulated in the trust during the preceding year to the persons who were participants and beneficiaries under the terminated plan as of the termination date. The section 4049 trustee must pay each participant or beneficiary an amount equal to his or her outstanding benefit entitlements (including interest calculated from the termination date), minus the actuarial present value of any amounts ****954 *303** previously paid by the section 4049 trustee to such participant or beneficiary. At the date of termination, the outstanding benefit entitlements of a participant or beneficiary is the actuarial present value of the amount of benefit entitlements, minus the actuarial present value of any benefits guaranteed by the PBGC or otherwise paid by the plan. In the event the section 4049 trust has not accumulated sufficient monies during the course of the liability payment year to pay the entire outstanding benefit entitlements to each participant or beneficiary, the section 4049 trustee must pay a pro-rate share to each participant or beneficiary. If the amount that would be payable to any participant or beneficiary is less than $25, for administrative convenience such amount may be carried over to the next year and paid at that time.

The concept of the section 4049 trust is based on the premise that, to the extent it receives sufficient liability payments, the trustee should pay to each person who was a participant or beneficiary under the terminated plan (determined as of the termination date) an amount equal to his or her outstanding benefit entitlements, that is, the difference between the actuarial present value of the benefit entitlements and the actuarial present value of the benefits guaranteed by the PBGC or otherwise paid by the plan. This amount is treated as though it were a debt owed by the section 4049 trustee to each participant and beneficiary. Each year the section 4049 trustee pays off a portion of this debt, depending on how much funds have been accumulated during the year. The amount payable to each participant and beneficiary is adjusted each year to reflect interest payable from the termination date, as well as any amounts previously paid by the section 4049 trustee. Since the section 4049 trustee is required to pay each participant and beneficiary his or her outstanding benefit entitlements, which reflect actuarial present values of the benefit entitlements, distributions must be made to all participants and beneficiaries each year, regardless of when they would have been placed into pay status had the plan not been terminated. Furthermore, such payments are made regardless of whether a participant or beneficiary has died. Since the amounts are treated as a debt payable by the section 4049 trust to the participant or beneficiary, the payment would still be made to the individual's estate.

The PBGC is given the authority to promulgate whatever regulations it considers necessary to carry out the purposes of section 4049. The Committee expects that the PBGC will promulgate regulations so as to insure that section 4049 trustees are able to manage the trusts in a manner which facilitates the payment of benefits to participants and beneficiaries and which minimizes the administrative burdens on the trustee.

F. Treatment of transactions to evade liability; effect of corporate reorganizations

Currently there is no express provision in title IV of ERISA regarding transactions intended to avoid liability in the single-employer program. The bill incorporates court decisions under current law by adding explicit statutory language to make clear that transactions, ****955 *304** a principal purpose of which is to evade liability under the statute, are to be ignored in determining liability.

In the case of *Solar v. PBGC*, 504 F. Supp. 116 (D.C.N.Y. 1981). *Aff'd*, 666 F.2d 28 (2d Cir. 1981), the court correctly ruled that a transaction intended to avoid liability should be disregarded for title IV liability purposes. It has always been the intent of the law that solvent employers who benefit from work performed in return for pension promises, pay for those pension benefits rather than shift that cost to other companies which fund plans that pay PBGC premiums.

The absence of an express provision has perhaps increased the likelihood that abusive schemes would be attempted. The bill's evasion rule is intended to deter such attempts, which can lead to complex, costly litigation. The rule in the Committee's bill is written in general terms. In the last Congress, H.R. 3930, the predecessor single-employer reform bill in the House, attempted to specify abusive transfers of liability transactions. There was some concern expressed by employer groups and others that such a detailed provision might result in unintended imposition of liability in some cases and fail to impose intended liability in others. Therefore, a more general rule has been adopted by the Committee in this bill.

The Committee hopes that the existence of this explicit statutory provision will deter shifting of pension obligations to very weak companies. It is the Committee's intention that the PBGC carefully scrutinize transfers of unfunded pension liabilities from stronger to weaker companies, especially where a financial connection exists or has existed between the companies.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

In addition to transactions designed to evade liability to the PBGC, this provision also applies to any situations in which a principal purpose of a transaction is to evade liability to participants and beneficiaries for benefit entitlements. For example, if a principal purpose behind a spinoff transaction is to enable a person to evade responsibility for paying certain benefit entitlements that are not guaranteed by the PBGC, such as early retirement supplements, the person shall continue to be subject to liability for those benefits as if the person was a contributing sponsor of the plan as of the termination date. In the event the person and the members of its controlled group would not have been able to satisfy the criteria for a distress termination, they shall be directly responsible for making the plan sufficient for all benefit entitlements, just as under a standard termination. In the event they would have qualified for a distress termination, they shall still be liable for the 5 percent of profits payments to the section 4049 trustee under section 4062(c).

The bill contains a 5-year lookback limit for purposes of this provision. Thus if a distress termination occurs more than 5 years after a transaction to evade liability, there will be no liability under this section with respect to such transaction.

The bill also makes it clear that a transferor controlled group shall never be held liable for any benefit increases or improvements that were adopted after the date the transaction became effective.

Notwithstanding this provision, the transferor controlled group may still be held liable for all benefits which were adopted prior to ****956 *305** the date of the transaction, even through participants and beneficiaries did not grow into eligibility for such benefits until after the date of the transaction. Thus, for example, if it is determined that a principal purpose of the transaction was to evade liability for certain previously negotiated early retirement or shutdown benefits which participants were going to 'grow into' in the next several years, the transferor controlled group may still be held liable for the full value of those benefits.

G. Minimum funding waivers

When a plan that has obtained one or more funding waivers later terminates, under current law, the PBGC usually is unable to recover the waived amounts from the plan sponsor. The PBGC must assert its claim for these amounts as successor trustee. However, plan termination may be intentionally or unwittingly delayed until the plan sponsor no longer has enough assets to cover pension obligations. Even if the waivers were granted to the plan on the condition that outstanding amounts become due and payable on plan termination (and the Committee trusts that this condition will be applied to all waivers), the plan would still have an unsecured claim, and thus a poor chance of recovery, in a bankruptcy proceeding.

In order to improve the chances for the PBGC to recover on its claims for waived contributions and other amounts not paid due to extensions of amortization periods, the bill permits the Secretary to require security as a condition of granting a waiver of the minimum funding standard or an extension of the amortization period. Because the PBGC is not at much risk unless the amount of plan underfunding is large and the company maintaining the plan is weak, the bill includes a de minimis exception to the security provision. Under this provision, security could be required only if the plan's outstanding contributions (including waivers and extensions and pending applications for waivers and extensions) exceed $1 million.

The Committee expects that the security requirements will be imposed when the prospects of repayment of waivers and extensions is questionable, unless imposition of security would, by itself, cause a business to fail. In order to assure that the potential effect of a waiver or extension on the PBGC insurance program is taken into account, the bill provides that the Secretary must solicit the views of the PBGC (providing the PBGC notice of the waiver request and adequate time to respond) and consider the PBGC's views in deciding whether the waiver or extension should be granted and its terms and conditions (including whether and what type of security should be required). The bill also requires that, before revising the terms of a waiver or extension (including a waiver or extension granted before enactment of this bill), the Secretary consider the views of the PBGC and other affected parties under the same rules that apply to the granting of waivers and extensions. In addition, the Secretary shall consider the views of any other affected parties which have been submitted in writing.

A written contract to reimburse the plan by a member of the plan sponsor's controlled group generally will not be an acceptable ****957 *306** form of security. Controlled group members may all be in a weakened condition, and therefore inappropriate guarantors, or, if they are strong, the plan probably will not qualify for a funding waiver or extension.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

In order to insulate the plan administrator from a possible conflict of interest, a security interest may only be perfected and enforced by the PBGC or by the company maintaining the plan (or members of its controlled group) at the PBGC's direction, at the cost of such sponsor and its controlled group.

The Committee expects that, as is the current practice, the PBGC will continue to be notified of funding waiver requests over $50,000 (or such higher level as the PBGC requests) and that the Secretary will consider the views of the PBGC in deciding on those requests.

The bill specifically authorizes the Secretary to provide security only for funding waivers and extensions of amortization provisions which are granted by the Secretary on or after the date of enactment of this Act. This authority to require security also applies to any modifications of existing waivers or extensions which are granted on or after the date of enactment of this Act in order to prevent companies from attempting to evade the security requirements by simply applying for a modification of an existing waiver or extension, rather than seeking a new one. However, the Committee intends that this latter provision only apply to situations in which the requested modification would enlarge or otherwise relax the terms and conditions of existing waivers or extensions.

H. Enforcement

The bill adds a new section 4070 to ERISA which sets forth the rights of employers, contributing sponsors and members of their controlled groups, participants, beneficiaries and employee organizations to enforce certain title IV provisions.

For instance, if a contributing sponsor wished to challenge the determination by the PBGC that the distress criteria were not met, the sponsor would have standing under this section to bring an action in Federal court. Another type of action which is authorized under this section is by a participant or beneficiary to enforce the provisions of a standard termination if that individual did not receive his or her full benefit entitlements under the plan.

The PBGC's enforcement authority, as under current law, is described in section 4003.

I. Miscellaneous amendments

The Committee wishes to highlight and explain two amendments made under the bill.

One amendment is intended to clarify current law by reversing the portion of the decision by the United States Court of Appeals for the Sixth Circuit in *PBGC & UAW v. Lear Siegler, Inc.* (Case Nos. 79–1361, 1362, 1363, (1979)), relating to the calculation of how long a benefit increase has been in effect for purposes of the phase-in rules under section 4022)b)(7). The amendment reestablishes the interpretation previously adopted by the PBGC that, in calculating how long a benefit increase has been in effect, the first day a benefit ****958 *307** or plan amendment became effective must be counted. Thus, for example, in the *Lear Siegler* case, the plan provided for benefit increases on May 1, 1973, May 1, 1974, and May 1, 1975, respectively. The plan was subsequently terminated at midnight or April 30, 1976. Thus, this amendment clarifies that the May 1, 1975 benefit increase would be deemed to have been in effect for one full year, and therefore would be guaranteed under section 4022. The purpose of this amendment is to avoid the unduly restrictive interpretation of the benefit guarantees under the Sixth Circuit decision, and to recognize the fact that benefit increases are commonly made effective on the anniversary dates of a collective bargaining agreement.

Another amendment clarifies the treatment of preretirement survivor benefits. The PBGC has taken the position that a preretirement survivor benefit with respect to a participant is not guaranteed under section 4022 in situations in which the participant has not died prior to the date a plan is terminated, because the benefit is not 'nonforfeitable'. This position is based on the view that the death of the participant is a condition precedent to the beneficiary's entitlement to the benefit. The PBGC has adopted this position with respect to preretirement survivor benefits both in situations in which the participant was eligibile to retire but had not yet actually retired as of the termination date, and in situations in which the participant was not yet eligible to retire under the terms of the plan. The PBGC's position with respect to both categories of preretirement survivor benefits is currently being challenged on the grounds that such benefits should be considered 'nonforfeitable', and therefore should be guaranteed under section 4022. The amendment is designed to clarify prospectively that such benefits

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

should not be considered forfeitable solely because the participant has not died as of the termination date, and accordingly that such benefits should be guaranteed by the PBGC under section 4022. The Committee intends that no inference be drawn as a result of this amendment as to whether or not these benefits were already guaranteed under preexisting law (under either the amendments made by the Retirement Equity Act or under ERISA).

J. Effective Date

Except as otherwise described above, the provisions of the bill are effective upon enactment. With respect to notices of intent to terminate received by the PBGC before the effective date that propose dates of termination no later than 10 days from the date of the notice, the Committee expects that these terminations will be processed as under current law.

In addition, the Committee shares the concerns expressed by many of the witnesses at hearings that constant legislative changes, which require virtually annual plan amendments, are both administratively costly and time consuming. Although the Committee does not anticipate plan amendments will be necessary, the bill provides that any amendments required by the bill need not be made until the earlier of the first date the plan is otherwise amended or the beginning of the first plan year beginning after December ****959 *308** 31, 1989, as long as the plan is administered in accordance with the Act in the interim.

OBJECTIVE OF THE MAIN PROVISIONS OF SUBTITLE D

The Committee is concerned with reports of the growing number of Americans without any health insurance coverage and the decreasing willingness of our Nation's hospitals to provide care to those who cannot afford to pay. Since 1977, the number of Americans without any health insurance coverage has increased by 40%, from twenty-five million people to thirty-five million people, according to a study conducted by the Department of Health and Human Services.

Many of those without health insurance coverage are family members of decreased, divorced, or Medicare-eligible workers. Most individuals covered by health insurance have access to that insurance through employment. Workers often cover their spouses and minor children through dependent coverage. Although dependent coverage is more expensive than individual coverage, the group rates available through the worker's employer have made broad health care coverage affordable to most American families.

Few employers, however, extend the benefit of group coverage to spouses and dependent family members when the worker dies, when the spouse's relationship to the worker is severed through divorce, or when the worker becomes eligible for Medicare.

In those instances, the spouse or former spouse is often forced either to seek health insurance at individual rates or forgo insurance completely. For many women who find themselves in this position, the choice are limited. Unless the woman is eligible for health insurance through her own employment, she may find herself unable to purchase insurance. First, individual insurance is quite costly. It is not uncommon for individual insurance premiums to ber several times as much as group health premiums. Second, particularly midlife and older women find themselves unable to secure adequate insurance because of preexisting conditions. Thus the problem of access to private health insurance is often a serious one for spouses of deceased or divorced workers, or younger spouses of Medicare-eligible workers.

In an effort to provide continued access to affordable private health insurance for some of these individuals, the Committee has adopted as subtitle D provisions which would require a five-year continuation option to be offered to certain groups of individuals: 1) a widowed spouses and dependent children, 2) a divorced or separated spouse and dependent children, 3) a Medicare-ineligible spouse and dependent children.

The bill would create a new part 6 of subtitle B of title I of ERISA. Under this new part 6, employers sponsoring group health plans must extend an option for continued participation in the plan to spouses and dependent children previously covered under the plan if coverage was lost because of a change in family status.

This option would be offered during a period beginning when the individual would otherwise loss coverage and ending not earlier than 60 days after the individual is notified of his or her continuation of coverage rights. 'Qualified beneficiaries' (i.e.,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

individuals ****960 *309** who fall into the three categories described above) could elect continuation of group coverage on their own behalf. No physical examination would be required nor other evidence of insurability and the coverage provided would generally be identical in scope to that provided to similarly situated spouses and dependent children who has not undergone a change in family status. Of course, if the employer offered only geographically based health maintenance organization (HMO) coverage and the qualified beneficiaries moved out of the geographic area served by the HMO, the employer would not be obliged to provide comparable coverage.

Coverage would be cancelled if, during the five-year period, the employer ceased providing any group health plan to employees, the qualified beneficiary did not pay the premium (both employer and employee share, although the employer could chose to pay all or part of the cost), the qualified beneficiary became covered under another group health policy or Medicare, or the qualified beneficiary remarried and became (or could become) covered under the new spouse's group health plan. A qualified beneficiary who was a covered dependent child would lose coverage as soon as the person no longer met the group health plan's definition of a dependent child.

Various notice requirements are imposed on the group health plan in order to assure that individuals understand their continuation rights under the bill. In addition, the covered employee would be required to notify the administrator of the group health plan of any change in family status and the employer must notify the administrator in the case of the death of the covered employee.

These changes are generally effective for plans years beginning on or after January 1, 1986. Special rules are provided for collectively-bargained group health plans.

Subtitle D was added by the Committee as a perfecting amendment to similar provisions in section 161 of H.R. 3128, the Deficit Reduction Amendments Act of 1985, reported by the Committee on Ways and Means. Section 161 is an amendment to the Internal Revenue Code. The Committee's amendment to title I of ERISA generally parallels the amendment to the Code adopted by the Committee on Ways and Means.

SECTION-BY-SECTION ANALYSIS

TITLE III—COMMITTEE ON EDUCATION AND LABOR

Subtitle A—Amendments to the Higher Education Act of 1965

PART I—AMENDMENTS RELATING TO FEDERALLY INSURED AND GUARANTEED STUDENT LOANS

Section 3101. This section requires the Secretary of Education to recall in fiscal year 1988 $50 million in advances made to States to establish reserve funds and to pay insurance costs, taking into consideration the solvency and maturity of the funds as determined by the Comptroller General. States which established guaranty agencies less than five years prior to the recall will be exempt from the recall.

****961 *310** *Section 3102*. Loans are disbursed to institutions but made payable to students and require the endorsement of students. The Secretary may not require that checks be made co-payable to the institutions and the student.

Section 3103. This section requires that students receive a determination of eligibility for Pell Grants before applying for a Guaranteed Student Loan. All students are also required to undergo a need analysis to determine if they are eligible for a loan and the amount of the loan.

Section 3104. Lenders are required to multiply disburse Guaranteed Student Loans in the amount appropriate, for loans equal to or greater than $1,000. Lenders are not eligible to receive Federal benefits or undisbursed portions of loans.

Section 3105. Guaranty agencies are required to charge an insurance premium of 3 percent on each loan, to be paid by the student.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 3106. Financial and compliance audits are required for guaranty agencies at least once every two years.

Section 3107. State guaranty agencies are required to attempt collections on defaulted loans for at least 210 days after a payment is missed before they can file for reinsurance from the Federal government. State guaranty agencies are also allowed to be reimbursed for administrative costs related to pre-claim collection activities pursued by either the agency or lenders. The amount of the reimbursement may not exceed $100 or 2 percent of the value of the loan whichever is less.

Section 3108. This section establishes a statute of limitations of six years for actions on defaulted GSLs if state law provides for a shorter period.

Section 3109. The Secretary is required to pay Administrative Cost Allowances to guaranty agencies as required by Section 428(f) of the Higher Education Act.

Section 3110. This section allows the Secretary to retain reasonable collection costs from GSL collections.

Section 3111. This section requires that all guaranteed student loans be reported to credit bureaus at the time they are originated. The section also sets out the terms of information sharing among credit bureaus, lending institutions, higher educat, on institutions, the Secretary, and state guaranty agencies.

Section 3112. This section requires that a civil penalty of $25,000 be charged against an institution or lender who violates or fails to carry out any provisions of Part B of Title IV or who has engaged in substantial misrepresentation of its financial charges. The section further delineates what constitutes actions for which the Secretary may impose civil penalties.

Section 3113. This section allows the Student Loan Marketing Association to incur debts in tax exempt student loans equal to the average stockholders' equity of the Association.

Section 3114. The Guaranty Student Loan Program is extended through fiscal year 1988 and the need analysis provisions contained in the Student Financial Assistance Technical Amendments Act of 1982 for the Guaranteed Student Loan Program are also extended.

****962 *311 PART 2—AMENDMENTS RELATING TO THE NATIONAL DIRECT STUDENT LOAN PROGRAM**

Section 3121. This section provides that the Secretary may require a defaulted National Direct Student Loan (NDSLs) to be assigned to the Secretary if an institution has knowingly failed to maintain an acceptable collection record with respect to the loan. Collections on such loans are to be distributed among all eligible institutions as new federal capital contribution. If an institution decides to refer a loan to the Secretary, the Secretary will return the proceeds of the collections, minus collection costs (not to exceed 30 percent) to that institution.

Section 3122. This section allows consumer reporting agencies to make reports regarding the status of borrowers' accounts under the NDSL program for a period of seven years.

Section 3123. This section provides that the institution will inform students of penalties imposed against NDSL borrowers as a result of default.

Section 3124. This section allows institutions to charge up to 20 percent as a late charge if the borrower fails to pay an installment when due under the NDSL program.

Section 3125. This section clarifies that referral to the Attorney General of defaulted loans for litigation is a legitimate action by the Secretary.

Section 3126. The Secretary is instructed to continue to attempt collection on NDSLs referred or assigned to him until all appropriate collection efforts have been expended.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 3127. This section establishes a statute of limitations of six years for action on a defaulted NDSL even if state law provides for a shorter period.

PART 3—AMENDMENTS RELATING TO STUDENT ASSISTANCE GENERALLY

Section 3131. This section orders the Secretary to promulgate special regulations to permit the exclusion from family income, for purpose of Pell Grants and Guaranteed Student Loans, of any proceeds from the sale of a farm or business if such sale results from foreclosure, forfeiture, or bankruptcy.

Section 3132. This section requires that a student's application for a loan must include the student's social security number or student indentification number.

Section 3133. This section imposes a six year statute of limitations on the collection of refunds due the Federal government from grant or work study programs even if state law provides for a shorter period.

Section 3134. This section requires that as part of program agreements with the Secretary, institutions shall agree to use all funds they receive in the manner prescribed by the provisions of the program and that each institution shall undergo a compliance and financial audit at least once every two years.

PART 4—EFFECTIVE DATES

Section 3141. This section establishes the effective dates for the Committee proposal. In general all provisions take effect October 1, ****963 *312** 1985. Exceptions are Sections 3102, 3123, and 3124, which shall take effect on July 1, 1986; Sections 3103(a) and 3104 and 3132 on July 1, 1986; Section 3105 on October 1, 1986; Sections 3106, 3108, 3110, 3111, 3112, 3121, 3125, 3126, and 3127, and 3133 and 3134 ninety days after enactment of the Act; and Section 3109 for fiscal years beginning after September 30, 1984.

Subtitle B—Single-Employer Plan Termination Insurance Premiums

Section 3201. Short Title. This section contains the short title ('Single-Employer Pension Plan Termination Insurance Premium Act of 1985') and the table of contents of this subtitle.

Section 3202. Premium Increase. This section provides for an increase in the single-employer premium from $2.60 to $8.50 per participant for plan years beginning after December 31, 1985.

Section 3203. Incorporation of Certain Former Provisions in Lieu of Cross Reference Thereto. This section corrects a technical error made by previous amendments to ERISA in 1980.

Section 3204. Approval by Joint Resolution of Recommendations of the Pension Benefit Guaranty Corporation. This section changes the statutory procedure for effecting a premium increase from Congressional approval of the increase by concurrent resolution to enactment of a joint resolution approving the increase.

Section 3205. Effective Dates. The provisions of the bill are generally effective for plan years beginning after December 31, 1985. The technical amendment made by section 203, however, is effective as of the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980.

Subtitle C—Single-Employer Plan Termination Insurance System Amendments

Section 3301. Short Title and Table of Contents. This section contains the short title ('Single-Employer Pension Plan Amendments Act of 1985') and the table of contents of this subtitle.

Section 3302. Findings and Declaration of Policy. This section contains the Congress' findings that, *inter alia*, a sound

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

termination insurance program is fundamental to the retirement income security of millions of persons covered by single-employer defined benefit pension plans; that the current system in some instances encourages employers to terminate plans, evade their obligations to pay benefits and shift unfunded pension liabilities to the insurance program; that it is desirable to limit claims against the program to cases of severe hardship; and that it is necessary to properly finance the program.

The section also states that the policy of this subtitle is, *inter alia*, to increase the likelihood that participants will receive their full benefits, to limit claims against the PBGC insurance system to instances of severe hardship and to assure that the program is prudently financed.

Section 3303. Amendment of the Employee Retirement Income Security Act of 1974. This section states that the provisions of this subtitle are amendments to the Employee Retirement Income Security Act of 1974 (ERISA).

****964 *313** *Section 3304. Definitions*. This section adds the following definitions to section 4001(a):

'Substantial employer' means, with respect to a single-employer plan year, contributing sponsors who are members of the same affiliated group and whose required contributions equal or exceed ten percent of all required contributions.

'Contributing sponsor' means, with respect to a single-employer plan, a person who is responsible for meeting the minimum funding requirements under title I of ERISA or a member of such person's controlled group that has employed a significant number of plan participants while such person was so responsible for funding.

'Controlled group' means a group consisting of a person and all other persons under common control with such person under regulations consistent and coextensive with regulations prescribed under section 414(c) of the Internal Revenue Code.

'Single-employer plan' means any plan which is not a multiemployer plan.

'Benefit entitlements' means all benefits provided by a single-employer plan which are guaranteed under section 4022, would be guaranteed but for the operation of section 4022(b), or constitute early retirement supplements or subsidies, plant closing benefits or death benefits if a participant or beneficiary has satisfied all conditions of entitlement other than submission of a formal application, retirement, completion or a waiting period, death or designation of a beneficiary.

'Amount of unfunded guaranteed benefits' means the excess of (A) the actuarial present value of benefits guaranteed under this title based on assumptions prescribed by the PBGC for purposes of section 4044, over (B) the current value of the assets of the plan which are allocated to those benefits in accordance with section 4044.

'Amount of unfunded benefit entitlements' means the excess of (A) the actuarial present value of benefit entitlements based on assumptions prescribed by the Corporation for purposes of section 4044 over (B) the current value of the assets of the plan which are allocated to those benefits in accordance with section 4044.

'Outstanding amount of benefit entitlements' means the excess of (A) the actuarial present value of benefit entitlements over (B) the actuarial present value of benefits guaranteed under Title IV of ERISA or to which assets of the plan are allocated in accordance with section 4044.

'Person' has the same meaning as under title I of ERISA.

'Affected party' means the PBGC, a participant, beneficiary of a deceased participant, beneficiary who is an alternate payee under a qualified domestic relations order, employee organization representing participants and any person designated to receive notice on behalf of an affected party.

'Section 4049 trustee' means the trustee of a terminated plan appointed under section 4049(a).

Section 3305. Clarification of Authority to Freeze Plan. This section clarifies that the adoption of an amendment providing solely that all service performed after a specified date shall not be taken into account for benefit accrual purposes (the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

'freezing of a plan') is not a termination under section 4041 or 4042. The freezing of certain ****965 *314** over factors used to compute benefit amounts is also permitted. However, under a frozen plan, service must continue to be taken into account for purposes of vesting and other eligibility requirements. The freezing of a plan will be effective only if affected parties are notified at least 60 days before the effective date of the freeze.

Section 3306. General Requirements Relating to Terminations of Single-Employer Plans by Plan Administrators. This section amends section 4041 of ERISA to provide that, except as provided in section 4042 (termination of the PBGC), a plan may only be terminated in a standard or a distress termination.

This section also requires the plan administrator to notify each affected party of the intended termination. Such notification must be made not less than 60 days before the proposed termination date.

During the pendency of a 'related adjudicatory proceeding' (defined as a grievance proceeding before an appropriate adjudicatory entity, an administrative proceeding before an appropriate governmental agency, or a civil action in a court of competent jurisdiction, in which an affected party alleges that a proposed termination would violate the contractual or statutory rights of any affected party), the plan administrator and the PBGC are given the option of suspending standard or distress termination or structuring the termination so that the plan may be effectively restored.

Section 3307. Standard Termination of Single-Employer Plans. Under this section, a single-employer plan may terminate under a standard termination only if (1) plan assets are sufficient (when the final distribution of assets occurs) to provide all benefit entitlements, (2) the plan administrator provides the required 60-day advance notice to affected parties, (3) an enrolled actuary's certification of sufficiency and certain other information are provided to the PBGC, (4) notice of benefit entitlements is provided to participants and (5) the PBGC does not issue a notice of noncompliance. The PBGC has 60 days to make its compliance determination unless the period is extended by agreement. The plan administrator shall commence the final distribution of assets pursuant to the standard termination after expiration of such 60-day period, provided the PBGC has not issued a notice of noncompliance and the plan is sufficient for benefit entitlements when the final distribution occurs.

The plan administrator shall distribute assets in accordance with section 4044. Within 30 days after the final distribution of assets is complete, the plan administrator is required to certify to the PBGC that the assets have been distributed in accordance with section 4044 and that all benefit entitlements have been distributed.

A standard termination is effective on the date specified in the notice of intent to terminate.

Section 3308. Distress Termination of Single-Employer Plans. Under this section, a single-employer plan may terminate under a distress termination only if—

(a) the plan administrator provides the required 60-day advance notice to affected parties,

(b) pertinent actuarial data and certifications are provided to the PBGC, and

****966 *315** (c) the PBGC notifies the plan that it has made a finding of 'distress' as described below.

A distress termination may occur only after the plan administrator demonstrates to the satisfaction of the corporation that one of the following requirements has been met:

1. A waiver of the minimum funding standard was granted to the terminating plan for at least 3 of the 5 plan years preceding the termination date, and a waiver also was granted to all other single-employer plans maintained by any contributing sponsors of the terminating plan or 'substantial' members of their controlled groups for at least 1 of the 3 plan years preceding the termination date;

2. The contributing sponsors and substantial members of their controlled groups are in a liquidation proceeding under Title 11, United States Code, or a similar State law, which has not, as of the termination date, been dismissed or converted to a reorganization proceeding. (If the petition is dismissed or converted to a organization proceeding during the year following the bankruptcy petition, unless it is shown that another of the distress criteria is applicable, the distress termination is void

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

and the plan shall be restored.);

3. A contributing sponsor provides to the PBGC substantial evidence that, unless a distress termination is granted, the contributing sponsors and substantial controlled group members will each be unable to pay their respective debts (including debts to the plan) when due and will be unable to continue in business; or

4. Solely as a result of a decline in the workforce, determined under PBGC regulations, each of the following two ratios, computed for the plan year in which the termination date occurs, is at least twice the corresponding ratio, computed for the later of the latest of the fifth preceding plan year, the initial plan year, or the plan year following the effective date of the most recent benefit increase:

A. the ratio of the required contribution under all single-employer plans maintained by the contributing sponsors and members of their controlled groups to the total annualized wages of the active participants in such plans; and

B. the ratio of the required contributions under all single-employer plans maintained by the contributing sponsors or members of their controlled groups to the consolidated gross income of all such persons.

The term 'substantial member' of a controlled group means a person whose assets comprise at least 5 percent of the total assets of the controlled group. This term also includes controlled group members who do not meet the 5 percent test as of the termination date, but who do meet this test (1) as of the year of the first waiver, if distress is determined under the funding waiver requirement and (2) as of the petition filing date, if distress is determined under the court-supervised liquidation requirement.

If the PBGC determine that the requirements for a distress termination have been met, it shall determine whether the plan's assets are sufficient to pay guaranteed benefits and benefit entitlements. Upon a determination by the PBGC that assets are sufficient to provide all guaranteed benefits, the plan administrator shall, as under current law, distribute the plan assets in accordance with section 4044. (If, during the course of a final distribution ****967 *316** of assets, it is found that assets will not be sufficient to provide all guaranteed benefits, the PBGS shall institute appropriate proceedings under section 4042.)

If the PBGC determines that plan assets are not sufficient to provide all guaranteed benefits (or that it is unable to determine whether the plan is sufficient for all guaranteed benefits based on the information available to it), it shall commence proceedings to terminate the plan in accordance with section 4042.

Upon a determination by the PBGC that plan assets are not sufficient to provide all benefit entitlements, the PBGC shall appoint a section 4049 trustee for the plan, and the plan administrator shall notify each contributing sponsor and controlled group member of possible liability under section 4062(c).

Once the plan administrator notifies the PBGC of a proposed distress termination, the plan shall pay employer-funded benefits (except death benefits) only in annuity form, shall not purchase annuities from an insurer, and shall continue to pay when due all benefit entitlements under the plan, except that, commencing on the proposed date of termination, the plan administrator shall limit the payment of benefits to guaranteed or funded amounts. In the event the plan is later determined not to have terminated in a distress termination, any benefits not paid due to this restriction shall be due and payable immediately (with interest).

Section 3309. Termination Proceedings; Duties of the Corporation. This section amends section 4042 to require the PBGC to institute court proceedings to terminate a plan whenever it determines that the plan does not have sufficient assets to pay benefits that are currently due.

Section 4042 is further amended to clarify that the PBGC has the power to collect contributions due under the minimum funding standards or the terms of the plan as well as other amounts due the plan.

Section 3310. Amendments to Liability Provisions; Liability Relating to Benefit Entitlements in Excess of Benefits Guaranteed by the Corporation. Under this section, the contributing sponsors and members of their controlled groups are jointly and severally liable to the PBGC for the following amounts, with certain limitations, when a plan is terminated under

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

a distress termination or terminated involuntarily under section 4042:

1. the total amount (in cash or securities acceptable to the PBGC) of the 'funding shortage' (defined as the sum of the outstanding balance of any accumulated funding deficiencies as of the termination date, the outstanding balance of waived funding deficiencies and the outstanding balance of the amount of decreases in the minimum funding standard due to extensions of amortization periods) and

2. the amount of unfunded guaranteed benefits under the plan as of the termination date, determined after taking into account the value of any amounts described in (1).

However, if the portion of the liability described in the second item is greater than 30 percent of the sum of the net worths (greater than zero) of each of the contributing sponsors and their controlled group members of the termination date, then that portion of employer liability is limited to—

****968 *317** 1. such 30 percent of net worth, payable only in cash or securities acceptable to the PBGC at the time of termination, and

2. an amount equal to 10 percent of the pre-tax profits (if any) of the contributing sponsors and their controlled group members for ten years, or until the amount of unfunded guaranteed benefits, with interest, has been paid to the PBGC.

Liability for the 30 percent of net worth amount is due and payable as of the termination date. A person's liability to the PBGC for the 10 percent of profits accrues at the end of each fiscal year and shall be paid not later than 30 days after the later of the end of the liability payment year or the latest date on which a liable person is required to file a Federal income tax return.

The PBGC and liable persons may agree to alternative arrangements for payment of liability to the PBGC.

In addition to liability to the PBGC, this section provides for liability to the section 4049 trustee in the amount of unfunded benefit entitlements (other than unfunded guaranteed benefits) with interest. Section 4049 liability is satisfied by annual payments to be made during the ten liability payment years after the termination, with each annual payment equal to 5 percent of the sum of the individual annual pre-tax profits of the same persons that are liable to the PBGC under section 4062. The due date is the same as for annual liability payments to the PBGC. Section 4049 liability may also be satisfied before the expiration of the 10 year period upon receipt by the PBGC of the full amount of section 4049 liability with interest.

This section also defines the term 'pre-tax profits', which means, for any fiscal year of any person, such person's consolidated net income (excluding any extraordinary charges to income and including any extraordinary credits to income) for such fiscal year, as shown on audited financial statements prepared in accordance with generally accepted accounting principles, before provision for or deduction of Federal or other income tax, any contribution to any single-employer pension plan with respect to which such person is a contributing sponsor during the period beginning on the termination date and ending with the end of such fiscal year, or any payments required under section 4062. The PBGC may by regulation require information necessary to determine the existence and amount of such pre-tax profits.

Section 3311. Distribution to Participants and Beneficiaries of Liability Payments to Section 4049 Trustee. This section adds a new section 4049 which requires the PBGC to appoint either itself or another person as the 'section 4049 trustee' whenever a terminated plan is not sufficent for benefit entitlements. The trustee must establish and maintain the trust exclusively: (1) to receive the annual 5 percent of profits liability payments, (2) to make distributions to participants and beneficiaries and (3) to defray reasonable administrative expenses. Within 30 days after the end of each liability payment year, the trustee must distribute to each participant and beneficiary the outstanding amount of each person's benefit entitlement (with interest) or, if the trust balance is not ****969** enough, a pro rats share of the person's outstanding benefit entitlement.

***318** *Section 3312. Treatment of Transactions to Evade Liability; Effect of Corporate Reorganization*. This section adds a new section 4069 which clarifies that the liability provisions of this subtitle apply without regard to any transaction if a principal purpose of the transaction is to evade liability under title IV of ERISA. Any person entering into such a transaction,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

is treated as if that person were a contributing sponsor as of the termination date. However, this provision applies only to evasion transactions that occur within the 5-year period immeditely preceding the termination date. However, a person liable under this section will not be responsible for any increases in the amount of liability which occur as a result of benefit increases or improvements adopted after the date of the transaction that triggers the operation of this section.

This section also incorporates the existing rules under section 4062(d) for assessing liability in the case of reorganizations that merely change identity, liquidations into parent corporations, mergers, consolidations or divisions.

Section 3313. Additional Enforcement Authority Relating to Terminations of Single-Employer Plans. This section adds a new section 4070 which permits a fiduciary, employer, contributing sponsor, controlled group member, participant, beneficiary, or employee organization representing participants, adversely affected by an act that violates any provision under this subtitle relating to plan terminations and liability, to bring an action to enjoin such act or obtain other appropriate equitable relief.

A single-employer plan may be sued as an entity. However, if the plan has not designated an agent for service of legal process, the PBGC can be served in its place and must so notify the plan within 15 days after receiving such service. Any money judgment against a plan is not enforceable against any other person unless liability is established in that person's individual capacity.

Federal district courts shall have exclusive jurisdiction of civil actions under this section. The PBGC shall receive a copy of the complaint and has the right to intervene in any action.

In any action brought under this section, the courts may award all or a portion of the costs of such action, including reasonable attorney's fees, to any party who prevails or substantially prevails. However, no plan shall be required to pay any such costs.

In any action alleging a violation of the requirements relating to the standard termination of a plan, the court shall award the plaintiff costs, including reasonable attorney's fees. In any action relating to the failure to make timely payment of any liability payment under section 4062(c) the court shall award the plaintiff costs, including reasonable attorney's fees, unless the defendent demonstrates that the failure was based on reasonable cause.

Actions under new section 4070 may not be brought after the later of (1) 6 years after the cause of action arose or (2) 3 years after the earliest date the plaintiff acquired or should have acquired actual knowledge of the cause of action (or 6 years after discovery in the case of fraud or concealment).

****970** *Section 3314. Security for Waivers of Minimum Funding Standard and Extension of Amortization Period*. This section adds a new section 306 to Title I of ERISA under which the Secretary may require security to a single-employer plan as a condition of granting ***319** a minimum funding waiver or an extension to amortization period to the plan. The providing of such security shall not be considered a prohibited transaction. The security requirement may be perfected and enforced only by the PBGC or by the contributing sponsor at the direction of the PBGC.

The security requirement may be imposed only if the sum of the outstanding minimum contributions (including waived amounts, amounts deferred because of extensions and pending requests for waivers and extensions) equals or exceeds $1 million. In such cases, the Secretary must solicit and consider the views of the PBGC regarding the waiver, extension or imposition of security. The PBGC is allowed a reasonable amount of time to provide its views. The Secretary must also consider the views of any other interested party that are submitted in writing.

This section applies to waivers, extensions, and modifications of waivers granted after the date of enactment of this Act and to revisions made after such date to the terms or conditions of prior waivers and extensions.

Section 3315. Conforming, Clarifying, Technical and Miscellaneous Amendments. This section conforms other section of ERISA with the amendments made by this subtitle and amends the table of contents of ERISA.

This section also amends section 303 and 304 of ERISA to require that, before granting a minimum funding waiver or extension of amortization period, the Secretary shall require that the applicant provide satisfactory evidence that the applicant

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

notified the PBGC each employee under the plan and each employee organization of the application for a waiver or extension.

Section 3316. Effective Date. This section states that, except as provided otherwise, the provisions of this subtitle are effective on the date of enactment. It also specifies that if an ongoing plan is administered in accordance with the requirements of this subtitle, the plan need not be amended to conform to such requirements until the earlier of the post-enactment date on which the plan is first amended or the beginning of the first plan year beginning after December 31, 1989.

*Subtitle D—**Continuation** **Coverage** Under Group Health Plans*

Section 3401. Temporary Extension of Coverage at Group Rates for Family Members of Deceased, Divorced, or Medicare-Eligible Workers. This section adds a new part 6 to subtitle B of title I of ERISA. New ERISA section 601 through 608 are contained in this section.

New section 601 requires each employer maintaining a group health plan to provide to each qualified beneficiary who would lose ****971** coverage under the plan because of a qualifying event, the option of electing **continuation** **coverage** under the plan.

New section 602 describes matters relating to the election of **continuation** **coverage**, including a definition of the election period and a description of the effect of such an election on other beneficiaries.

New section 603 defines ‘qualifying event’ and ‘termination date’.

***320** New section 604 describes the terms of **continuation** **coverage**, including the events which would cut off such coverage.

New section 605 provides that the qualified beneficiary must pay the total premium charged by the group health plan (both employee and employer share), unless the employer chooses to pay all or part of the premium.

New section 606 contains the notice requirements.

New section 607 contains the definitions of ‘group health plan’, ‘medical care’, ‘covered employee’, ‘qualified beneficiary’, ‘covered dependent child’, and ‘group health plan administrator’.

New section 608 authorizes the Secretary of Labor to promulgate regulations to carry out the provisions of new part 6.

Section 3402. Effective Dates. The amendments made by this subtitle are effective for plan years beginning on or after January 1, 1986. In the case of a group health plan maintained pursuant to one or more collective bargaining agreements ratified before the date of enactment of the Act, the amendments made by this subtitle would not apply to plan years beginning before the earlier of the date on which the last of the collective bargining agreements relating to the plan terminates or January 1, 1987.

Section 3403. Notification to Covered Employees. At the time the amendments made by this subtitle apply to a group health plan, the plan must notify each covered employee and spouse of the employee covered under the plan about the new **continuation** **coverage**. That initial notice is in lieu of the notice otherwise required under new section 606(1) of ERISA.

****972 *321** SUPPLEMENTARY VIEWS: GSL BUDGET RECONCILIATION

This package of recommendations meets and may even exceed the reconciliation targets established by the Budget Committee. We are pleased that the Committee has adopted a modified version of the Coleman Loan Default Prevention bill which will provide $48 billion in savings over the three-year period, FY 1986–1988, by reducing the default in the program and at the same time enhancing the integrity of the GSL program.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

However, we have some concern over using the reconciliation process to achieve policy aims which are not related to budget saving items. Although, the temptation is great, we think we should have learned from our experience in 1981 that good public policy and technical correctness are clearly associated with the give and take of the authorization process rather than the expedited reconciliation 'faster track'. This is especially true now when the Postsecondary Education Subcommittee is currently involved in a major reauthorization of the High Education Act. It is our understanding that Chairman Ford plans to move a bill through Committee and onto the House floor by late November or early December. Therefore, any attempt to rush forward with policy changes not related to budget reconciliation appears unwise.

There are several policy issues which are not related to the budget savings in the proposal. Although we support some of these policy changes, others cause concern. We have serious misgivings about handling these matters in the context of budget reconciliation in spite of the merits of the proposals. We fear that it does a disservice to the authorization process and merely reinforces a bad tendency started in 1981.

In addition to our concerns about the non-budgetary items contained in these recommendations, we would like to draw attention to a cost-saving item in this package that we feel may need further review before we go to Conference Committee with the other body. We are concerned about the impact of an 'across-the-board' needs analysis on the independent student. We fear that if we enact this universal needs analysis without understanding the full impact this might have on the independent student, we might be facing some unintended consequences.

In spite of some reservation regarding the instruction of non-budgetary items in these recommendations, the required savings have been achieved. We are confident that these recommendations represent a good faith effort on the part of the Committee on Education and Labor to comply with the budget reconciliation instructions.

JAMES M. JEFFORDS.
WILLIAM F. GOODLING.
JOHN R. McKERNAN, Jr.

****973 *322** ADDITIONAL VIEWS

These additional views were made necessary as a result of the unusual procedure by which the Committee included the provisions of Subtitle D—**Continuation Coverage** Under Group Health Plans. The provision is similar in substance to one approved by the Committee on Ways and Means in connection with that Committee's reconciliation measure, H.R. 3128. The Majority brought this provision before the Committee for consideration at this time because, as it was explained, to do otherwise would mean this Committee would forfeit its jurisdictional prerogative during the expected conference consideration of this measure. We agree that this Committee is the appropriate one to consider amendments to the Employee Retirement Income Security Act of 1974 (ERISA) in connection with the issues dealt with under the continuation of coverage provision. However, we want the record to be made clear that the Committee has not held hearings on this issue and has not followed the regular order in considering the substance of Subtitle D.

For this reason, and by means of these additional views, we wish to record the exceptional circumstances involved in this instance and to register our objection to any use of this procedure as setting a precedent for the manner in which this Committee will consider ERISA legislation in the future.

JAMES M. JEFFORDS,
MARGE ROUKEMA.

* * * * *

***392** COST ESTIMATES

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 20, 1985.

Hon. AUGUSTUS F. HAWKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, DC.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate of the Guaranteed Student Loan Program legislative changes sent by the House Committee on Education and Labor, September 19, 1985. The purpose of this legislation is to make changes in the Guaranteed Student Loan Program for the purposes of meeting the reconciliation instructions included in the First Concurrent Resolution on the Budget—Fiscal Year 1986.

****974 *393** If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: None.

2. Bill title: None.

3. Bill status: As reported by the House Committee on Education and Labor on September 19, 1985.

4. Bill purpose: To make changes in spending in the Guaranteed Student Loan Programs for the purposes of deficit reduction consistent with the budget process.

5. Estimated cost to the Federal Government: Two federal cost tables are displayed below. The first table shows the costs or savings estimated relative to current authorizing law. This is consistent with the standard cost estimate format used by the Congressional Budget Office. Because this bill is intended as a reconciliation act, we have also included a second table displaying estimates relative to the baseline used for the first budget resolution for 1986. The baseline differs from current law primarily in that it reflects the full projected cost of the current GSL program for the next five years. The current authorization for loans to new borrowers expires at the end of 1986. This legislative proposal amends and extends the authorization for loans to new borrowers in 1987 and 1988. The federal costs relative to current law include the cost of loans to new borrowers in 1987 and 1988.

TABLE 1.—ESTIMATED FEDERAL COSTS RELATIVE TO CURRENT LAW

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Budget authority	-170	-242	-105	353	873
Outlays	-201	-232	-155	273	773

TABLE 2.—ESTIMATED FEDERAL COSTS RELATIVE TO BASELINE UNDER THE ECONOMIC ASSUMPTION CONSISTENT WITH THE FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1986

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Baseline:					

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Budget authority	3,267	3,155	2,657	2,242	2,150
Outlays	3,271	3,187	2,785	2,343	2,168
Change to baseline:					
Budget authority	-170	-272	-425	-417	-447
Outlays	-201	-252	-415	-417	-447

The costs of the bill fall within budget function 500.

Basis of estimated changes to baseline

This legislation makes several programmatic changes to the GSL program. Specifically these changes would: (1) change the current ****975 *394** GSL program eligibility requirement from requiring a financial needs analysis only for students with family incomes in excess of $30,000 to requiring needs analysis for all students under current methods for determining need; (2) require lenders to make multiple disbursements of the loans for courses of education which take longer than six months to complete and allow federal payments of interest subsidies only on the disbursed amount; (3) recall $50 million of federal advance funds to state guarantee agencies; (4) extend by 90 days the time period lenders and state agencies have to collect on delinquent loans before applying for federal default claims; (5) allow for federal payment of third-party pre-claims assistance costs; and (6) change collection procedures to require certain borrowers to have loan endorsement and require other borrowers who have defaulted to repay the federal government the cost of collecting their defaulted loan.

CBO projects that the GSL program will cost $3.3 billion under current law for 1986, the first full year of implementation of the Committee's proposed changes. This level assumes $8.5 billion in new loans to 3.6 million students. Limiting the GSL program eligibility requirement to needs analysis regardless of family income under current program formulas used for determining financial need for students from families with incomes above $30,000 would decrease new loan volume by over $1 billion in 1986; approximately $200 million of this loan volume is assumed to transfer to the auxiliary loan program. Thus, total new loan volume would decline by over $800 million in 1986.

Based on the CBO estimating model, over 650,000 GSL borrowers either would be eliminated from the program or would have their borrowing levels reduced as a result of this change. These borrowers would be primarily financially independent students, less than full-time students, or dependent students attending low-cost schools whose family income is close to the current $30,000 ceiling. Assuming an October 1985 implementation date, this change in eligibility would save approximately $10 million in 1986 growing to over $300 million by 1990.

This bill would also require lenders to make multiple disbursements of loans for education programs with durations in excess of six months. In addition, the federal government would only pay interest subsidies on the disbursed amount. Currently, the lender has the option to make multiple disbursements but receives subsidies on the full amount of the loan from the first disbursement. It is assumed that the loans affected are those loans committed in August and September for the entire academic year. This would increase lenders servicing costs at the same time the total yield is being reduced, but no reduction in lender participation has been assumed as a result of this change. This change would have no effect on outlays in 1986 but would save close to $100 million in outlays in 1990.

This legislation would require state guarantee agencies to repay $50 million of their federal advance funds in 1988, the Secretary of Education is to consider the maturity and solvency of a state's insurance fund in the requirement of repayment of these advances. Federal advance funds are non-interest bearing federal loans of indefinite ****976 *395** maturity made to establish state guarantee agency reserve funds.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

These legislative changes also include federal reimbursement for preclaim assistance. Current federal law and regulations require lenders to prove ‘due diligence’ in pursuing a delinquent loan before filing a default claim with a state guarantee agency that, in turn, files it with the federal government (after meeting certain requirements). There are no detailed time tables with specific courses of action under the federal definitions of ‘due diligence’ requirements, leaving each state to define and enforce it. In 1986, federal payments for default claims are projected to be approximately $850 million for an estimated 280,000 claims with average outstanding balances of $3,000. The vast majority of these claims are from loans originally insured by a state guarantee agency and reinsured by the federal government.

Many of the state guarantee agencies have implemented and enforced within their state very specific ‘due diligence’ requirements for lenders filing default claims. Lenders today, depending on the state requirements, can use a third-party agency for pre-claim assistance but the lender has to pay for the administrative costs. This bill would permit federal reimbursement for these administrative expenses. This estimate assumes that 10 percent of the projected default claims in 1986 would be turned over by the lender to a third-party pre-claim collection agency whose administrative cost would be reimbursed by the federal government. We assumed that this increased effort would have a net success rate of returning 25 percent of these delinquent loans to repayment. We also assumed that the federal government would pay an average of $30 per claim to cover the administrative costs resulting in federal costs of $1 million in 1986. As a result of these pre-default efforts, federal payments for defaults would decline $20 million in 1986; and would decline by $23 million in 1990. Since current law projections of the GSL program assume that the federal government would be successful in bringing many of these loans into repayment once the government has paid the lender and acquired the loan, this estimate assumes that half of those loans would have been brought into repayment; thus, federal collections on acquired defaulted loans would decrease in the outyears.

New GSL program regulations are being considered by the Department of Education of specify ‘due diligence’ requirements of lenders seeking federal reinsurance payments on their defaulted loans. Tightening the ‘due diligence’ regulations could potentially lower the level of federal payments of default claims by an amount similar to the changes in this legislation. At this point in time, the regulation changes being considered would not allow for federal reimbursement of administrative costs if a lender chose to use a third-party agency to aid in their ‘due diligence’ requirements. If this amendment were implemented after the proposed regulations were implemented, then the net effect of this amendment would probably be to increase federal administrative costs.

This legislation would increase by 90 days the time period state agencies have to collect delinquent loans and would save an estimated $160 million in 1986. Of this amount, $150 million reflects a one-time delay in the default claim obligations and outlays associated ****977 *396** with shifting the payments from a 120-day basis to a 210-day basis. The remaining estimated saving of $10 million reflects the net effect on federal default payments of increases in interest and of a one percent reduction in the total number of guarantee agency defaults.

The debt collection and default recovery provisions in the bill would make several technical changes relating to loan disbursements, debt collection, and default recoveries in both components of the GSL program—the federally insured student loan (FISLP) component and the state guarantee agency component (GA). It also affects the National Direct Student Loan Program (NDSL) as well.

The federal cost savings associated with these provisions would result primarily from two specific changes to the FISLP program; the endorsement provision and the debt collection fee provision. FISLP loans are currently less than one half of one percent of all GSL loans. In 1986, FISLP loan volume is projected to be $40 million. Estimated savings for the endorsement provision assume that all FISLP lenders would require an endorsement for a loan. As a result, CBO estimates that FISLP loan volume would be reduced by half, resulting in interest subsidy savings of $5 million in 1990. CBO also estimates that requiring loan endorsements would reduce default costs on the remaining FISLP loan volume by 90 percent, saving an estimated $2 million in 1990. The Secretary of Education would be authorized to charge borrowers who have defaulted up to 20 percent of their monthly repayments to cover the cost of federal debt collection. Based on available data and assuming the entire 20 percent per month is charged, these collections would approximately equal the current cost of federal debt collection which is 20 cents per dollar collected. Federal collections, therefore, would increase approximately $15 million annually.

This legislation also includes a provision to require all GSL borrowers to first obtain a determination of Pell grant eligibility. Assuming all borrowers complied with the application process, this change would have little net budget impact. Many current

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

GSL borrowers already apply for need-based financial aid and those who are eligible receive Pell grants. This provision would require all GSL borrowers to apply for Pell grants, even those with higher incomes who would not be eligible. Because this process could find some current borrowers who have never applied for Pell grants but who would be eligible, GSL borrowing could decline. On the other hand, the federal administrative costs of processing additional applications could increase. Also, unless funding for Pell grants were increased to cover new recipients, many current Pell grant recipients would have their grants reduced; some of these students could increase their GSL borrowing.

Finally, this bill contains a provision to change the current federal student aid regulations regarding the treatment of family income from the proceeds of the sale of farm or business assets that result from foreclosure, forfeiture, or bankruptcy. Under current regulations, such proceeds are considered family income for the purposes of determining eligibility for federal student aid programs. This bill would specifically exclude from the definition of family income the proceeds from these types of asset sales. An unknown, but assumed small number of students could become eligible ****978 *397** for student aid as a result of this change. Pell grant costs could increase from $50,000 up to $10 million; the higher figure assumes that 5 percent of Pell grant applicants from families with farm or business assets who had not qualified under the current program regulations, would now be eligible for a grant. If federal funding for Pell grants were not increased, however, current awards would be reduced.

A technical amendment to the Student Loan Marketing Association (SALLIE MAE) was also included in this bill. The amendment establishes that SALLIE MAE purchases of tax-exempt securities are financed with shareholder equity rather than debt. This protects SALLIE MAE from the possibility of future adverse tax rulings.

6. Estimated cost to State and local Governments: This bill would not affect the budgets of state and local governments. Virtually all of state guarantee agencies operating revenues come from the federal government, insurance premium charged borrowers, or defaulted loan collections.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 18, 1985, CBO prepared a cost estimate of this bill as reported from the Subcommittee on Postsecondary Education. That version of the bill did not include the debt collection provisions, the provision relating to treatment of family income from the proceeds of the sale of farm or business assets that result from foreclosure or bankruptcy, and the SALLIE MAE technical amendment.

9. Estimate prepared by: Deborah Kalcevic.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1985.

Hon. AUGUSTUS F. HAWKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared an estimate of the budgetary effects of subtitles B, C, D of the Committee on Education and Labor Budget Reconciliation Proposals, as ordered reported by the Committee on Education and Labor on September 19, 1985. Subtitle B would provide for an increase in the single-employer pension plan premium from $2.60 to $8.50 per participant, effective January 1, 1986. Subtitle C would amend the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1954 to improve the single-employer pension plan termination insurance program. Subtitle D amends ERISA to require sponsors of group health plans to offer qualified beneficiaries the option of electing **continuation coverage** in the event of death, divorce or eligibility for Medicare of the covered employee.

****979** Should you so desire, we would be pleased to provide further detail on the attached cost estimate.

***398** With best wishes,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: None.

2. Bill title: Subtitles B, C and D of the Committee on Education and Labor Budget Reconciliation Proposals.

3. Bill status: As ordered reported by the Committee on Education and Labor, September 19, 1985.

4. Bill purpose: To provide for an increase in the single-employer plan premium to $8.50 per participant, effective January 1, 1986, and to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve the single-employer pension plan termination insurance program and to require employers to allow beneficiaries of group health plans the option of continued coverage under certain circumstances.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Budget authority					
Outlays	-174	-231	-261	-294	-332

The budget authority and outlay effects of this bill would fall within function 600.

Basis of Estimate: The outlay effects shown result from an increase in the single-employer premium rate from $2.60 to $8.50, which would return an additional $5.90 per participant in premium income annually to the Pension Benefit Guaranty Corporation (PBGC). The PBGC estimates that approximately 32 million employees will participate in single-employer plans in 1986. The additional income would be credited to the revolving fund, resulting in the estimated outlay reduction shown above.

Subtitle B would set forth procedures and requirements for the termination of single-employer pension plans. The bill would expand the authority of the PBGC to recover assets from plan sponsors that terminate plans with unfunded pension liabilities, to secure repayments of waived contributions and to take action against plan sponsors that attempt to evade obligations to pay benefits or to shift unfunded pension liabilities to the PBGC and other premium payers.

According to the PBGC, the near-term effect of discouraging terminations and reducing claims against the PBGC would be negligible.

All net claims against the PBGC eventually show up as outlays when benefits for which the PBGC has assumed responsibility are paid. Over the long term the effect of the reforms would likely be to reduce the share of net claims against the PBGC and therefore reduce the subsequent long-range benefit payments to retired participants ****980 *399** of terminated plans that the PBGC would be required to finance. As current single-employer plan participants reach retirement age, the outlay savings resulting from a reduction in the net claims against the PBGC could be considerable.

It is difficult to estimate with any degree of confidence what the long-range impact of these amendments might be, since the results would depend on the number of plan terminations that would be avoided by the measures. The PBGC has estimated that outlay savings averaging $35 million per year over the next 20 years could occur if these reforms are enacted. It is

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

important to note that most of the outlay reductions would not occur, however, until well into the 20 year period when the benefits would have been paid.

Subtitle D would require plan sponsors of group health plans to allow qualified beneficiaries to elect to continue coverage in the event of death, divorce or eligibility for Medicare of the covered employee. Since the provision would only provide that beneficiaries could elect to pay for group health care coverage themselves, there would be no effect on the budget of the federal government.

6. Estimated cost to State and local governments: The Congressional Budget Office has determined that the budgets of state and local governments would not be directly affected by the enactment of this bill.

7. Estimate comparison: On September 11, 1985, the Congresional Budget Office prepared cost estimates for H.R. 2811, H.R. 2812, and H.R. 2813. H.R. 2811 and H.R. 2813 would amend ERISA to improve the single-employer pension plan termination program. H.R. 2812 and H.R. 2813 provide for an increase in the single-employer pension plan premium rate to $8.50 per participant, effective January 1, 1986.

8. Previous CBO estimate: None:

9. Estimate prepared by: Marianne Deignan.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

TITLE IV—COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, September 27, 1985.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to section 2(q) of the First Concurrent Resolution on the Budget-Fiscal Year 1986 and section 310 of the Congressional Budget Act of 1974, I am transmitting herewith the recommendations of the Committee on Energy and Commerce for changes in laws within its jurisdiction sufficient to achieve the reconciliation savings assigned to this Committee.

These recommendations are embodied in the seven enclosed Committee Prints adopted by the Committee on September 18, 1985, and in the enclosed copy of H.R. 3101 and amendments thereto, favorably reported on September 11, 1985. Each of these recommendations is accompanied herein by an appropriate legislative report.

****981 *400** As you may know, H.R. 3101, ‘a bill to amend titles XVIII and XIX of the Social Security Act to provide for budget reconciliation and improvements, with respect to the Medicare and Medicaid programs,’ differs in some respects from the related bill reported by the Ways and Means Committee. The two Committees have worked together to draft H.R. 3290, which reconciles the differences in their respective bills and achieves non-duplicative three-year savings of $10.449 billion. I understand from the conference report on the budget resolution that these savings will be credited toward both Committees’ reconciliation targets. A copy of H.R. 3290 is also enclosed for your convenience.

Taking H.R. 3290 into account, the following table illustrates the work of this Committee, as certified by the Congressional Budget Office, in complying with our reconciliation instructions:

Fiscal year 1986		Fiscal year 1987		Fiscal year 1988		
Budget authority	Outl	Budget authority	Outl	Budget authority	Outl	Outlay total

		a y s		a y s		a y s	
Target	-1,513	-3,947	-1,246	-5,008	-1,401	-6,512	-15,467
Actual	-8,753	-4,048	-1,725	-5,406	-1,934	-6,858	-16,314
Additional savings	-7,240	-1,01	-479	-398	-533	-346	-846

By a vote of 20–22, the Committee failed to terminate the U.S. Travel and Tourism Administration and its affiliates, as assumed under the Budget Committee's reconciliation instructions.

I greatly appreciate your assistance and cooperation, and that of your staff, during this process, and I commend you for your outstanding leadership in this area.

Sincerely,

JOHN D. DINGELL, *Chairman*.

Enclosures.

CONGRESSIONAL BUDGET OFFICE ESTIMATES OF RECONCILIATION SAVINGS TO BE ACHIEVED BY ENERGY AND COMMERCE COMMITTEE PRINTS

[Savings in millions]

	Fiscal year 1986		**Fiscal year 1987**			**Fiscal year 1988**	
Committee prints	**Budget authority**	**Out lays**	**Budget authority**	**O ut la ys**	**B A**	**O ut la ys**	**Outlay total**
SynFuels	$6,870	$93		$166		$209	$468
SPRO	1,471	1,359	$1,185	1,331	$1,335	1,313	4,003

Uranium enrichment and DOE power sale	190	120	273	234	316	297	651
Energy-related user fees:							
Pipeline safety user fees	9	9	9	9	10	10	28
NRC user fees	160	160	172	172	179	179	511
FERC user fees	34	34	34	34	35	35	103
Shared savings	([1])	(1)	2	2	4	4	7
FCC user fees			30	30	34	34	64
Rail assistance	19	4	20	8	21	17	29
Total	8,753	1,779	1,725	1,986	1,934	2,098	5,864
3-year outlay total		5,864					
Add health savings done by E&C and W&M		10,449					
Total savings		16,313					
Target		(15,467)					
Additional savings		846					
Totals may not add due to rounding:							

FN1 Less than $1 million.

****982** REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON ENERGY AND COMMERCE

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Subtitle A—Synthetic Fuels

The Committee on Energy and Commerce, having considered the Committee Print, report favorably thereon, without amendment, and recommends that the Committee Print be referred to the Committee on the Budget.

PURPOSE AND SUMMARY

The Committee Print abolishes the Synthetic Fuel Corporation (SFC), rescinds $6.9 billion in unobligated Energy Security Reserve funds, and appropriates $500 million for a smaller, new synthetic fuels commercialization program at the Department of Energy (DOE).

The main provisions of this Print will:

Immediately preclude any new awards by the SFC from the $7.9 billion currently available in the Energy Security Reserve, and end the SFC's excessive salaries and pensions;

Reduce Federal spending authority by nearly $500 million over the next three years, and by as much as $6.9 billion over the next ten years, thereby cutting the deficit and improving our nation's economic health;

Recognize the need for a continuing—but much smaller—synthetic fuels commercial assistance program, by authorizing a new $500 million multi-year synfuels program at DOE;

Make this new program subject to Congressional accountability and standard Federal requirements in the areas of conflicts of interest, salary ceilings, and public information, to prevent the kinds of abuses that have harmed the current SFC program; and

Not alter legal commitments of the SFC and DOE entered into before July 31, 1985—which total about $2.676 billion in price and loan guarantees to four synfuels projects that had received awards as of that date.

Rescind all funds in the Energy Security Reserve, except:

$500 million for clean coal technologies;

****983 *402** $500 million for the new DOE synfuels program;

$1.813 billion, which is the total amount obligated from the Energy Security Reserve for the four projects that had received awards before July 31, 1985;

Appropriate $500 million for the new DOE synfuels program; and

Withdraw the consent of the United States to be sued on any new awards made by the SFC, in order to prevent a 'last-minute spending spree' by the Corporation.

BACKGROUND AND NEED FOR THE LEGISLATION

A. Prior consideration

This title combines the provisions of two measures—a legislative bill and an appropriations amendment—which have been extensively considered by the Committee on Energy and Commerce and the full House of Representatives during the 99th Congress: H.R. 935, the Synthetic Fuels Fiscal Responsibility Act of 1985, as reported by the Committee on June 25, 1985 (See House Report 99–196, Part 1), and the Sharp-Conte amendment to H.R. 3011, the FY 1986 Interior and Related Agencies Appropriations bill, as approved by the House of Representatives on July 31, 1985 (See Cong. Rec. pages H

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

6973–6979 and H 6985–6991).

Some technical and substantive changes and additions have been made to both of these two provisions. These are explained below.

H.R. 935, the synfuels bill reported by the Energy and Commerce Committee in June:

Freezes SFC power to award financial assistance, on enactment.

Abolishes the SFC, 90 days after enactment.

Authorizes a new $500 million synfuels commercialization program at DOE.

Puts the Secretary of Energy in charge of the new program, and the two projects aided by the SFC before February 5, 1985, as well as the two projects aided to date by the DOE.

Allows Congressional disapproval of synfuel awards:

made by SFC after Feb. 5, 1985, and before enactment, and made by DOE after enactment.

The Sharp-Conte amendment in July to H.R. 3011, the FY 1986 Interior Appropriations bill:

Rescinds all funds in the Energy Security Reserve except:

$500 million for clean coal technologies;
$500 million which was frozen and reserved for the new DOE synfuels program; and
about $1.813 billion to cover the two project awards already made by the SFC, and the two awards made by DOE.

This amendment did not actually appropriate $500 million for the new DOE synfuels program.

This Committee Print does all that was accomplished in H.R. 935, and all the rescissions and appropriations contained in the amendment to H.R. 3011.

In addition, it:

****984 *403** Appropriates $500 million for the new DOE program. This will create a smooth transition to the new DOE program—a goal generally shared by supporters of this bill—and minimize delays facing projects that seek new awards from DOE. Makes technical changes stressing the commercial nature of the new DOE synfuels program, and deletes some findings and purposes in H.R. 935. Deletes Congressional review of SFC awards made before enactment, and replaces that with a ban on U.S. payment of any price or loan guarantees, or other awards, if the award is made by the SFC after July 31—when the House voted to abolish the SFC—and before enactment of this bill. The policy is to stop a 'last minute spending spree' by the SFC.

Ordinarily, this ban on U.S. payments would amount to contract abrogation, because the U.S. would not perform its contract by paying the award. Thus, a synfuel project could sue the U.S. and recover its award monies—and thereby legally enforce any 'last minute spending spree' that might be carried out by the SFC after July 31, 1985.

But this provision prevents such suits. The Supreme Court has ruled that such a 'withdrawal of the sovereign's consent to be sued' is constitutional, and may be made by Congress at any time.

Nevertheless, projects that are now 'in line' for SFC awards will still be in line for awards under the new DOE program. This bill does not disqualify them, nor impair the four contracts awarded by the SFC and DOE over the past few years.

B. Enactment of the Energy Security Act of 1980—Original SFC goals

The Energy Security Act of 1980 (ESA) created the Synthetic Fuels Corporation '* * * to improve the Nation's balance of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

payments, reduce the threat of economic disruption from oil supply interruptions, and increase the Nation's security by reducing its dependence upon imported oil.'

Congress directed that these purposes be served by 'demonstrating at the earliest feasible time the practicality of commercial production of synthetic fuel from domestic resources employing the widest diversity of feasible technologies,' and fostering 'commercial synthetic fuel production capability' equivalent to: at least 500,000 barrels of crude oil per day by 1987, and at least 2,000,000 barrels of crude oil per day by 1992.

The powers of the SFC are vested in a seven-member Board of Directors, nominated by the President and confirmed by the U.S. Senate. The Corporation is authorized to provide financial assistance to qualified projects which will produce 'synthetic fuels,' including synthetic liquids, solids or gases from coal, oil shale, tar sands and certain heavy oils.

Financial assistance may be awarded as loans, loan guarantees, price guarantees, purchase agreements, joint ventures, or combinations of these types of assistance.

Under the Energy Security Act, the SFC's program was divided into two phases. During the initial phase, the Corporation was to solicit and assist synthetic fuel projects that contribute to the goals ****985 *404** of the Act, using up to $20 billion of the $88 billion authorized by the ESA.

To achieve the second phase, the SFC was to submit to Congress, by June 30, 1984, a Comprehensive Strategy for achieving ESA's national synfuel production goals. With its Comprehensive Strategy, the SFC was directed to request any additional funds from the $68 billion authorized for Phase II that it deemed appropriate.

If approved by Congress, the Comprehensive Strategy would serve as the basis for the Corporation's Phase II efforts. The Strategy was not submitted until July 1, 1985, in large part because the SFC did not have a quorum of four Directions to do business from April until December 1984.

C. Current Realities—SFC achievements in the five years since enactment of ESA, much has happened

Only two projects: The massive assistance program created by ESA has produced only two operating projects. One, the Coolwater combined cycle project, backed by a $120 million SFC price guarantee, is reasonably successful.

The other, the Great Plains coal gasification project, has become a painfully costly lesson in how not to create a synthetic fuels industry. Although built on-schedule and within cost estimates, it is using decades-old technology, to produce synthetic gas at a price several times the current market price of newly drilled, conventional gas.

On August 1, 1985, the partners in the Great Plains consortium terminated their participation in the project, and defaulted on their $1.536 billion Federal loan. They were willing to continue the project only if they received an additional $720 million in subsidies from the U.S. DOE rejected these subsidies after it concluded they would not 'temporarily carry' the project long enough to make it profitable over its full operating life. Instead, DOE concluded, the extra subsidies would probably have increased the ultimate, overall cost of this project to U.S. taxpayer.

Numerous other projects have fallen by the wayside, abandoned by their sponsors as uneconomic, crippled by technological problems, or stymied by a confused and poorly managed SFC selection and assistance process.

Falling energy prices: In 1980, predictions of $50/barrel oil by 1985 were commonplace. In a world with such costly energy markets, even high-priced domestic synfuels could be much more cost-effective, and perhaps even profitable.

But that world has not arrived. Oil is now selling for $27/barrel, and further declines are possible.

One must be skeptical of current projections for cheap oil into the 1990's; plainly, they may be as erroneous as the 'doomsday' predictions of only five years ago. Nevertheless, continuing declines in world consumption, continuing conservation and efficiency gains, the deregulations of much of the large U.S. oil and gas markets, and continuing increases in Third World oil production all point to falling real oil prices for at least the next few years. Even pessimistic forecasters

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

are estimating prices of only $35/barrel, in current dollars, by 1993.

****986 *405** This fundamental change in circumstances largely invalidates a 'synfuels at any price' approach to the problem of energy security, while making it unattractive for private companies to proceed with commercial synfuels development on their own.

U.S. oil import dependency: A major justification for the 1980 program was U.S. dependency on foreign oil—a dependency that many believe will only grow over the next decades. However, the Strategic Petroleum Reserve has been built and should be filled to deal with this problem of dependency and possible supply disruptions.

In the summer of 1980, the SPR held less than 80 million barrels—only enough to replace 11 days of imports at the high import levels of that time. It now holds nearly 500 million barrels, enough to replace about 120 days of imports at current levels.

Unlike a fully commercially viable synfuels industry, the SPR cannot handle a chronic, year-after-year, long-term lack of energy; but it is an ideal tool for protecting the nation against shorter-term, 'abnormal' supply disruptions.

Conversely, even a massive synfuels program cannot do what the SPR can do: Produce large volumes of oil, as much as two or three million barrels per day, at a moment's notice, to mitigate the economic effects of a temporary and perhaps politically inspired shortage.

Synthetic fuels accordingly must remain as a necessary option for the 1990's and the 21st century, and the Department of Energy is the appropriate agency to help develop that option. But purchasing oil for the SPR is a defense against another OPEC embargo that is far more cost effective than subsidizing synfuels.

Continuing record U.S. deficits: In 1980, few could predict what now seem to be years of $200 billion-plus deficits. Federal spending is being but back in areas that for decades had been viewed as 'immune' to budget reductions.

When financial assistance to the elderly, the unemployed, and those in need of government health care are cut, and programs for food stamps, school lunches, and student loans are curbed, continued corporate subsidies must also be reduced.

Some may contend that a synfuels industry will ultimately help our economy, and protect it from the multi-billion dollar losses that an oil disruption could impose. Spending tax revenues on commercial-scale projects that produce energy at two, three, and even four times current market prices, however, is hardly an economically wise course: The more we spend, the more we lose.

SFC procedural and managerial excesses: Even if a massive synfuel program were worthwhile, the SFC has repeatedly demonstrated that it is not the proper agency to administer it. Among its many derelictions and excesses are these:

Political fund-raising efforts by board members with potential project sponsors and beneficiaries of SFC financial assistance.

Repeated charges of conflicts of interest among board members (leading to the resignation of two SFC presidents), and such insensitivity to conflict concerns that SFC officials responsible for them have been publicly berated by SFC directors for raising these concerns.

****987 *406** An extremely slow decision-making process, which virtually paralyzed the SFC in the early 1980's—and thereby wasted time that would have been wisely spend on developing diverse, modest-scale projects, and obtaining data to further the emergence of a synfuels industry.

Exessive salaries, pensions, and savings plans, lavish travel benefits, and other costly perquisites.

Questionable use of 'safe houses' to avoid public and Congressional oversight.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

‘Psychological testing’ of prospective employees by overpaid outside ‘consultants.’

Repeated changes in plans and procedures, and repeated internal reorganizations to improve efficiency—which in fact only contributed to SFC inefficiency.

D. How the committee print resolves these problems

The bill eliminates these problems by abolishing the SFC 90 days after enactment, and transferring its functions to a much smaller commercial synfuel applications program at the Department of Energy. In summary, the bill’s provisions are:

Section 4101. Short title.

Section 4102. Findings and purposes:

Deficits must be reduced.

The SFC has failed in its mission.

A smaller synfuels commercialization program at DOE is now the best way to reduce our future energy vulnerability.

Section 4103.

Immediately stops SFC spending on new synfuel projects.

Immediately discharges all SFC Directors, and makes the Energy Secretary the chief SFC officer during 90 day phase-out of SFC.

Immediately cuts excessive salaries to SFC officers and employees, to no more than $72,000. Ten SFC officials now exceed that level.

Within 90 days, revises, cuts, and bars payment of excessive pensions to SFC Directors, officers, or employees.

After 90 days, abolishes the SFC and discharges all SFC officers and employees.

Section 4104.

Places the Energy Secretary permanently in charge of projects administered by SFC before enactment. The Secretary ‘inherits’ all SFC rights and responsibilities regarding these projects, and the ‘letter of intent’ projects.

Authorizes a new synfuel commercial applications assistance program at DOE, under the Secretary’s direction.

Sets a new standard for financial assistance under the new program—‘the smallest least expensive scale practicable that would encourage the replication of commercial scale synthetic fuel technologies, including those which may face economic or other risks in order to compete in the marketplace.’ This standard replaces the more ambitious ‘commercial production’ goals of the original 1980 synfuels program.

Requires the Secretary to explain how he will carry out this program, by submitting an assistance plan to Congress.

****988 *407** Sets a three-part assistance strategy, including solicitation, negotiation, and construction of projects.

Section 4105.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Requires additional environmental planning, testing, data collection, mitigation efforts, and health analysis for new projects funded after enactment.

Section 4106.

Bars future funding for any project if total assistance thereby exceeds more than 60% of the project's capital and operating costs.

Bars additional funding for the Great Plains project, out of the $500 million authorized for the new program at DOE.

Section 4107.

Caps any future price guarantees at 125% of projected market prices.

Section 4108.

Authorizes Congressional disapproval of any awards over $20 million made by DOE after enactment.

Section 4109.

Authorizes $500 million in appropriations for the new, limited synfuels commercial applications assistance program at DOE.

Section 4110.

Rescinds all funds remaining in the Energy Security Reserve except $500 million for clean coal technologies, $500 million for the new DOE synfuels program, and $1.813 billion which has been obligated for the four pre-July 31 awards to the Union I, Dow Syngas, Coolwater, and Great Plains projects. Also appropriates $500 million for the new DOE program.

Section 4111.

Bars any payments by the U.S., the SFC, the DOE, or any officers or agents of the U.S., to cover any new awards made by the SFC, i.e., awards made after July 31, 1985, which was the date the House adopted the Sharp-Conte amendment to the FY 1986 Interior Appropriations bill. Also withdraws the consent of the U.S. to be sued on any claim arising from any new SFC award.

Section 4112.

Technical and conforming amendments.

What the bill does not do:

Unconstitutionally discharge officials or lower their salaries. All the SFC offices are created by law, and by law may be abolished or reduced in salary. Only the President and Federal judges are immune from such reductions.
Alter the types of financing available to projects.
Alter DOE's synfuels authority under the Defense Production Act or the Non-nuclear Energy Research and Development Act, which is the authority used to date to assist the Great Plains project.
Alter the definition of 'synfuels' which are eligible for aid.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

**989 *408 *E. The Synthetic Fuels Commercial Applications Program at DOE*

The Energy and Commerce Committee has sought to draft the amendment in a way that provides maximum flexibility to the Energy Secretary to administer a sensible and smaller program to assist commercial applications of synfuels technologies. At the same time, the amendment creates a minimum of additional disruption and extra paperwork for proposals already pending before the SFC.

The intent is to achieve a smooth transition to the new program, so that further time is not lost, and the difficult task of identifying and aiding the proper commercial projects can proceed.

Because the new program is under the Secretary's direction, it will be subject to standard provisions of law regarding administrative procedures and rulemaking, public access to information, Congressional oversight and investigation, and salary and pension restrictions.

Because the new program will be funded at a level only one-six teenth that of the current program, the Secretary will be required to allocate these limited funds more carefully and wisely than has the SFC. Smaller-scale commercial applications projects are the inevitable, and desired, result, and should benefit from higher reliability and operating factors.

Furthermore, Congress retains the right to disapprove any new awards by the Secretary, if they total more than $20 million. That proper, and economic realities which will force projects to produce energy at prices more nearly matching market prices, should help ensure more sensible outlays in the years ahead.

Finally, if the new program proves more successful than the current one, the Congress may well decide to increase its funding. The Committee believes that the approach of this bill will help advance the commercial application of synthetic fuels, not thwart it.

F. Projected Outlays and Obligations

SFC Chairman Noble testified before the Senate Energy Committee on March 1, 1985, that the Corporation expects to obligate $4.06 billion in FY 1985 and $3.615 billion in FY 1986. This would almost completely exhaust the Energy Security Reserve. Administrative expenses are expected to be $22 million in FY 1985 and $23.0 million in FY 1986.

According to CBO, outlays by the SFC will total $872 million over FY 1986 through FY 1988. The three projects administered by the SFC before July 31, 1985—Union Oil Shale Phase I, Coolwater, and Dow Syngas—are projected to account for $358 million of that amount.

**990 *409 *G. Project Contracts Awarded Before July 31, 1985*

Project	Funding commitment	Resource	Size	Status
1. Union Oil Shale I	$400 million price guarantee—$42.50 plus inflation per barrel. As of 3/1/85 guaranteed price equals $51.20 per barrel.	Oil shale	10,400 BPD	SEF estimates that full capacity operation will not occur until the 4th quarter of 1986. Full $400 million cannot be used.
2. Coolwater	$120 million price guarantee—$12.50 per million Btu for first 9 trillion Btu; $10 per mcf. thereafter, inflated.	Coal gasification to produce electricity.	106 MW electricity	Operating.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

3. Dow Syngas.	$620 million price guarantee—$12.50 per MMBtu initially, later $11.00 per MMBtu.	Coal gasification	5,172 BPD gas equivalent.	Contract signed 4/26/84. Initial production expected early 1987.
4. Great Plains.	$1.536 billion loan guarantee, but covered by only $673 million in Energy Security Reserve funds.	Coal gasification	23,100 BPD gas equivalent.	In default; now administered by DOE.

This measure does not invalidate or in any way alter these four existing commitments. If all four projects ultimately require payment of all awarded monies—because of low energy prices or a project's economic collapse—a total of $1.813 billion may have to be paid out from the Energy Security Reserve, and an additional $863 million from some source would have to be paid to fully cover the Great Plains loan guarantee.

H. Letters of intent issued to date

Letters of intent are *non-binding* pledges of the parties' intent to negotiate a mutually acceptable contract. Each letter of intent is accompanied by a cover letter which contains the following language:

'We understand that this Letter of Intent constitutes a statement of mutual understanding and intentions and neither this Letter of Intent nor the Term Sheet constitutes an obligation binding on any person or creates any right in favor of any person.'

The sponsors of two of the projects which had received letters of intent totaling potentially $643 million have withdrawn. The remaining projects are summarized below.

Project	Funding commitment	Resource	Size	Status
1. Union Oil Shale Phase II.	$500 million price guarantee—$60 per barrel up to$67 per barrel escalated using PPI from 3rd quarter 1983.	Oil shale	80,000 BPD shale oil	Original letter of intent executed December 1983. Project now set to go forward under SFC's tentative August 22, 1985 proposal.
2. Cathedral Bluffs (Union technology for 90% of production).	$2.19 billion loan and price guarantees—$60 per barrel escalated using PPI from March 1983.	Oil shale	14,300 BPD shale oil	Letter of intent executed 7/28/83 Project unlikely to go forward as anticipated in letter of intent.
3. Northern Peat Energy Project.	$365 million price and loan guarantee.	Peat moss	290,000 tons per year of solid briquettes used to replace coal and wood in boilers.	Letter of intent executed 4/26/84.
4. Seep Ridge Oil Shale.	$184 million in price and loan guarantee.	Oil shale	1,000 BPD raw shale oil.	Sponsors received tenative SFC agreement to increase assistance in August, 1985.
5. Forest Hill Heavy Oil.	$60 million price and loan guarantees. $40 per barrel for the first 500,000 barrels, $37.50 after, adjusted for inflation.	Heavy oil	1,750 BPD of heavy oil	Contract awarded September 24, 1985.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

****991 *410** *I. 'Last-Minute SFC Spending Spree'*

On July 31, the House voted in favor of the Sharp-Conte amendment to H.R. 3011, by 312 to 111. That amendment rescinded most of the SFC's remaining funds, and partly froze the remaining funds available to the SFC by specifying that the frozen funds could not be used for project awards, but only for SFC salaries and administrative expenses.

Soon thereafter, statements and memoranda by SFC officials were released, indicating that the SFC was ready to grant new awards totalling more than $740 million, in the next few weeks. Some memos even suggested that awards would be made to particular projects in order to influence key senators to support the SFC and oppose enactment of the Sharp-Conte amendment and H.R. 935.

Numerous Congressmen and Senators thereupon wrote both the President and the SFC, urging a halt to any new awards during Congress' consideration of H.R. 3011, H.R. 935, and related measures. They stressed that it would be irresponsible for the SFC to engage in a 'midnight spending rush' in order to thwart the will of Congress.

No clear answer has been received from either the President or the SFC. And on September 24, 1985, the SFC voted one award of $60 million to one of the projects on their list.

Accordingly, to effectively prevent such a circumvention of the will of Congress and to give Congress an opportunity for reasoned decisionmaking on this issue, this measure prohibits the payment of any new awards that may be made by the SFC including the most recent award of September 24 and prohibits any lawsuits to recover such awards.

HEARINGS

The Committee's Subcommittee on Fossil and Synthetic Fuels held one day of hearings on H.R. 935, a measure to abolish the SFC, on April 24, 1985. Testimony was received from six witnesses, representing five organizations, with additional material submitted by numerous individuals and organizations.

****992 *411** COMMITTEE CONSIDERATION

On September 18, 1985, the Energy and Commerce Committee met in open mark-up session and ordered, with a quorum present, ordered a Committee Print transmitted to the House Committee on the Budget, in accordance with section 310 of the Congressional Budget Act of 1974.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has made findings and recommendations as set forth in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that this measure will have the following budget effect for fiscal years 1986 through 1996:

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Outlays will be reduced by $468 million over the next three fiscal years.

In addition, by immediately reducing the amount of money that may be obligated for synthetic fuel assistance from $7.9 billion to $.5 billion, and reserving an additional $.5 billion for clean coal technologies, the bill will save as much as $6.9 billion over the next ten years. The exact amount cannot now be determined, because it depends on two unknowns:

1. How much of the remaining $7.9 billion will be obligated by the SFC, if it is not abolished, over the next seven years.

2. How much of those obligations will ultimately be 'called on' by synfuels projects that will be unable, by themselves, to cover their own capital and operating costs—which would then force an actual payout of the previously obligated funds.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the Committee Print:

The Committee believes that by substantially lowering Federal expenditures over the next ten years, the measure will significantly lower inflation.

SECOND-BY-SECTION ANALYSIS

Section 4101. Short title.

Section 4102. Findings and Purposes. One finding contained in H.R. 935, and set forth in new ESA section 100(a)(7), relating to 'pioneer plants,' has been deleted as superfluous.

****993 *412** Two purposes contained in H.R. 935, and set forth in new ESA section 100(b)(2)(B) and (D) have been deleted as superfluous. One purpose, in new ESA section 100(b)(2)(C), has been reworded by deleting the phrase 'which will provide adequate information for evaluating and constructing commercial scale projects,' and replacing it with 'which will encourage the replication of commercial scale technologies.'

Section 4103. Abolishes the SFC, by amending Subtitle B of the U.S. Synthetic Fuels Corporation Act of 1980 (USSFC Act) which is Part B of Title I of the Energy Security Act of 1980. This law establishes the SFC, vests its powers in a Board of Directors, and provides compensation for employees and officers.

New Section 115. The SFC cannot make any new binding obligations after enactment of this legislation, nor increase any existing obligations. This provision is independent of and in addition to the restriction under sec. 111.

New Section 116. The SFC Board is abolished on date of enactment, and the directors are discharged.

The Secretary of Energy becomes the SFC's chief operating officer on date of enactment, and—in lieu of and as a 'replacement' for the SFC Board of Directors—immediately begins to exercise two authorities: the power to wind up SFC affairs, and the power to administer the SFC. Under the latter authority, the Secretary can fulfill pre-July 31, 1985 synfuels obligations made by the SFC.

The Secretary transfers SEC assets to DOE, for use in DOE's synfuels assistance program.

Salaries of SFC officers and employees are capped, during the 90 days after enactment, at the ES-IV rate.

No unreasonable or excessive compensation—as determined by the Office of Personnel Management—may be paid after enactment to SFC directors, officers, or employees.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

New Section 117. The SFC is abolished 90 days after enactment, and its officers and employees are discharged.

Subtitle B repealers. Repealed provisions of Subtitle B include section 118, conflicts of interest; section 119, delegation; section 120, authorization of administrative expenses; section 121, public access to information; section 122, inspector general; and section 123, advisory committee.

These repealed sections are replaced by provisions of the DOE Organization Act on conflicts of interest, delegation, and inspector general authority; and by general Federal law regarding salaries, advisory committees, and public access to information.

Section 4104. Amends Subtitle C of the USSFC Act. On October 1, 1985 (or enactment, if later), the Secretary—in his capacity as Secretary of Energy—gains permanent authority to administer and fulfill synfuels obligations previously made by the SFC.

Immediately on enactment, the Secretary—in his capacity as Secretary of Eneregy—is authorized to administer the 'modified synthetic fuels assistance program' for new, smaller projects.

New Section 125. Both the 'old' program and the new program are administered by the Secretary of Energy.

In the continuing 'old' program, the Secretary inherits all rights and responsibilities of the SFC regarding previously funded projects, insofar as the SFC had 'legally binding obligations' to ****994 *413** those projects. The SFC's pre-July 31, 1985 contractual commitments to these projects are not altered by this bill, but all post-enactment actions on them by the Secretary must be in accord with the new 'U.S. Synthetic Fuels Assistance Act.'

The new program is carried out under section 126. Section 9 of the bill authorizes appropriations of $500,000,000 for this new program.

The Secretary shall 'count' obligations made by him under the new program in the same way, and subject to the same generally accepted accounting principles, that have been used to date by the SFC under the original Energy Security Act.

New Section 126. In H.R. 935, the new DOE synfuels program stressed financial aid 'on the smallest, least expensive scale practicable * * * to determine the commercial viability and * * * feasibility of commercial scale projects.' In this measure, this standard has been reworded to allow financial aid 'on the smallest, least expensive scale practicable that would encourage the replication of commercial scale synthetic fuels technologies, including those which may face economic or other risks in order to compete in the market place.'

The Secretary is required to give *consideration* first to 'letter-of-intent' projects, i.e., those receiving letters of intent from the SFC before February 5, 1985. However, the Secretary is not required by this provision to award financial assistance to these projects.

New Section 127. The Secretary shall submit an assistance plan to Congress, after enactment, setting forth how he will carry out the 'old' and 'new' synfuels assistance programs. The plan shall address:

which resources and technologies warrant support,

each technology's feasibility,

anticipated gains for commercial scale projects,

anticipated environmental effects, and

the best resource/technology combinations.

New Section 128. Replaces the 'production strategy' provisions of the original USSFC Act, with a smaller, differently

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

oriented ‘assistance strategy,’ which is keyed to the new program and plan requirements of sections 125, 126, and 127.

The procedural requirements of this new strategy are similar to those in the original USSFC Act. The Secretary:

shall solicit proposals,

shall award assistance to qualified concerns,

shall negotiate contracts if acceptable proposals are not made, and

may, only under limited conditions, undertake a construction project.

Financial assistance shall incorporate technological diversity, and help to achieve the assistance plan.

New Section 129. Sets forth the solicitation process which the Secretary is to use, from time to time, to invite proposals.

New Section 130. Authorizes the Secretary to hire former SFC employees to help carry out the new, smaller synfuels assistance program.

Subtitle C repealers. Repealed provisions of Subtitle C and their successors are as follows:

Repealed	**Successor**
Sec. 125, National synfuel production goals	Sec. 125, Secretary’s responsibilities for old and new synfuels programs.
	Sec. 126, New assistance program.
Sec. 126, Congressional review of comprehensive ‘production goal’ strategy.	Sec. 127, Submission to Congress of new assistance plan.
Sec. 126, Production strategy	Sec. 128, Assistance strategy.
Sec. 127, Solicitations	Sec. 129, Solicitations.
Secs. 128, 129, Congressional disapproval and approval	Sec. 138, Congressional review of assistance decisions.

Deleted, and not revised, are:

Sec. 126(b), (c), and (d)

Sec. 127(a)(2) and (3), (e), and (f)

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

****995** *Section 4105*. Establishes new environmental planning requirements for financial assistance granted after enactment.

The plan must be developed before any award is granted, and provide for the collection of data on all pollutants and emissions, the testing of mitigation methods, and the assessment of effects on water supplies, worker health, and local social and economic impacts.

Section 4106. Sets a funding limitation for all projects assisted after enactment. Under the limit, no project shall receive assistance from the $500 million authorized to be appropriated under (9 of this bill, if that assistance, aggregated with all prior awards, would exceed 60% of the capital and operating costs of the project.

In the case of any project which has received more than $1 billion, i.e., Great Plains, no financial assistance from the $500 million program may be made.

Section 4107. Sets a price guarantee limitation for all projects receiving price guarantees after enactment. The limit prohibits any guarantee greater than 125% of the projected market price of comparable energy.

Subtitle D—Financial Assistance. Sections 5, 6, and 7 all amend the financial assistance provisions of the USSFC Act. The bill generally retains all these provisions, and the accompanying restrictions and qualifications. Thus, the Secretary may continue to offer the following types of assistance: Loans, loan guarantees, price guarantees, purchase agreements, and joint ventures.

Subtitle D repealers. Repealed provisions include (131)(d), (j), (k)(2), and (3), and (u).

Section 4108. Sets a Congressional disapproval process for any synthetic fuels awards made after enactment by DOE, if they exceed $20 million.

No award can be made by the Secretary until after the Congress has had 90 legislative days to review the award. The 90 day review period begins when the Secretary submits the proposed award, termed a ‘synthetic fuel action,’ to both houses of Congress. If Congress does not thereafter, within the 90 day period, disapprove the proposal, it becomes a valid and ‘legally binding obligation.’

Related analysis: Any contract or proposal submitted to Congress shall include a financial analysis, a resource and technology assessment, a cost-benefit analysis, the required environmental monitoring plan, and an explanation of how the contract or proposal fits ****996 *415** into the Secretary’s overall assistance plan. In H.R. 935, Congress wa also empowered to review and disapprove new SFC awards made before enactment. That provision has been deleted, and replace by section 111.

Section 4109. Authorization of Appropriations. Authorizes $500,000,000 to be appropriated to carry out the new program.

Section 4110. Rescission. Rescinds all remaining funds in the Energy Security Reserve, except: $500 million for clean coal techologies; $500 million for the new DOE synfuels programs; and amounts necessary to cover pre-July 31, 1985 obligations to four synfuels projects, or about $1.813 billion.

This section also appropriates $500 million for the new DOE program. This section was not included in H.R. 935, as reported by the Committee on Energy and Commerce; it is a revised version of the Sharp-Conte amendment to H.R. 3011. The only significant differences between this provision and Sharp-Conte are (1) the inclusion in this provision of an appropriation for the new DOE program, and (2) an exemption from recission only for pre-July 31, 1985 SFC awards.

Section 4111. Prohibits the payment of any awards made by the SFC after July 31, 1985, and before enactment. On September 24, 1985, such an award was made by the SFC.

This section prevents payment of this award, and prevents the institution or maintenance of any lawsuit against the United

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

States (or its agents and instrumentalities) to recover the award monies. Any other SFC award made subsequent to July 31, 1985, and prior to enactment of this measure is also subject to this section. In addition, the Energy Security Reserve funds necessary to cover such awards are rescinded by section 110, supra.

While section 4111 concededly is an extraordinary step, it is the only effective response to the SFC's attempt at last minute spending, and its constitutionality is unquestioned. See *Lynch v. U.S.*, 292 U.S. 571 (1934), holding that the privilege of suing the government is not a property right protected by the Fifth Amendment; that it may be withdrawn even after it is given for a pecuniary consideration; and that if withdrawn, the sovereign's resulting immunity from suit exists whatever the character of the proceeding or the source of the right sought to be enforced. (Brandeis, J.) See also *Maricopa County v. Valley National Bank*, 318 U.S. 357 (1943), holding that there are no limitations to the power of Congress to withdraw the privilege of suing the United States or its instrumentalities. (Douglas, J.)

Section 4112. Technical and Conforming Amendments

Retitles the USSFC Act as the 'United States Synthetic Fuels Assistance Act.'

Deletes Congressional review of additional loans, loan guarantees, and joint venture assistance to projects experiencing large cost overruns. Review in only these special cases is no longer necessary, in view of the authority in Section 8 for Congressional disapproval of all awards of more than $20 million.

Amends sec. 139 of the USSFC Act to specify that user fees collected by the Secretary will be deposited in the U.S. Treasury, instead of being made available to the synfuels assistance program. ****997 *416** The same treatment applies to any receipts collected by the Secretary, for example, those monies collected under profit sharing arrangements.

Repeals most provisions of sec. 171(a), and all of sec. 171(b). These authorities are generally needed only to the extent that a non-Federal entity is exercising powers of a governmental nature. When these powers are transferred to a Federal entity such as DOE, they become superfluous. For example, DOE needs no authority 'to use the U.S. mails' in the same manner as other executive departments.

Repealers. Also repealed are:

Sec. 142, Limitations on Corporation Construction Projects.

Subtitle F, Capitalization and Finance, except for sec. 154, Receipts of the Corporation.

Subtitle G, Unlawful Acts, Penalties, and Suits Against the Corporation.

Sec. 172, Coordination with Federal Entities.

Sec. 173(e), Transfer of patent rights to DOE, and sec. 173(g), Grants of Corporation license rights to the U.S. Government.

Sec. 174, Small and Disadvantaged Business Utilization.

Sec. 175, Relationship to Other Laws.

Sec. 177, Fiscal Year, Audits, and Reports.

Sec. 179, Western Hemisphere Projects.

Sec. 180, Completion Guarantee Study.

Subtitle I, Disposal of Assets.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Subtitle J, Termination of Corporation.

Subtitle K, Department of the Treasury Authorizations.

Miscellaneous terminology changes:

1. Replaces references to the SFC or its Board with references to the Secretary or the U.S., as appropriate;

2. Replaces references to the comprehensive strategy with references to the assistance plan;

3. Replaces references to Corporation synthetic fuel actions with references to synthetic fuel actions requiring Congressional approval under [138; and

4. Replaces references to production goals with references to the assistance plan.

5. Makes other necessary technical changes.

* * * * *

****998 *480** Subtitle B—Strategic Petroleum Reserve

SUPPLEMENTAL VIEWS

The Committee on Energy and Commerce, having considered the Committee Print, reports favorably thereon, without amendment, and recommends that the Committee Print be referred to the Committee on the Budget.

PURPOSE AND SUMMARY

The purpose of the Committee Print is to make authorizations for the continued construction, operation, and fill of the Strategic Petroleum Reserve (SPR) on a slower schedule, in accordance with the reconciliation assumptions of the Budget Committee in the Conference Report on the budget, S. Con. Res. 32 (House Report 99–249).

The SPR is the nation's first line of defense against the oil price shocks and economic hardships that could result from an oil supply emergency. As of October 1, 1985, 489 million barrels will be in storage.

The nation is now better protected against a supply interruption or sudden price shock than it was in 1973 and 1979. The Strategic Petroleum Reserve is now large enough to constitute a real tool for dealing with any oil crises the U.S. might face. In fact, with U.S. crude imports running at approximately 3 million barrels per day, the SPR could potentially replace about 6 months of imports.

On the other hand, the SPR is our only line of defense—the Administration has chosen reliance on the SPR and on market mechanisms, rather than on a variety of emergency preparedness options which could potentially interfere with the working of the world oil market.

This reliance on the SPR has strengthened the Congress' commitment to it and has resulted in the recommendation of the Congress that the SPR continue to be filled, even at a reduced rate, instead of adopting the Administration's proposal to enact a moratorium on SPR fill. Indeed, the best time to buy oil is now, when the price is low.

Today's oil surplus and falling prices will not continue forever. Despite the virtual impossibility of predicting the future where oil markets are concerned, Congress can draw some educated conclusions:

Depletion of the huge non-OPEC oil fields that have helped to create the current surplus is occurring in Mexico, Prudhoe Bay, and the North Sea, and similarly large new fields have not been found to replace them;

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The huge oil reserves in the Middle East are still subject to interruption due to war, civil strife or religious or ideological disruption;

The current price decline and supply stability could contribute to a move back to more profligate consumption habits and an end to almost a decade of improved efficiency in energy use;

Despite the news that last year U.S. oil reserves rose for the first time in 15 years, lower 48 reserves have steadily declined, ****999 *481** from 31 billion barrels in 1968, to only 21 billion barrels today; and

Many energy experts predict that by 1995 the U.S. will be importing well over 50% of its oil.

These alarming issues serve to reinforce the lessons that policy makers have learned about the world oil market—that it is volatile, unpredictable, influenced by many factors beyond the control of oil users, and capable or doing tremendous damage to the economies of all oil importing countries when it is suddenly disrupted.

These realities result in continued bi-partisan support for the Strategic Petroleum Reserve and the decision by the Committee on Energy and Commerce to continue to fund and fill the SPR.

This Committee Print will assure a slow but steady continuation of SPR fill for FY 1986, FY 1987 and FY 1988. Histroic and projected SPR fill under this authorization is shown below in Chart 1, entitled SPR Oil Fill.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The Committee Print provides authorization for continued operation, maintenance and expansion of existing oil storage sites. It authorizes funds for distribution enhancement—the building of new pipelines out of SPR—necessary due to recent shutdowns or conversions of old oil pipelines. It also authorizes sufficient funds for continued construction of a sixth storage site in Big Hill, Texas, although construction will proceed at a slower pace than originally planned.

The filling of the SPR is again tied to production at the Naval Petroleum Reserve, Elk Hills, California. The SPR must be filled at an average annual rate of 35,000 barrels per day until 527,000,000 barrels are in storage, estimated to be achieved at the end of FY 1988, or production at Elk Hills must be reduced to the minimum level necessary to protect the integrity of the Elk Hills Reserve.

****1000 *482** BACKGROUND AND NEED FOR THE LEGISLATION

The need to reduce Federal spending and the relative tranquility in international oil markets has created a climate in which SPR fill can be reduced without extreme risk to our national security.

Despite continued support in Congress for the SPR and for an aggressive policy of purchasing oil for the SPR, the Congress has reduced the fill rate and slowed new construction primarily as a response to its desire to cut back Federal programs, even ones with great support, to reduce the Federal budget deficit.

In the absence of this compelling mandate, the Energy and Commerce Committee believes that the Congress would support a resumption of oil purchases and a fill rate more closely approximating the 159,000 barrels per day rate achieved in the current year.

HEARINGS

The Energy and Commerce Committee held two days of hearings on March 6, 1985, and March 27, 1985, related to SPR authorization, SPR test drawdown and extension of the Energy Policy and Conservation Act of 1975 (EPCA). Testimony was heard from a number of witnesses representing Congress and the Department of Energy (DOE).

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

COMMITTEE CONSIDERATION

On September 18, 1985, the Energy and Commerce Committee met in open mark-up session and, with a quorum present, ordered a Committee Print transmitted to the House Committee on the Budget, in accordance with the reconciliation assumptions of the budget resolution and the requirements of the Congressional Budget Act of 1974.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has made findings and recommendations as set forth in this report and in H. Rept. 99–150.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Energy and Commerce Committee believes that the Committee Print will result in budget savings of $1.471 billion in Budget Authority and $1.359 in Outlays in FY 1986, $1.185 billion in Budget Authority and $1.331 in Outlays in FY 1987, and $1.335 billion in Budget Authority and $1.313 in Outlays in FY 1988.

****1001 *483** INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the Committee Print: The Committee on Energy and Commerce estimates that enactment into law of the Committee Print is not expected to have a measurable impact on inflation. Deflationary pressures may, in fact, result from the reduced Federal borrowing made necessary by the savings in this Committee Print.

SECTION-BY-SECTION ANALYSIS

Section 4201. Strategic Petroleum Reserve

Subsection (a) provides that the Strategic Petroleum Reserve shall be filled at an annual average rate of 35,000 barrels per day for each of the fiscal years 1986, 1987 and 1988.

Subsection (b)(1) authorizes the appropriation of funds for the acquisition, transportation and injection of crude oil into the SPR in the amount of: $358 million for FY 1986; $334 million for FY 1987; and $357 million for FY 1988.

The authorization level for FY 1986, FY 1987, and FY 1988, together with amounts authorized and appropriated in prior years for SPR oil purchases, is in excess of the exact amount needed to purchase oil and fill the SPR at a rate of 35,000 barrels per day. This should provide orderly purchase and fill schedules between fiscal years, and allow the Department of Energy (DOE) to take advantage of ‘soft’ market conditions. For this reason the 35,000 barrel per day fill rate is expressed in terms of an ‘annual average rate.’

Subsection (b)(2) authorizes the appropriation of funds for all other SPR functions including normal operation, maintenance, testing, distribution and site expansion in the amount of: for FY 1986 $136 million; for FY 1987 $359 million; and for FY 1988 $157 million.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Energy and Commerce Committee believes that the FY 1986 authorization is sufficient to continue routine operation, distribution enhancement, and development of the Big Hill site. The Energy and Commerce Committee expects that DOE will continue construction of Big Hill including site preparation and brine line and brine facility construction during FY 1986.

Subsection (b)(3) clarifies that this enactment supersedes any previous authorizations for the purposes and the fiscal years covered by this Committee Print.

Subsection (c)(1) amends EPCA to insert the fill rate of 35,000 barrels per day, which applies until about 38 million more barrels have been added to SPR, thus bringing its total size to 527 million barrels. The change ensures that during the next three years, the SPR must be filled at an annual average of 35,000 barrels per day; otherwise, production from the Naval Petroleum Reserve would be restricted or used to meet the 35,000 barrel minimum SPR fill. Further, subsection (c)(1) indicates that at the end of FY 1988 the SPR will contain at least 527,000,000 barrels.

****1002 *484** Subsection (c)(2) makes the amendments contained in Subsection (c) effective on October 1, 1985.

***485** SUPPLEMENTAL VIEWS

We concur in the Committee's recommendation to cut the Strategic Petroleum Reserve (SPR) fill rate. Many of us support the Administration's request for a complete moratorium on fill and development of the Strategic Petroleum Reserve. Adoption of the Administration's position would have saved an additional $1.5 billion over three years.

The urgent necessity to reduce Federal spending militates strongly in favor of a reduced fill rate. We wish to emphasize, however, our belief that our Nation's current energy posture also renders this action fully consistent with the public interest.

The most significant development in the world oil market since the creation of the SPR has been the re-assertion of the fundamental laws of supply and demand. Over-reaching by the Organization of Petroleum Exporting Countries (OPEC) caused a decrease in petroleum consumption and the development of alternative sources of supply. OPEC production thus far in 1985 is averaging about one-half of what it was in 1977. Non-OPEC production is up by nearly one-third. The price of oil has fallen twenty percent since 1981, and appears likely to fall even lower.

In the United States, adoption of free market policies in 1981 complemented and strengthened these positive worldwide trends. Total domestic crude oil production has been experiencing a slight year-to-year uptrend for more than three years. Decreases averaging 300,000 barrels per day occurred in lower 48 State production while price controls were in effect in the 1970's. Had that trend continued, lower 48 production would be 1.9 million barrels per day less than current levels.

As a result of this increase in domestic production and the conservation efforts of millions of Americans—efforts which are largely structural in nature and will not evaporate with lower oil prices—imports thus far in 1985 are about one-half of what they were in 1977. Our sources of supply are diversified, with dependence on oil from the Persian Gulf considerably reduced. The Deputy Secretary of Energy is able to report that 'the economic impact of any likely oil supply disruption would be relatively minor.'

Continued reliance on the free market to adjust the supply, demand, and price of oil is our first line of defense against the supply and allocation problems that afflicted this nation in the 1970's. Rather than spending taxpayer funds to put imported oil in storage, we should be developing the abundant resources now locked up in coastal areas off California and elsewhere. We should also eliminate the last vestiges of regulation which are preventing the development of low-cost natural gas reserves.

****1003 *486** In the event these resources are not released and unwise governmental policies create another 'oil crisis', the SPR will be available to soften the impact on consumers and businesses.

JAMES T. BROYHILL.
NORMAN F. LENT.
CARLOS J. MOORHEAD.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

BILL DANNEMEYER.
BOB WHITTAKER.
THOMAS J. BLILEY, Jr.
MICHAEL G. OXLEY.
DON RITTER.

***487** *Subtitle C—Uranium Enrichment and Power Sales*

The Committee on Energy and Commerce, having considered the Committee Print, reports favorably thereon and recommends that the Committee Print be referred to the Committee on the Budget.

PURPOSE AND SUMMARY

This measure reforms the Department of Energy's uranium enrichment program by reducing authorized spending and requiring specific repayments to the Treasury for prior year investments in the program. The program is currently in debt to the Treasury. The repayment levels required by the measure, $460 million over three years, are slightly higher than the assumptions in the budget resolution to provide greater deficit reduction. The measure also permits DOE to resell to electric utilities unneeded electric power which it has contracted to purchase for its uranium enrichment activities, with any revenues in excess of the energy charge to be returned to the Treasury in further repayment.

The reduced authorizations and repayment requirement are expected to reduce outlays, compared to the Congressional Budget Office baseline, by approximately $600 million over three years. Under CBO estimates, the program outlays would have exceeded revenues by $250 million. The bill authorizes appropriations at less than revenues, by requiring repayment resulting in an additional $350 million in outlay savings. The resale provision is expected to save an additional $25 million to $30 million a year beginning in FY 1987.

BACKGROUND AND NEED FOR THE LEGISLATION

The purpose of the uranium enrichment program is to produce uranium enriched in the U–235 isotope to a level sufficient for use in civilian nuclear power reactors and certain defense related Government programs. The Government charges utilities for its services, and under the terms of section 161v. of the Atomic Energy Act of 1954, the charges must be established at a level to recover the costs of the program.

Despite the requirement to recover costs, the program is currently in debt to the Treasury. The General Accounting Office has estimated the indebtedness of the program at $6 billion with the inclusion of imputed interest. The amount of the debt is currently the subject of discussions between the Office of Management and Budget and the Department of Energy.

****1004** There are many causes for the program's failure to recover these costs. The principal reason is the overestimate by both the Government and utilities of the demand for the services. The Government made costly improvements to its gaseous diffusion plants to increase capacity and embarked upon the costly construction of a ***488** gaseous centrifuge enrichment plant for further capacity. In addition, the Department committed itself in contracts to purchase increased amounts of electricity to operate the plants. Furthermore, the Department may not have established prices for enrichment services that fully recovered costs.

The demand forecasts proved highly inaccurate, principally because scheduled nuclear power plants were cancelled. Moreover, new foreign enrichment capacity came on line, further reducing demand for the Government's enrichment services. As as result of these events, the Government was left with substantial unneeded enrichment capacity and costly take-or-pay contracts for electricity that it could not use.

On June 5, 1985, Secretary John Herrington took several actions to reduce program costs. He halted construction of the gaseous centrifuge enrichment plant. The Government had already spent $2.6 billion on the plant, and it was estimated that completion would cost an additional $5 billion. The Secretary also placed one of the three gaseous diffusion plants on standby status.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The actions of the Secretary are expected to reduce the costs of the program. The first concurrent budget resolution incorporated assumptions that the program would now be in a position to begin repayaments to the Treasury of amounts owed. According to an analysis by the Congressional Budget Office, the resolution assumed that program revenues would exceed program expenditures by an amount sufficient to permit repayment of at least $98 million in FY 1986, $145 million in FY 1987, and $146 million in FY 1988.

Although the House and Senate agreed to these assumptions in the budget resolution, and the repayments were also supported by the Administration, the status of the repayments was called into question in the consideration of the program's appropriation contained in H.R. 2959, the Energy and Water Development Appropriation for FY 1986. That bill did not require repayment, and the House Committee noted in its report:

> The Committee has not included appropriation language requested which would permit the repayment of prior year appropriations to the U.S. Treasury. In the view of the Committee, this proposal may require statutory authority and this is the prerogative of the authorizing committees of jurisdiction. Action on this proposal of the Administration will have to await consideration by the authorizing committees. (H. Rpt. 99–195, p. 104)

Although repayment would have taken place had the appropriation for the program been less than the estimated revenues, the Committee agrees that authorizing language clearly requiring repayment is desirable. Therefore, the Committee has included in its reconciliation recommendations a three-year authorization for the program with an explicit requirement that the program begin repayment to the Treasury in specified amounts. The repayment amounts specified in the measure are consistent with assumptions ****1005** in the budget resolution. They have been slightly increased based upon more recent information supplied by the Department of Energy.

The stipulated repayment amounts are intended to be a floor. The Committee commends the Secretary of Energy for the cost ***489** saving actions it took earlier this year and the Department is encouraged to take further steps to improve the efficiency of the enrichment program. It is important to begin the process of debt repayment and the amounts mandated by this legislation is an excellent first step. It is anticipated that the Department will be able to increase its payments as is necessary to repay the full debt in subsequent years as it gets on firmer financial ground.

The program continues to suffer under a costly contract to purchase electric power from the Tennessee Valley Authority. The contract will require the Department of Energy to pay $400 million per year for the next several years for the right to purchase power it no longer needs due to closure of its Oak Ridge, Tennessee and Paducah, Kentucky uranium enrichment facilities. Attempts by the Department to renegotiate this contract have been largely unsuccessful. The Department and the Authority are encouraged to negotiate a more equitable arrangement as soon as possible.

There is evidence that some of the power that the Department has contracted for could be used by other electric utilities, providing benefits for DOE as well as the purchasing utilities and their customers. However, TVA has refused to consent to the resale of the power. To resolve this problem, the bill directs the Department of Energy to attempt to resell its power to electric utilities which could purchase the power and prohibits any Executive agency, including TVA, from refusing to consent to this sale. Any revenues in excess of the energy charge from the sale would be returned to the Treasury as partial repayment of the program's debt.

The Committee is aware of the longstanding 'fence' around the TVA service area, and the reasons for its existence. This provision does not break down this fence or change TVA's relationship with the surrounding utilities. This is power which DOE has a contract to purchase, and which DOE, and not TVA, would be selling. As such, there are clear limits to the amount of power allowed to be sold under this provision—it is the 4,485 megawatts DOE currently has the contractual right to purchase, and only that power. Also, DOE has power under contract for a limited period of time and thus cannot be considered a long-term supplier who will displace other utility capacity. Moreover, the sale of power is not intended to be done on a cut-rate basis since DOE would have no interest in selling the power below its full cost, which is tied to the industrial rate set throughout the TVA system.

The Committee expects that the overall impact of this provision on those now served by TVA should be positive. The provision is not intended to put DOE into competition with TVA since DOE would not be offering power for sale within the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

TVA region, nor is it intended to allow DOE to displace TVA sales to other utilities through existing interconnection and power-exchange agreements. To the extent that DOE is able to find purchasers for this power, TVA will then be able to use power generation facilities that otherwise would lie idle. A component of the energy charges that DOE ****1006** pays to TVA if, and only if, it takes the power would be returned to the TVA system to the benefit of consumers in the TVA region.

The Committee permits resale of TVA power by DOE only to other electric utilities. Thus, any sales would benefit such utilities and all of its customers.

***490** COMMITTEE CONSIDERATION

On September 18, 1985, the Committee met in open mark-up session and, with a quorum present, ordered a Committee Print transmitted to the House Committee on the Budget, in accordance with section 310 of the Congressional Budget Act of 1974.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee has made findings and recommendations as set forth in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that this measure will reduce outlays by $120 million in FY 1986, by $234 million in FY 1987, and by $297 million in FY 1988.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported measure:

The uranium enrichment program reforms will not contribute to inflation, and will reduce the Federal deficit by approximately $675 million over the next three years. The reforms are not expected to increase the costs of enrichment services. Nuclear fuel costs represent a very small component of the cost of nuclear power, and any increase in enrichment service prices should result in only negligible, if any, increases in consumers' electric bills.

SECTION-BY-SECTION ANALYSIS

Section 4301 is a three-year authorization for the uranium enrichment program. The authorization for each year is an amount equal to the revenues estimated by the President in his budget submission less the amount of repayment specified in section 4302. Subsection (b) requires that an adjustment to the authorization level in subsection (a) be made if the revenue estimates for the prior year are subsequently adjusted. For example, if the revenues for FY 1986 are estimated in the FY 1986 budget submission to be $1.8 billion, but if the FY 1986 revenues are re-estimated in the FY 1987 budget submission to be $1.7 billion, then the FY 1987 authorization must be decreased by $100,000 to adjust for the decrease in prior year revenues.

****1007** Section 4302(a) establishes a schedule for repayment to the Treasury of the prior investment in the enrichment program. The amounts are $110 million in FY 1987; and $150 million in FY 1988. These amounts are the minimum repayments to be made to the ***491** Treasury is these fiscal years and may be increased. Subsection (b) permits the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

repayments to be made on a quarterly basis. The purpose of the subsection is to make clear that the full year's repayment need not be made prior to any program expenditure.

Section 4303 permits the Secretary of Energy to resell to any electric utility electricity that the Secretary has the right to purchase, under contract or law, for the uranium enrichment program, if the Secretary determines the power to be unnecessary. Subsection (b) prohibits any Executive agency from withholding consent to the sale. Subsection (c) requires the agency selling the power to deliver such power where requested by the Secretary and requires the various power authorities under the Secretary to assist in transmission. The Committee intends by requiring any Executive agency selling electric power to make such power 'available to the location requested by the Secretary of Energy,' that such agency do only what is within its capacity to do. This would require such an agency to deliver the power to the interconnection points of its own system with other electric utilities, and would not prohibit that agency from recovering any additional costs which it legitimately incurs as a result. The provision allows DOE to specify which interconnection point delivery should be made to because this will facilitate sale of the power. If other systems are then to transmit that power beyond the interconnection point, it is for DOE to arrange through appropriate negotiations. Subsection (d) requires the Secretary to deposit in the Treasury general fund any revenues in excess of the energy change incurred as a repayment in addition to the section 4302 repayments. Subsection (e) defines several terms used in this Section. The term 'electric utility' is defined as any person, State agency or Federal agency which sells electric energy, other than a person which sells only electric energy from a cogeneration facility or small power production facility. The Committee does not intend to include within this definition entities, such as industrial consumer, which may constitute themselves into an electric utility solely for the purpose of meeting this definition so as to purchase power sold pursuant to this Section. The Committee intends to prohibit DOE from selling electricity to the ultimate customers of electric utilities.

The purpose of section 4303 is to permit the Department of Energy to resell power it has acquired the right to purchase from the Tennessee Valley Authority. The sale must be to an electric utility and must be at a price above the energy charge for the power. The Department currently is paying approximately $400 million per year for the right to purchase power it does not need. The provision is designed to reduce this loss, increase TVA production, and supply utilities with additional power, as needed. It is not the intention of this provision to permit DOE or TVA to unfairly compete with utilities outside the TVA region. Thus, sales are permitted only to utilities and not to end-use customers. The Secretary ****1008** should take such steps as may be necessary to ensure that the sales of such power do not harm these neighboring utilities and their customers.

***492** *Subtitle D—Energy-Related User Fees*

The Committee on Energy and Commerce, having considered the Committee Print, reports favorably thereon, without amendment, and recommends that the Committee Print be referred to the Committee on the Budget.

PURPOSE AND SUMMARY

The purpose of the Committee Print is to institute the collection of user fees and/or annual charges for some or all of the operations of the Federal Pipeline Safety program of the Department of Transportation, the Nuclear Regulatory Commission, and the Federal Energy Regulatory Commission.

The Conference Report on the Budget, S. Con. Reg. 32 (H. Rept. 99–249), assumed that the Committee on Energy and Commerce would report legislation imposing a system of user fees to fund most of the activities of the Federal Energy Regulatory Commission.

This assumption was consistent with proposed language previously submitted to Congress by the Administration. Section 3 of this Committee Print is consistent with the assumptions of the Budget Committee and, in addition, is similar in many respects to the previous proposals by the Administration.

The Energy and Commerce Committee, in acting upon the assumptions contained in the Conference Report on the Budget, also decided to look at other energy-related user fees. The need to reduce Federal spending and the budget deficit was paramount during these deliberations. Therefore, the Energy and Commerce Committee proposes in this Committee Print to institute user fees for two additional Federal programs.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Pipeline safety user fees

Section 4401 of the Committee Print for Energy Related User Fees requires that the total Federal cost of the pipeline safety programs administered by the Department of Transportation (DOT) pursuant to the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended, and the Hazardous Liquid Pipeline Safety Act (HLPSA) of 1979 be funded through user fees imposed on pipelines subject to DOT regulation under either act. Total costs are intended to include the costs associated with collection of the user fees as well as the entire range of costs related to the activities and responsibilities delegated to DOT under the above referenced statutes including grants to the states.

NRC annual charges

Section 4402 of the Committee Print requires the Nuclear Regulatory Commission (the Commission) to assess annual charges upon its licensees. The revenues, when combined with other fees, should equal one-half of the NRC budget. The NRC has requested $430 million for its FY 1986 budget, and currently collects approximately $60 million in fees. Thus, the annual charges would increase revenues ****1009** by about $150 million per year. The Commission must establish the schedule of charges by rule, and the bill provides for guidelines to be followed by the Commission in the rulemaking.

***493** *FERC user fees*

The purpose of Section 4403 of the Committee Print is to grant the Federal Energy Regulatory Commission (FERC) the authority to assess and collect charges from companies subject to FERC's regulation. The revenues collected from these charges, when added to the revenues collected by FERC through the assessment of various fees, will cover most of FERC's operating costs. Since FERC will sustain itself almost completely through the collection of fees and charges, the burden on the U.S. Treasury will be reduced.

Section 4403 of the Committee Print requires FERC to assess annual charges on interstate natural gas pipelines, interstate oil pipeline carriers, and public utilities. FERC currently assesses these companies various fees which cover a portion of the costs of their regulation. The annual charges authorized by this section will be based generally upon sales, and, when combined with fees already being assessed, will cover almost the full cost of regulating these pipelines and utilities.

BACKGROUND AND NEED FOR THE LEGISLATION

Peipeline safety user fees

Natural Gas Pipeline Safety Act

The Natural Gas Pipeline Safety Act of 1968 (NGPSA) provided for federal safety regulations of those facilities used in the transportation by pipelines of natural and other gases in or affecting interstate or foreign commerce. It created exclusive federal authority over interstate gas pipeline systems and granted the Department of Transportation (DOT) overall responsibility for regulation of intrastate gas systems with provisions allowing for state assumption of regulatory jurisdiction over intrastate systems.

Hazardous Liquid Pipeline Safety Act

The Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) granted DOT substantial new regulatory and enforcement authority over liquid pipelines which parallels that granted by the NGPSA. Specific provisions allow for: (1) establishment of minimum federal safety standards governing the transportation of hazardous liquids by pipeline, (2) a program for federal-state cooperation in regulating intrastate liquid pipelines and federal financial assistance to state agencies, and (3)

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

establishment of civil penalties for violations of the federal standards to augment the criminal penalty provisions previously established by the Transporation of Explosives Act.

Desirability of user fees and need for legislative authority

The possibility of funding the Federal Pipeline Safety program through the collection of user fees has been discussed by Congress at least since 1981. (*See* dissenting views, H. Rept. 97–89, Part 2, accompanying H.R. 3420, the Pipeline Safety Authorization Act of 1981.) More recently the Committee, at a hearing held March 12, ****1010** 1984, in connection with FY 1985 authorizations for the Pipeline Safety Program, asked DOT to consider the appropriateness of user fees. In a letter dated May 3, 1984, Mr. Sharp and Mr. Dannemeyer ***494** asked the General Accounting Office to study the legal and practical issues surrounding the collection of pipeline safety user fees.

At the April 16, 1985, hearing, Mr. Oliver W. Krueger of the U.S. General Accounting Office testified that DOT had the legal authority to implement a system of specific fees for specific inspections. He added, however, that 'under the general user fee statute, which is already on the books and applies to all agencies, you are somewhat restricted as to what you can charge for.' He concluded that, 'If you pass specific legislation authorizing the Department to do that (collection general user fees), then you can charge whatever you want to for whatever you want to, really.'

Ms. Cynthia Douglass, Administrator, Research and Special Programs Administration, U.S. Department of Transportation, stated that, 'Generally, the Administration has been supportive of user fees, and we go into it with, I think, a positive attitude, but there are a lot of questions that need to be answered, and I don't know if this is the appropriate place for a user fee.' Among the questions she raised were whether it would be fair to assess fees against just the largest users or against just those on whom inspections were performed in a given year, whether the costs of collecting the user fees would be excessive relative to the costs of the program, and whether the Department has legal authority without new legislation to collect anything other than fees for a specific inspection of a specific pipeline operator.

Mr. Dale Johanson of the Missouri Public Service Commission, representing the National Association of Regulatory Utility Commissioners (NARUC), stated that 'with the Federal budget deficit constraints continuing to affect Federal funding for the grant-in-aid programs, the NARUC believes that the time is right to begin studying alternative funding mechanisms for these programs.' He also noted his concern about how a federal user fee would fit in with existing state user fees and whether state utility regulatory commissions would be willing to allow a pass-through to consumers of fees which, taken together, might exceed the cost of carrying out the pipeline safety program at all levels of government.

Mr. Krueger spoke to the issues of equity and costs relative to revenues. 'We believe that it is equitable for interstate pipeline operators and their customers to finance DOT's safety inspections, because the risks that these inspections reduce are entirely created by the pipeline operations. . . . Our economic analysis of the user fees shows that the impact of a user fee on interstate pipeline companies and their customers will be extremely small, since the safety inspection program is so small relative to industry revenues.'

The Energy and Commerce Committee, nothing that eleven states are already using some form of user fee system, instructed DOT to 'move much more rapidly' in answering some of the questions of equity and administration and to prepare by October 1, 1985, a 'report and recommendation' for administerion a user fee.

The Energy and Commerce Committee concluded that imposition of user fees is feasible and that imposition of such fees would be an ****1011** extremely small financial burden on pipeline operators and customers. Pipeline safety user fees directly place the cost of the Federal pipeline safety programs on the users of the gas and hazardous ***495** liquids transported by those pipelines. With the benefit of work done by NARUC and the experience of several states. DOT has suffficient knowledge and experience to impose such fees during FY 1986.

NRC fees

The Nuclear Regulatory Commission is responsible for administering the Atomic Energy Act of 1954 and other statutes relating to the regulation of nuclear energy and radioactive materials. The Commission's budget request for FY 1986 is

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

approximately $430 million.

The Commission currently assesses license fees on over 20,000 licensees. Revenues from these fees are estimated at approximately $60 million per year.

The Administration has been committed to requiring the Federal Energy Regulatory Commission to collect charges from pipelines and electric utilities to recoup the costs of regulation. In adopting the Administration proposal with respect to FERC, the Energy and Commerce Committee applied a similar standard to the NRC. The energy-related user fee legislation, therefore, increases charges to NRC licensees.

The Committee Print requires the NRC to collect fees and charges that total one-half of its budget. This will add more than $150 million per year in revenues. Discretion is left to the NRC to established the details of the charges in a rulemaking. However, the Commission must consider the costs of regulating various classes of licensees. The Commission must also consider other special circumstances, such as the impact of charges on research and medical treatment. In addition, in allocating charges nuclear power reactors, consideration is to be given to the facilities' rated capacity.

FERC user fees

FERC has requested legislation since 1982 to authorize it to assess annual charges on the companies subject to its regulation. A proposal requesting such authority was again submitted to the Congress in May of 1985. The stated purpose of the proposal was 'to make clear the Commission's authority to reduce the costs of energy regulation to the taxpayers by recovering a greater share of those costs, in the form of annual charges and user fees, from energy companies that operate under Commission license or authorization.'

The budget submitted by the President for fiscal year 1986 proposed enactment of the legislation submitted by FERC. When the Congress considered and formulated its own budget proposal to reduce the Federal deficit, the grant of authority to FERC to asses certain charges on regulated companies was assumed. The conference report on the budget assumed that the Energy and Commerce Committee would achieve savings in reconciliation by reporting legislation that would impose a system of FERC user fees. This Committee Print is responsive to those assumptions.

****1012** The only authorities currently available to FERC to assess fees to reimburse the Federal government for FERC's work are section 10(e) of the Federal Power Act and the Independent Offices Appropriations ***496** Act of 1952. Under the former authority, annual charges can be and are assessed to companies holding hydroelectric licenses. Under the latter authority, only certain types of fees can be assessed; these fees cover only a relatively small portion of the costs of operating FERC.

FERC does not currently have authority to assess charges on regulated companies for the remainder of the work performed by FERC in regulating oil pipelines, natural gas pipelines, and public utilities. The legislation gives this authority to FERC.

HEARINGS

During the 99th Congress, the Energy and Commerce Committee held one hearing in pipeline safety on April 16, 1985. Testimony was received from Ms. Cynthia Douglass, Administrator, Research and Special Programs Administration, U.S. Department of Transportation (DOT); Oliver W. Krueger, U.S. General Accounting Office (GAO); and Mr. Dale Johanson of the Missouri Public Service Commission, representing the National Association of Regulatory Utility Commissioners (NARUC). In the context of the program's budget authorization for FY 1986, witnesses commented on the desirability and feasibility of pipeline safety user fees and the legal authority for imposing them.

COMMITTEE CONSIDERATION

On September 18, 1985, the Committee on Energy and Commerce met in open mark-up session and, with a quorum present, ordered a Committee Print transmitted to the House Committee on the Budget, in accordance with the reconciliation

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

assumptions of the budget resolution and the requirements of section 310 of the Congressional Budget Act of 1974.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Prepresentatives, the Committee has made oversight findings and recommendations as set forth in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 21(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Energy and Commerce Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the Committee Print will result in savings totaling $203 million in both Budget Authority and Outlays in FY 1986, $215 million in both Budget Authority and Outlays in FY 1987, and $224 million in both Budget Authority and Outlays in FY 1988.

****1013 *497** INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Energy and Commerce Committee makes the following statement with regard to the inflationary impact of the reported Committee Print:

The Energy and Commerce Committee believes that there will be negligible inflationary impact due to the imposition of user fees. The total amounts to be collected are relatively small and any small increases which might occur would certainly be offset by the savings resulting in the Federal budget.

SECTION-BY-SECTION ANALYSIS

Section 1. Pipeline Safety User Fees

Subsection (a): Requires the Secretary of Transportation to establish user fees on natural gas and hazardous liquid pipelines which are subject to the Secretary's jurisdiction under the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, in order to recover the total costs incurred by the Department of Transportation in administering the safety programs under NGPSA and HLPSA.

Under paragraph (a)(1), each pipeline subject to these two Acts would be assessed a fee based on the size of the pipeline and the scope of its activities. Over a number of years, such a measure should reflect the amount of costs that pipeline system imposes on DOT. Because the costs of administering DOT's program are shared by the entire pipeline industry, some reasonably equitable formula for spelling out each pipeline's portion of those total costs has to be selected by the Secretary.

This subsection specifies that the formula must be 'reasonable,' and gives the Secretary discretion to select among several different approaches for allocating total program costs fairly among the various pipelines. In addition to the specified measures, i.e., volumemiles and miles, the Secretary may choose an appropriate combination thereof, for example, a combination that reflects each pipeline's own share of total pipeline industry revenues in a recent year. The Committee believes that this, too, would yield a fair allocation of program costs.

Two additional reasonable guidelines for allocating program costs are set forth in subsection (d)(2), relating to non-hydrocarbon gases and liquids, and subsection (d)(3), relating to pipeline facilities that create an unusual drain on DOT safety resources.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Under paragraph (a)(2), DOT retains discretion to enter into agreements with other departments of the government, such as the Treasury, for the actual collection of the fee. Similar agreements with the states, under this paragraph and subsection (e), are also permitted.

In addition, under paragraph (a)(2), the Secretary may establish such procedures as are necessary for ease of administration and to prevent inefficient, duplicative, or counter-productive collection costs. The Committee expects that DOT will not ordinarily impose user fees on local distribution companies. Some of these companies are so small that the cost of collecting the fee may equal or even exceed the company's fair share of total program costs. Moreover, ****1014 *498** to the extent that transmission pipelines serving them lawfully pass on user fees to them in their rates, local gas distribution companies are in reality contributing to DOT's safety program costs.

Clearly, the Energy and Commerce Committee does not expect DOT to impose a user fee on every master meter operator; but it does expect that all inter- and intra-state natural gas and hazardous liquid pipelines which have facilities subject to these two safety laws will pay an annual fee.

Under paragraph (a)(3), fees established under this subsection shall be paid by the pipeline which owns the facilities subject to the safety laws.

Subsection (b): Describes the intention of the Energy and Commerce Committee that each fiscal year's assessments and collections shall cover DOT's safety program costs for that year. Subsequent adjustments, after the end of a particular fiscal year, may be needed to achieve this goal, and such adjustments are not barred by this subsection.

Subsection (c): States that DOT program continues to be subject to annual authorizations and appropriations. Only the source of the funds—not the spending of them—is affected by this section. The funds collected from natural gas pipelines are to pay only for the natural gas pipeline safety program; the funds collected from liquid pipelines are to pay only for the costs of the hazardous liquid pipeline safety program.

Subsection (d): Paragraph (d)(1) specifies that while the user fees are to be sufficient to cover all costs of the Federal DOT safety program under the two pipeline safety acts (including the costs of collecting the user fees), they are not intended to be so high that they generate additional funds beyond the costs of the safety program. If charges are inadvertently excessive, they can be refunded to pipelines or credited against future charges, in the Secretary's discretion.

This subsection also specifies that the fees shall start on October 1, 1985, i.e., they shall be assessed against gases and liquids transported on and after October 1, 1985, and shall be adequate to meet program costs incurred on and after October 1, 1985.

Paragraph (d)(2) authorizes higher rates for non-hydrocarbon gases and liquids. Unlike hydrocarbons—such as pipeline quality natural gas, crude oil, and refined petroleum products—these non-hydrocarbon gases and liquids, such as carbon dioxide, ammonia, or coal slurry, may require disproportionate amounts of DOT's time and resources. The same may be true of hydrocarbons that contain other non-hydrocarbon substances, such as sour crude oil or sour natural gas. If so, the Secretary may set the user fees for some or all of these substances at a level higher than is set for hydrocarbons.

Paragraph (d)(3) authorizes higher rates if a pipeline safety accident requires an excessive or unpredicted drain on DOT resources. In addition, the Energy and Commerce Committee believes that Liquified Natural Gas (LNG) facilities pose unique safety considerations, and may therefore warrant a higher fee than pipeline facilities which transport only natural gas in its gaseous state.

Subsection (e): Authorizes but does not require the Federal government to act as an agent for the states, and collect a state user ****1015 *499** fee if the state user fee is compatible with the Federal user fee and fee schedule. The collection of the state fee by DOT would be lieu of state collection of user fees, not in addition to state collection. The intent is to achieve economies of administration by eliminating dual collections of similar fees.

The Energy and Commerce Committee does not intend that DOT enter into a collection agreement under this subsection with any state that uses its pipeline safety user fees to generate revenues in excess of those needed to fund the costs of the state pipeline safety program.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 2. NRC Annual Charges: Subsection (a) requires the Nuclear Regulatory Commission to assess annual charge upon its licensees beginning with fiscal year 1986. The charges are to be established by rule.

Subsection (b) sets forth matters to be considered in establishing assessments. Charges are to be allocated among different classes of licensees taking into consideration the relative cost of regulating each class. In addition, the Commission may consider other appropriate factors. In particular, appropriate actions, including exemption, should be taken to avoid adverse impact on research and medical treatment as a result of such charges. The imposition of charges on hospitals and research centers could raise the cost of health care and research or put undue strain on these budgets. Therefore, the Commission is instructed to pay careful consideration to these factors and consider waivers of the fee where appropriate. There are a large number of licensees potentially subject to charges, and the bill provides the Commission with the necessary discretion and flexibility to accommodate situations where administrative costs would outweigh the revenues raised by charges to certain licensees as the indefinite suspension of a reactor's operation or those factors described above, would make such charges inappropriate. In allocating charges among nuclear power reactors, the Commission is instructed to take into consideration the rated capacity of each plant.

Subsection (c) establishes the level of charges under this bill, so that when combined with other fees, they will be equal to 50 percent of the Commission's costs. It is the Committee's intention that the authority in this bill be used to the maximum so as to achieve the full level of deficit reduction.

Subsection (d) permits the Commission to make estimates in assessing charges. The purpose of this provision is to provide the Commission the necessary authority and flexibility to assess charges during the fiscal year, rather than requiring the Commission to complete its fiscal year and determine its actual expenditures.

Subsection (e) permits, to the extent provided in appropriation Acts, that amounts collected may be retained and used for the Commission's costs. Such amounts will offset appropriations. The appropriation mechanism should be similar to that currently used for the FERC, in which the Commission receives a full appropriation for its budget, and revenues are used to offset the appropriation. The provision is not intended to permit only a 'net appropriation' which could leave the Commission vulnerable to the timing of collections of its revenues. The provision also makes clear that ****1016 *500** the retention of revenues is subject to appropriation Acts, so the Commission may not utilize revenues except as provided in authorization and appropriation Acts.

Section 3. FERC User Fees: Subsection (a) grants FERC that authority to assess and collect annual charges from interstate natural gas pipelines, interstate oil pipeline carriers and public utilities. This authority is effective beginning fiscal year 1986. It is the intent of the Energy and Commerce Committee that FERC assess and collect charges covering its activities from October 1, 1985, although bills for these charges would not be issued until late in the fiscal year. The Energy and Commerce Committee intends that FERC implement the new authority through a generic decision or order so that new rate proceedings would not have to be conducted for each company before the new charges are included in rates.

Subsection (b) specifies the methodology FERC is to use to allocate the costs incurred during a fiscal year in administering its jurisdictional statutes, and to assess these costs as annual charges.

For interstate natural gas pipelines, each pipeline's annual charge is to be a proportionate share of FERC's cost of administering all aspects of the Natural Gas Act and the Natural Gas Policy Act of 1978. Each pipeline's proportion is to be calculated by dividing the total volume of natural gas delivered or sold by all interstate natural gas pipelines, into the volume of natural gas delivered or sold by the subject pipeline. This fraction is to be multiplied by FERC's costs of administering the Natural Gas Act and the NGPA in order to determine the pipeline's annual charge.

All volumes of gas either sold or delivered to local distribution utilities for sale or use, as well as all volumes either sold or delivered to consumers for ultimate use, are to be included in the total volume of this calculation for all pipelines. It is intended that pipeline-to-pipeline sales or deliveries not be included in the calculation of volumes. In this way, no volumes will be counted twice. Many of the pipeline companies are familiar with identifying those volumes which should not be counted (to avoid double counting), because they perform this identification in determing the volumes which are assessed the funding unit for the Gas Research Institute (GRI).

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The methodology provided for the assessment of charges on interstate oil pipelines is similar to that for gas pipelines, in that each barrel moved through the interstate oil pipelines would be assessed the same charge as every other barrel moved through the system. Each oil pipeline company's annual charge would be calculated on its proportion of FERC's costs of administering the regulation of oil pipelines under Title 40 U.S.C. (The authority to administer these provisions was transferred to FERC from the Interstate Commerce Commission in the Department of Energy Organization Act of 1977.) Each company's proportion would be calculated by dividing the total barrels of oil (subject to FERC's jurisdiction) delivered by that company, by the total barrels of oil (subject to FERC jurisdiction) delivered by all interstate oil pipelines. This fraction would be multiplied by the total costs to be assessed to all oil pipelines, to obtain the charge to be assessed to the particular company in question.

The assessment of charges on public utilities will equal the adjusted costs of the Commission, as defined in subsection (h). The allocation ****1017** allocation ***501** of the charges among the utilities are to be based upon jurisdictional sales.

Subsections (c)–(e) provide that the annual charges authorized to be collected in subsection (b) must be paid by the end of the fiscal year for which they are assessed.

The Energy and Commerce Committee intends in subsection (c) that FERC base its assessments on as close to actual data as possible. That is, the actual operating costs of FERC for a given fiscal year are to be assessed on the basis of actual sales or deliveries for the same period of time. FERC is directed to wait until the fourth quarter of a given fiscal year to obtain as much actual data as possible on sales and deliveries, and then estimate sales and deliveries for the final quarter. In subsection (e), FERC is given authority to make adjustments to these estimates, once acutal data is available in the next fiscal year, and to make credits to or add obligations to the following fiscal year's assessments, reflecting these adjustments.

Subsection (f) provides that FERC may retain annual charges as collected and use them for carrying out its responsibilities, as well as retaining them until expended. This methodology has been followed in recent fiscal years in appropriating funds for the operation of FERC. Under this approach, the authorization and appropriations committees retain full control over the total costs which FERC can incur in performing its regulatory responsibilities. The appropriation will continue to be an appropriation for the entire FERC budget, and charges and fees may be used to offset the appropriation. The availability of funds to FERC is not to be made contingent upon the collection of such charges.

Subsection (g) provides that FERC shall include annual charges assessed to interstate natural gas pipelines as a uniform (or level) charge on each unit (measured by volume or heat content as determined appropriate by FERC) of gas sold or transported by a pipeline. The Committee expresses no preference on who—the producer, the pipeline, or the purchaser—should ultimately pay the charge. The Committee's only intent is that each unit of gas that is transported through the interstate pipeline system or sold by an interstate pipeline (with adjustments to assure no double imposition of charges) bear the same charge to avoid any one person being charged more per unit of gas than another. The Committee determined this was the most equitable way to assess the costs incurred by FERC in administering the Natural Gas Act and the Natural Gas Policy Act of 1978.

Subsection (h) provides those costs which shall be included in the total costs to be assessed as annual charges. The Energy and Commerce Committee assumes that a small portion of the total cost of operating FERC would not be assessed as annual charges, or fees under the 1952 Act. Excluded will be the costs incurred by FERC in administering the cogeneration and small power production programs, because the imposition of substantial charges upon small producers would be contrary to policies encouraging the development of these potential sources of energy.

FERC is then to allocate and determine the costs incurred in administering its jurisdictional statutes, broken down into the following areas of responsibility: the administration of the Natural Gas ****1018 *502** Act and the Natural Gas Policy Act of 1978; the regulation of interstate oil pipelines under Title 49, U.S.C.; and the regulation of public utilities under Parts II and III of the Federal Power Act. From these three subtotals, FERC is to subtract the fees collected (if any) under the 1952 Act which are paid in connection with activities which pertain to each of the programs. The remaining costs of administering its jurisdictional statutes in each of the three areas are those costs which are to be assessed as annual charges.

The remainder of subsection (h) sets forth definitions of an 'interstate natural gas pipeline;' a 'pipeline carrier;' a 'public

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

utility;' and 'natural gas sold or transported.'

Subtitle E—Federal Energy Conservation Shared Savings

The Committee on Energy and Commerce, having considered the Committee Print, reports favorably thereon, without amendment, and recommends that the Committee Print be referred to the Committee on the Budget.

PURPOSE AND SUMMARY

This measure provides Federal agencies authority to enter into shared savings contracts with private energy service companies. These contracts will enable the Federal government to reduce its $4 billion annual bill for energy used in buildings without requiring appropriations for new equipment. Under shared savings contracts, the capital costs of installing energy conservation equipment in buildings are paid for entirely by the private energy service company. The company receives a return on its investment and recovers its costs by sharing in the energy savings which accrue after the equipment has been installed. The owner of the building (in this case, the Federal government) also shares in the energy savings, as agreed in the contract.

BACKGROUND AND NEED FOR THE LEGISLATION

The Federal government is the nation's largest energy consumer. In 1984, Federal agencies used 1.9 quadrillion Btu's of energy at a cost of nearly $12 billion. Of that amount, over $4.2 billion was spent on energy used in Federal buildings.

In recent years, progress towards improving the efficiency of Federal energy use in buildings has stalled. Measured on the basis of Btu's per gross square foot, Federal energy efficiency improved through 1981, but has not improved since. Moreover, from 1983 to 1984, Federal building energy efficiency declined.

The Committee does not want to see conservation efforts stall. At the Committee's request, the General Accounting Office (GAO) has reviewed the efforts of each of the major energy consuming agencies to reduce energy consumption (See, e.g. 'Overview of Selected Civilian Agencies' Progress in Achieving Energy Conservation' (GAO/RCED–84–200); 'Overview of the Department of Defense's Progress in Achieving Energy Conservation (GAO/RCED–85–122)). The Committee remains convinced that the energy efficiency in Federal buildings can still be improved significantly.

****1019 *503** Also, the severity of the Federal budget deficit has continued to grow, forcing most agencies to forego requests for additional capital expenditures for energy efficiency improvements, even where such expenditures would save money over the life of the investments. For example, the Department of Defense, which uses 70 percent of all the energy consumed in Federal buildings, has reduced its energy conservation investment program by 25 percent since 1981.

However, it has come to the Committee's attention that an innovative approach to overcoming these hurdles has developed in the private sector. Private companies, recognizing that energy savings in buildings can represent attractive investment opportunities, are now actively soliciting building owners to allow them to install energy conservation equipment at no charge to the owner. The private company risks its own capital in return for a share of the energy savings resulting from the improvements. According to the Department of Energy, several hundred companies now exist which are active in this business.

Although private building owners are now taking advantage of such arrangements, the Federal government has not been able to participate. According to the Department of Energy, which has attempted to promote shared savings contracts by Federal agencies, the principal barrier to Federal participation is the lack of authority to enter into long-term contracts. This barrier has actually prevented the Navy from proceeding with at least three shared savings proposals, and other agencies, aware of the Navy's problems, have been discouraged from investigating this option further.

For these reasons, the Committee is providing the necessary authority and encouraging all agencies to use this authority when appropriate to increase energy efficiency.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

COMMITTEE CONSIDERATION

On September 18, 1985, the Committee met in open session and, with a quorum present, ordered the Committee Print transmitted to the Committee on the Budget, in accordance with the requirements of section 310 of the Congressional Budget Act of 1974.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee has made findings and recommendations as set forth in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that this measure will reduce outlays by the Federal government for utility costs by a minimum of $300,000 in FY 1986, by $2.3 million in FY 1987, and by $4.4 million in FY 1988.

**1020 *504 INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported measure:

The measure provides no new spending authority. Instead the measure will reduce Federal spending by permitting private companies to finance the installation of energy efficiency improvements. There will be no inflationary impact of this measure.

SECTION-BY-SECTION ANALYSIS

Section 4501

Section 4501 amends the National Energy Conservation Policy Act by adding a new title, 'Title VIII—Shared Energy Savings.' The new title has four sections as follows:

Section 801. This section provides authority to Federal agencies to enter into long-term energy savings contracts, notwithstanding any other provisions of law. The Committee does not intend and does not expect that the entire amount of funds necessary to carry out these contracts or to cover contingent liabilities be appropriated in the year the contracts are signed. Instead, the Committee intends that payments be made periodically out of savings that result after energy conservation materials, equipment and services are provided by a private contractor. The initial cost of implementing such energy savings measures is borne by the private contractor in exchange for a share of any savings resulting from such implementation.

Section 802. This section provides that any amount paid by a Federal agency pursuant to any contract entered into under this title, including any termination costs, may be paid only from funds appropriated, after the date of enactment of this title, for

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

the payment of utility costs (and related operational and maintenance costs) of such agency. In providing authority to use utility funds in this manner, the Committee does not intend to prevent agencies from seeking additional authority or appropriations as the need arises.

Section 803. This section requires each agency to include a description of its progress in implementing this title in a report to Congress already required elsewhere in the Act.

Section 804. This section defines the terms 'Federal agency' and 'energy savings' for purposes of this title. The definition of 'energy savings' includes not only a reduction in energy consumption, but also a reduction in energy-related costs, in order to make clear that contracts for the installation of load-shifting devices are permitted even if such contracts do not reduce net energy consumption, as long as they reduce energy costs.

Finally, Section 4501 amends the table of contents of the Act to reflect the adoption of Title VIII.

****1021** * * * * *

***506** *Subtitle F—Charges to Cover the Cost of FCC Regulation*

The Committee on Energy and Commerce, having considered the Committee Print, reports favorably thereon, without amendment, and recommends that the Committee Print be referred to the Committee on the Budget

PURPOSE AND SUMMARY

The Committee recommendation requires the Federal Communications Commission (FCC) to charge fees for the regulatory services it provides to many of the communications entities within its jurisdiction. These fees have been recommended by the FCC and are based on the Commission's estimates of the cost of providing such services. The fee schedule will not subject any additional communications entities to Commission regulation.

BACKGROUND AND NEED

The Committee believes that fees based on cost of regulation principles are an appropriate mechanism by which a portion of the FCC's regulatory expenses may be recaptured.

HEARINGS

The Committee extensively reviewed FCC proposals and held meetings with industry representatives on the proposed fee schedule.

COMMITTEE CONSIDERATION

On September 18, 1985, the Committee on Energy and Commerce met in open session with a quorum present and ordered a Committee Print transmitted to the Committee on the Budget in accordance with Section 310 of the Congressional Budget Act of 1974.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has made findings and recommendations as set forth in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

****1022 *507** COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that this measure would result in net savings to the U.S. government in the amounts indicated by the Congressional Budget Office.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: The Committee does not believe that an inflationary impact on the economy will result from the passage of H.R. 2032. Indeed, by reducing the national debt below what it would otherwise be this measure will reduce interest rates and thereby decrease inflationary pressures.

SECTION-BY-SECTION ANALYSIS

Subsection (a) of Section 4601 of the Committee Print requires the Commission to collect fees for the following regulatory services:

Private radio service

1. *Marine Coast Stations* (New Modifications, Renewals). Maritime stations on land which are intended for the transmission of marine radionavigation information or communications for the operation of ships and for convenience of shipboard personnel and passengers. Alaska stations intended are for point-to-point communications within Alaska where no other means of communication is available.

2. *Operational Fixed Microwave Stations* (New, Modifications, Renewals). These stations are most commonly used for point-to-point communications. These communications are associated with Aviation, Marine, Public Safety, Industrial and Land Transportation Radio Services.

3. *Aviation Ground Stations* (New, Modifications, Renewals). These stations are intended for the transmission of air radionavigation communications for the operation of aircraft. This definition is applicable to the following Part 87 stations: Flight Test, Aviation Instruction, Aeronautical Search, Rescue, Radionavigation Land Test, etc.

4. *Land Mobile Radio Licenses* (New, Modifications, Renewals). These stations are used to satisfy the needs of commercial and industrial activities, state and local governments, transportation systems and religious, philanthropic and educational endeavors.

Equipment approval service

1. *Certification*. An equipment authorization issued by the Commission for equipment designed to be operated without individual license under Parts 15 and 18. Applies mostly to low power radio frequency devices, some computing devices, receivers which tune anywhere in the band 30 to 890 MHz, CB receivers and some other kinds of Industrial, Scientific and Medical (ISM) equipment.

****1023 *508** 1.a. *Receivers (except TV and FM receivers)*. A device for receiving elecatrical waves and/signals. These include CB receivers, scanning receivers, radio control and security alarms and receivers tuning between 30 and 890 MHz. TV and FM receivers are excluded as they require only *verification*. A process which allows the manufacaturer to be responsible for measurement necessary to insure with appropriate technical requirements. Reports of compliance are not required unless requested by the FCC.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

1.b. *All other devices*. These include non-licensed transmitting devices (low-power communication devices, personal computers (PC), PC peripheral devices, telemetering devices, cordless telephones, TV interface devices, to name a few) and Industrial, Scientific and Medical Equipment (Industrial heating equipment and induction cooking ranges).

2. *Type Acceptance*. Equipment authorization issued by the Commission for transmitting equipment to be used pursuant to a station authorization.

2.a. *Approval of Subscription TV Systems*. Applies to the encoding and decoding schemes for transmission and reception of scrambled bay TV programs over the air. Applicants must show that the requirements of Part 73 of the rules are met by the system.

2.b. *All others*. Applies to certain licensed transmitting equipment such as AM stereo exciter-generators, remote pick-up, low power TV, TV translators, instructional TV, FM broadcast translators/boosters, cable TV relay, mobile, maritime radio-telephone, aviation transmiters, to name a few.

3. *Type Approval*. Equipment authorization issued by the Commission based on examination and measurement of one or more sample units by the Commission at its laboratory. This applies to some compulsorily installed marine safety-of-life equipment, and to some non-licensed devices, including certain ISM devices.

3.a. *Ship (Radio-Telegraph) Automatic Alarm Systems*. Self-explanatory.

3.b. *Ship and Lifeboat (Radio-Telegraph) Transmitters*. Self-explanatory.

3.c. *All others (with testing)*. Examination and measurement testing required of new and major modification of some non-licensed transmitting devices (wireless microphones telemetering devices) and some Industrial, Scientific, and Medical Equipment (ultrasonic, heating, medical disthermy).

3.d. *All others (without testing)*. Applies to equipment previously tested and approved as new equipment, however resubmitted for approval under new name or minor modification to original approval.

4. *Notification*. Process requires manufacturers to test devices for compliance with applicable FCC regulations and to keep records of test data. Manufacturer submits brief application for authorization of device citing that all regulatory requirements have been met. Test data is not required unless requested by FCC.

Mass media bureau

1. *Commercial TV Station*.

****1024 *509** *Commercial Television Station*. Any UHF or VHF station other than those classified by the FCC as non-commercial educational stations.

Construction Permit for New Station. The instrument authorizing construction of a broadcast facility which has not been previously authorized.

1.a. *New and Major Change Construction Permits Application Fees*. The charge levied when filing an application for a permit to construct a new station or change frequency or station location of a previously authorized facility. The application fee does not apply to requests for Special Temporary Authority or reinstatement of expired permits.

1.b. *Minor Change Application Fee*. The charge levied when filing an application for a construction permit to make minor changes in previously authorized facilities.

(1) Minor changes include any change involving operating power; the installation of a transmitter which has not been authorized by the FCC for use by licensed broadcast stations; any change in location, height or directional radiating

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

characteristics of the antenna or antenna system; and moving the main studio of a TV station to a location outside the principal community, or to move the studio from one location outside the principal community to another such location.

(2) Minor changes do not include extension of time to construct, reinstatement of expired permit, modifications that may be made without prior authorization from the FCC and requests for Special Temporary Authority.

1.c. *Hearing Charge*. The charge levied when an application is designated for hearing.

1.d. *License Fee*. The charge levied when an application is filed for a license to cover a construction permit. License fees are not applicable to any license modification that may be made without prior authorization from the FCC.

2. *Commercial Radio Stations*.

Commercial Radio Station. Any AM or FM station other than those classified by the FCC as non-commercial educational stations.

Construction Permit for New Station. The instrument authorizing construction of a broadcast facility which has not been previously authorized.

2.1. New and Major Change Construction Permits.

(1) *Application Fee AM Station*. The charge levied when filing an application for a permit to construct a new station or for a construction permit for any increase in power, or any change in frequency, hours of operation or station location. The application fee does not apply to requests for Special Temporary Authority or reinstatements of expired permits.

(2) *Application Fee FM Station*. The charge levied when filing an application for a permit to construct a new station or for a construction permit to change frequency or station location. The application fee does not apply to requests ****1025 *510** for Special Temporary Authority or reinstatements of expired permits.

2.b *Minor Changes Application Fee—AM & FM*. The charge levied when filing an application for a construction permit to make minor changes in previously authorized facilities.

(1) Minor changes include the installation of a transmitter which has not been authorized by the FCC for use by licensed broadcast stations; any change in the location, height, or directional radiating characteristics of the antenna or antenna system; any change involving operating power of an FM station; any decrease in nominal power of an AM station; and moving the main studio of a station to a location outside the principal community, or to move the studio from one location outside the principal community to another such location.

(2) Minor changes do not include extensions of time to construct, reinstatement of expired permit, modifications that may be made without prior authorization from the FCC, requests for Special Temporary Authority or remote control authorizations.

2.c. *Hearing Charge*. The charge levied when an application is designated for hearing.

2.d. *License Fee*.

(1) AM. The charge levied when filing an application for a license to cover a construction permit. AM license fees are not applicable to requests to determine power by the direct method or for any license modification that may be made without prior authorization from the FCC.

(2) FM. The charge levied when filing an application for a license to cover a construction permit. FM license fees are not applicable to any license modification that may be made without prior authorization from the FCC.

Directional Antenna. A system of one or more towers used to orient or redirect radiation in a certain direction.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

2.e. *Directional Antenna License Fee*. (AM Only) The charge levied when filing for a license for a directional antenna. This charge is in addition to the AM license fee.

3. *FM/TV Translators and LPTV Stations*. (New & Major Change Construction Permits).

FM Translator Station. A station in the broadcast service operated for the purpose of retransmitting the programs and signals of an FM broadcast station, without significantly altering any characteristics of the original signal other than its frequency and amplitude, for the purpose of providing FM reception to the general public.

Television Translator Station. A station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristics of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.

****1026 *511** *Low Power Television Station*. A UHF or VHF station that may originate programming or provide a subscription television service. The transmitter power output is limited to a maximum of 1,000 watts for a UHF station and 10 watts for a VHF station, except where VHF operation is on an allocated channel and then 100 watts may be employed.

3.a. *Application Fee*

(1) *FM Translators*. The charge levied when filing an application for a permit to construct a new station or to make major changes in previously-authorized facilities. Major changes include changes in frequency (output channel) or authorized principal community or area.

(2) *TV Translators and LPTV Stations*. The charge levied when filing an application for a permit to construct a new station or make major changes in previously authorized facilities. Major changes include any change in frequency (output channel) assignment or any of the following changes if such changes will increase the signal range of the station in any horizontal direction.

(i) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission line;

(ii) Antenna height:

(iii) Antenna location exceeding 200 meters; or

(iv) Authorized operating power.

3.b *License Fee* The charge levied when filing an application to cover a construction permit for a new station or major change in previously authorized facilities.

4. *Station Assignment and Transfer Fees*.

4.a. *AM, FM, and TV Commercial Stations*.

(1) '*Long' Form Application Fees*. The charge levied when filing an Application for Consent to Assignment of Broadcast Construction Permit or License (FCC Form 314) or an application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License (FCC Form 315).

(2) '*Short' Form Application Fee*. The charge levied when filing FCC 'short' form Application for Consent to Assignment of Broadcast Station Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License (FCC Form 316).

4.b *FM/TV Translators & LPTV Stations*. The charge levied when filing Application for Transfer of Control of Corporate License of Permit or Assignment of License or Permit for an FM or TV Translator Station, or a Low Power TV Station (FCC Form 345).

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

5. *Auxiliary Services Major Actions—Application Fee*. The charge levied when filing applications for new stations and changes to existing stations (equivalent to the category 'New and Major Changes' in other services), including Remote Pickup, TV Auxiliary Broadcast Stations, Aural Broadcast STI and Intercity Relay, and Low Power Auxiliary stations.

****1027 *512** 6. *Renewals—All Services*. The charge levied when filing an application for license renewals. The license periods are five years for television broadcast stations and seven years for radio broadcast stations. Auxiliary Service licenses are generally held by licensees of full service AM, FM or TV stations and are renewed automatically whenever the main station license is renewed.

7. *Cable Television Service*.

Cable Television Service. A fixed or mobile station used in connection with the operations of cable television systems for the transmission of television, audio and other signals to a cable system or within a cable system (Section 73.5(a) of the Commission's Rules).

7.a. *Cable Television Relay Service (CARS)*. Filing fees for construction permits, assignments and transfers, renewals and modifications.

7.b. *Cable Special Relief Petitions*. Filing fees for petitions filed by a cable television system, a franchising authority, an applicant, permittee or licensee of a television broadcast, translator or microwave relay station, or by any other interested party, seeking waiver of any provision of the rules relating to cable television systems, or the imposition of additional or different requirements, or the issuance of a ruling on a complaint or disputed question.

8. *Direct Broadcast Satellites*.

Direct Broadcast Satellites. A radio communication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public.

8.a. *Application Fee*. Self-explanatory.

8.b. *CP and Launch Authority*. An applicant for a DBS facility is first granted an authorization. The applicant then has one year to demonstrate 'due diligence' toward construction of the proposed satellite. If the showing is successfully made, a construction permit will be issued. The fee is for issuance of this construction permit, which specifies orbital positions and frequencies to be used, as well as granting launch authority.

8.c. *License to Operate a Satellite*. Self-explanatory filing fee.

8.d. *Hearing Charge*. Self-explanatory.

Common Carrier Bureau

1. *Domestic Public Land Mobile Stations (Base, Dispatch, Control, & Repeater Stations)*.

Domestic Public Land Mobile Radio Service. A public communications service for hire between land mobile stations wherever located and their associated base stations which are located within the United States or its possessions, or between land mobile station in the United States and base stations in Canada.

Base Station. A land station in the land mobile service carrying on a service with land mobile stations.

****1028 *513** *Dispatch Station*. A fixed station, operated by a subscriber, or a group of subscribers, which communicates, under the supervision and control of the base station licensee, through the base station, with the individual subscriber's own mobile station or stations.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Control Station. A fixed station whose transmissions are used to control automatically the emissions or operations of another radio station at a specified location, or to transmit automatically to an alarm center telemetering information relative to the application of such station.

Repeater Station. A fixed station established for the automatic retransmission of radiocommunications received from one or more mobile stations and directed to a specific location.

1.a. *New or Additional Facility Authorizations, Assignments and Transfers* (per transmitter/per station). Initial authorization to construct and operate common carrier land mobile stations and their associated base stations; approval of major modifications to an authorized facility and consent to assign or transfer control a station authorization.

1.b. *Renewals and Minor Modifications* (per station). Renewal of an initial authorization and minor modifications effected on authorized facilities.

1.c. *Air-Ground Individual License Renewals and Modifications*. Application for license, renewal or modification for airborne mobile stations for subscribers to a common carrier service for public correspondence.

2. *Cellular Systems*. A mobile radio system with a high capacity to service subscriber units due to the coordinated reuse of a group of radio channels. A system in which the assigned spectrum is divided into discrete channels which are assigned in groups to geographic cells covering a cellular geographic service area.

2.a. *Initial Construction Permits & Major Modification Applications* (per cellular system). Self-explanatory

2.b. *Assignments and Transfers* (per station). Self-explanatory

2.c. *Initial Covering License* (per cellular system). Initial authorization to operate a cellular system.

2.d. *Renewals*. Self explanatory.

2.e. *Minor Modifications and Additional Licenses*. A minor modification effected on an authorized facility. Application notifying of additional sites or completion of construction of original sites for which license to cover not yet filed, requiring additional licenses.

3. *Rural Radio (Central Office, Interoffice or Relay Facilities)*. A domestic public radio service rendered by fixed stations on frequencies below 1000 MHz used to provide (1) public message communication service between a central office and subscribers located in rural areas to which it is impracticable to extend service between landlines, or (2) public message communication service between landline central offices and different exchange areas which it is impracticable ****1029 *514** to interconnect by other means, or (3) private line telephone, telegraph, or facsimile service between 2 or more points to which it is impracticable to extend service via landline.

3.a. *Initial Construction Permits, Assignments and Transfers* (per transmitter). Self-explanatory.

3.b. *Renewals and Modifications* (per station). Self-explanatory.

4. *Offshore Radio Service*. A public communications service for hire between stations located in the offshore coastal waters of the United States and its possessions.

4.a. *Initial Construction Permits, Assignments and Transfers* (per transmitter). Self-explanatory.

4.b. *Renewals and Modifications* (per station). Self-explanatory.

5. *Local Television or Point-to-Point Microwave Radio Service*.

Local Television. Radio communications service for the transmission of television material and related communications.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Point-to-Point Microwave. A service rendered on microwave frequencies by fixed stations between points which lie within the United States or between points to its possessions or to point in Canada and Mexico.

5.a. *Construction Permits, Modification of Construction Permits, and Renewals of License*. Self-explanatory.

5.b. *Assignments and Transfers of Authorizations*. Self-explanatory.

5.c. *Initial License for New Frequency*. Self-explanatory.

6. *International Fixed Public Radio (Public & Control Stations)*.

Public Stations. Stations which are open to public correspondence and which, in general, are intended to provide radiocommunications between any one of the contiguous 48 states, Alaska, Hawaii or any U.S. possession in connection with the relaying of international traffic between stations.

Control Stations. Stations whose transmissions are used to control automatically the emissions of operations of another radio station at a specified location, or to transmit automatically to an alarm center telemetering information relative to the operation of such station.

6.a. *Initial Construction Permits, Assignments & Transfers*. Self-explanatory.

6.b. *Renewals and Modifications*. Self-explanatory.

7. *Satellite Services*. A service that provides access to any authorized satellite for communications purposes.

7.a. *Transmit Earth Stations*. Antennas and associated transmitting and receiving equipment which gives access to a communications satellite.

(1) *Initial Station Authorization*. Authority to construct and/or operate a transmitting earth station for regular private or common carrier communications services or for telemetry, tracking and command functions.

****1030 *515** (2) *Assignments and Transfers of Authorization*. Self-explanatory.

(3) *All Other Applications*. Any other application for regular or temporary authorization, including but not limited to, modification or renewal of station authorization, temporary authorizations or waivers.

7.b. *Small Transmit/Receive Stations*. Small antennas (two meters or less) and associated transmitting and receiving equipment which gives access to a communications satellite.

(1) *Lead Station Authorization*. Authority to construct and/or operate a small transmit/receive earth station for regular private or common carrier communication services. A Lead Authorization is the first earth station authorization in a network of user earth stations. The Lead Authorization establisheds the terms and conditions under which routine authorizations may be granted.

(2) *Routine Station Authorization*. Authority to construct and/or operate a small transmit/receive earth station for regular private or common carrier communications services under the terms and conditions of a Lead Authorization. An application for a routine authorization must identify the Lead Authorization to which it is associated.

(3) *All Other Applications*. Any other application for regular or temporary authorization, including but not limited to, modification or renewal of station waivers, and transfers and assignments.

7.c. *Received Only Earth Stations*. Stations licensed to only receive transmissions from communications satellities.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

(1) *Initial Station Authorization*. An authorization or assignment of frequency to a regular commercial received-only earth station for which protection from interference is being requested.

(2) *All Other Applications*. Any other application for regular or temporary authorization, including but not limited to modification or renewal of station authorizations, temporary authorizations or waivers, and transfers and assignments.

7.d. *Applications for Authority to Construct a Space Station*. Self-explanatory.

7.e. *Application for Authority to Launch and Operate a Space Station*. Authorization to launch a space station and assignment of an orbital location at which the space station is to be operated.

7.f. *Satellite Systems Application*. All antennas and associated transmit and receive equipment required to operate a single satellite communications system which generally includes a main Transmit Earth Station and many Small Transmit/Receive earth stations. The application is processed as a total and complete system in bands where frequency coordination is not required for each station site.

****1031 *516** (1) *Initial Station Authorization*. Authority to construct and/or operate a setellite system for regular private or common carrier communications services.

(2) *Assignments and Transfers of System Authorizations*. Self-explanatory.

(3) *All Other Applications*. Any other application for regular or temporary authorization, including but not limited to, modifications or renewal of station authorizations, temporary authorizations or waivers, and transfers and assignments.

8. *Multipoint Distribution Service*. One way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in a omnidirectional pattern) to multiple receiving facilities located at fixed points determined by the subscribers.

8.a. *Construction Permits, Renewals and Modifications of Construction Permits*. Self-explanatory.

8.b. *Assignments and Transfers of Control* (per station). Self-explanatory.

8.c. *Initial License (first license or a license adding a new frequency)*. Self-explanatory.

9. *Section 214 Applications*. All circuits (channels) installed or acquired and required to be reported pursuant to Sections 63.03(e), 63.04(e) and 63.07(b) of the Commission's rules.

9.a. *Overseas Cable Construction Permits*. Authorization to lay a new cable or cables.

9.b. *Domestic Cable Construction Permits*. Authorization to lay a new cable or cables.

9.c. *All other 214 Applications*. Authorization to install or acquire a 4 kHz or 24 Kb/s channels for domestic use. Any Domestic broad band channel is considered, for fee purposes, a single 4 kHz frequency. All international 214 applications other than cable construction permits.

10. *Tariff Filings*. Published charges or regulations for one or more, but not all carriers applicable to communication service between points of a system which is subject to any provision of the Communications Act of 1934 and which participates or engages in such communications service, irrespective of whether it is a terminal or intermediate carrier.

10.a. *Filing Fee*. A filing is a Letter of Transmittal with accompanying tariff supplement, revised page(s), additional page(s), concurrence(s), notice of revocation, adoption notice or any other schedule(s) of rates or regulations filed in accordance with Part 61 of the Commission's rules.

10.b. *Special Permission Filing*. An application to waive any portion of Part 61 of the Commission's rules.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

11. *Telephone Equipment Registration*. Registration of equipment filed pursuant to Part 68 of the rules. (Terminal equipment and protective circuitry.)

12. *Digital Electronic Message Service*. A two-way domestic end-to-end fixed radio service utilizing Digital Termination Systems for the exchange of digital information.

****1032 *517** 12.a. *Construction Permits, Renewals and Modifications of Construction Permits*. Self-explanatory.

12.b. *Assignments and Transfers of Control* (per station). Self-explanatory.

12.c. *Initial License (first license or license adding a new frequency)*. Self-explanatory.

Non-commercial radio and TV stations will not be subject to any of the fees listed in this schedule. In addition, no provision in the fee schedule applies to petitions to deny the grant of a license to regulated communications entities.

The fee schedule shall be implemented not later than 360 days after the date of enactment of this section.

Subsection (b) requires the Commission to review these fees every 2 years, and to increase or decrease the fees to reflect changes in the Consumer Price Index (CPI). Adjustments will apply to all fees, but an individual fee shall not be adjusted until the net change in the CPI amounts to at least $5 for fees under $100, or 5 percent of fees of $100 or more. Adjusted fees will be rounded upward to the next $5 increment. The Commission shall notify Congress of any adjustments no later than 90 days before such adjustment takes effect. Adjustments to fees pursuant to this procedure shall not be subject to judicial review, because these changes merely are ministerial, nondiscretionary acts.

Subsection (c) requires the Commission to develop penalty charges that will be assessed for late payment of fees. These penalties will equal 26 percent of the late payment fees. The Commission is authorized to dismiss applications or other filings to penalize late payment of charges.

Subsection (d) provides that the fees shall not apply to specified radio services: Local government, police, fire, highway maintenance, forestry-conservation, public safety, and special emergency radio. In addition, the charges established shall not apply to governmental entities licensed in other services. The Commission is authorized to waive or defer fee payments in specific instances, where good cause is shown and where waiver or deferment of fees would promote the public interest. The Committee intends that the Commission's discretion to waive or defer fees shall be narrowly defined.

Subsection (e) provides that the fees collected by the Commission under this section will be deposited in the general fund of the U.S. Treasury. Although the fees collected will reimburse the United States for amounts appropriated for use by the Commission in carrying out its functions, nothing in this Committee Print shall be interpreted to affect the need for full funding of the Commission's activities through the normal appropriations process.

Subsection (f) directs the Commission to prescribe rules and regulations to implement this fee schedule.

Subtitle G—Local Rail Service Assistance

The Committee on Energy and Commerce, having considered the Committee Print, reports favorably thereon, without amendment, and recommends that the Committee Print be referred to the Committee on the Budget.

****1033 *518** PURPOSE AND SUMMARY

The Committee recommendation provides that no additional funds are authorized to be appropriated for the Local Rail Service Assistance program after September 1, 1985. The Committee's recommendation is consistent with the assumptions of the conference report on the first concurrent resolution on the budget for fiscal year 1986, which contemplated termination of funding for this program in reconciliation.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

BACKGROUND AND NEED FOR THE LEGISLATION

The local rail service assistance program is a Department of Transportation (DOT) program of grants to states for rail planning, and for the acquisition, rehabilitation, and construction of rail lines for the purpose of maintaining and improving rail service. In general, the program is targeted at light density rail lines.

Funding is allocated to states on both a formula and discretionary basis, with each state initially entitled to $100,000 per fiscal year for rail planning purposes. The formula allocation for rail service assistance is based on a formula that considers rail mileage in each state which has been abandoned or is subject to potential abandonment, with a one percent minimum guarantee for each state. The federal share of the cost of any project is limited to 70 percent.

While the program has been valuable in the past in maintaining essential rail service, the need for the program has diminished. As a result of the Staggers Rail Act of 1980, railroads have improved their profitability. Many states have committed their own resources to rail assistance programs. In addition, there are alternative financing sources available. For example, the House recently approved a two-year extension of the redeemable preference share (or Section 505 loan) program, which is administered by DOT and provides low-interest loans for rail line rehabilitation.

The Budget Resolution conference report for fiscal year 1986 assumes termination of funding for this program. Because of the need to reduce the nation's large budget deficits and the reduced need for the program, the Committee has adopted a provision which provides that no funds are authorized to be appropriated for this program after September 1, 1985.

Because of the capital nature of the projects funded by this program, obligation and expenditure of funding is often delayed. Thus, according to the Federal Railroad Administration, there is currently about $24 million in previously appropriated, but unobligated or unexpended, funding still available. Of this $24 million, about $10 million consists of unexpended funds that had previously been obligated to states. Another $10.4 million consists of available discretionary funds for which applications are pending. Also pending is about $3.2 million in current entitlement applications. Finally, there is about $350,000 in fiscal year 1985 entitlement funding for which applications have not yet been filed.

To ensure that this funding continues to remain available under the provisions of current law, the Committee has retained the existing statutory provisions governing the program. The Committee emphasizes that all previously appropriated but unobligated or unexpended ****1034 *519** funds remains available until expended, and FRA continues to have the administrative authority to disburse those available funds.

In addition, the Committee notes that certain states have established revolving loan funds from their rail assistance grants. These previously appropriated funds are also unaffected by the Committee recommendation, and thus remain available.

HEARINGS

The Committee's recommendation complies with the reconciliation assumptions of the conference report on the budget resolution. Because of the need for timely compliance with the reconciliation instructions, which required transmittal of Committee recommendations to the Committee on the Budget by September 27, 1985, no hearings were held.

COMMITTEE CONSIDERATION

On September 18, 1985, the Energy and Commerce Committee met in open mark-up session and, with a quorum present, ordered a Committee Print transmitted to the House Committee on the Budget, in accordance with the reconciliation assumptions of the budget resolution and the requirements of section 310 of the Congressional Budget Act of 1974.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee has made findings and

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

recommendations as set forth in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee this Congress by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

The Committee recommendation provides that no funds are authorized to be appropriated for the Local Rail Service Assistance program after September 1, 1985. This would result in $19 million in budget authority savings and $4 million in outlay savings in fiscal year 1986, $20 million in budget authority savings and $8 million in outlay savings in fiscal year 1987, and $21 million in budget authority savings and $17 million in outlay savings in fiscal year 1988.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of the Rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported Committee recommendation.

****1035 *520** By reducing budget authority and outlays, the Committee recommendation will reduce the deficit and thus have an anti-inflationary effect.

SECTION-BY-SECTION ANALYSIS

The Committee recommendation, 'Local Rail Service Assistance,' provides that no funds are authorized to be appropriated after September 1, 1985, for grants to states under the Local Rail Service Assistance program. The recommendation is consistent with the assumptions of the conference report on the budget resolution for fiscal year 1986, which contemplated termination of funding of this program in reconciliation. Funds appropriated in prior fiscal years under the program's no-year authorization will remain available for obligation and expenditure, subject to the same statutory criteria, guidelines, and requirements under which the program currently operates.

***521** CBO COST ESTIMATES

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 24, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.
DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Committee print entitled 'Synthetic Fuels Fiscal Responsibility Act.'

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

****1036** CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

1. Bill number: Not yet assigned.

2. Bill title: Synthetic Fuels Fiscal Responsibility Act

3. Bill status: Committee print as adopted by the House Committee on Energy and Commerce, September 18, 1985.

4. Bill purpose: This bill abolishes the Synthetic Fuels Corporation (SFC) and authorizes a modified synthetic fuels program. It rescinds all of the unobligated funds available to the SFC, after reserving $500 million for a clean coal technology program and $500 million for a new synthetic fuels program.

Upon enactment of the bill, the SFC's Board of Directors would be dissolved and the Secretary of Energy appointed as its chief officer. Effective upon enactment, the bill would repeal the SFC's authority to obligate funds and the Department of Treasury's authority to purchase notes related to SFC obligations. Projects funded under existing contracts would be administered by the Department of Energy (DOE), but their funding would be limited to the amount provided prior to enactment of the bill. Any contracts approved by the SFC after February 5, 1985 would be subject to Congressional review. All SFC operations would be terminated 90 days after the date of enactment.

Federal assistance for synthetic fuels projects would continue under a modified program administered by DOE. The bill authorizes and appropriates $500 million for the types of assistance authorized under current law, but revises the criteria used to award the assistance. For example, it directs DOE to fund projects on the basis of their size and feasibility rather than on the production targets in current law. Funding also would be contingent upon the submission of environmental plans acceptable to DOE and the Environmental Protection Agency (EPA). There would be a cap on the level of price guarantees (125 percent of projected prices), and a ceiling of the amount of assistance given to any individual project (60 percent of its capital and operating costs). Projects would be ineligible for aid under the DOE program if they previously received certain types of federal funding. The bill includes procedures for ***522** DOE's solicitation and approval of proposals, and for Congressional review of awards exceeding $20 million. DOE must submit an assistance plan reflecting these changes within 90 days after the enactment of the bill.

5. Estimated cost to the Federal Government: The following table summarizes the budget impact of this bill, relative to spending projected both under current law and under the budget resolution baseline.

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated budget authority	-6,870				
Estimated outlays	-93	-166	-209	-219	-254

****1037** In addition, outlays would be reduced by approximately $6.5 billion after 1990, assuming enactment of the bill.

The budgt impact of this bill falls within budget function 270.

Basis of estimate: It is assumed for this estimate that the bill be enacted by October 1, 1985, CBO estimates that enactment of this bill would reduce federal outlays by a total of $0.9 billion over the fiscal years 1986 through 1990, and by another $6.5 billion after 1990. This estimate reflects the savings attributable to the repeal of the SFC's obligational authority, which would be partially offset by the spending on synthetic fuels projects under the modified program administered by DOE.

According to data from the SFC, the Corporation's remaining obligational authority would total about $7.9 billion at the end of fiscal year 1985. After providing $500 million for the clean coal program and $500 million for the new program, approximately $6.9 billion would be rescinded by this bill.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

CBO estimates that terminating the SFC would reduce SFC outlays by $7.9 billion over the long term, because the CBO baseline methodology assumes that all funds available to the SFC ultimately would be committed and disbursed as price guarantees. Relative to the CBO baseline projections, repealing this authority would reduce outlays by $1.2 billion over the 1986–1990 period, and by $6.7 billion after 1990. This estimate assumes that projects with contracts approved by the SFC prior to enactment would continue to receive funding under the terms of the SFC agreements.

The savings from terminating the SFC would be partially offset by the cost of administering the DOE program and providing financial assistance to projects funded out of the $500 million authorized and appropriated for DOE. For the purpose of this estimate, CBO assumes that half of the funds available for project assistance would be disbursed for price guarantees, and that the remainder would be used to fund the construction of facilities directly. It is assumed that price guarantees would be made at the maximum level and would be paid out over a ten-year period starting in the initial year of production. Before funding the construction of a project, DOE would have to consult with affected governments, prepare environmental assessments, and comply with other applicable ***523** laws. Because of the lead time associated with these activities, CBO assumes that outlays for construction would not be incurred until fiscal year 1988. Outlays for project assistance are estimated to total $0.3 billion over the 1986–1990 period, and $0.2 billion after 1990. (Under the current law, the entire $0.5 billion would have been spent by the SFC after 1990.

****1038** Reserving funds for the clean coal technology program would have no effect on outlays because this program already is authorized under current law. Other provisions in the bill are not expected to have a significant budget impact.

6. Estimated cost to state and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 9, 1985, CBO transmitted a cost estimate for H.R. 935, the Synthetic Fuels Fiscal Responsibility Act of 1985, as ordered reported by the Committee on Energy and Commerce on June 25, 1985. The differences in estimated authorization levels reflect the provisions in this bill that rescind money available to the SFC and that use existing funds to finance the DOE program. The estimated outlays also differ, because CBO no longer assumes that the SFC would obligate funds for the Great Plains project prior to enactment of the bill.

9. Estimate prepared by: Kathy Gramp.

10. Estimate approved by: C.G. Nuckols, (James L. Blum, Assistant Director for Budget Analysis).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 23, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, 2125 Rayburn House Office Building, Washington, DC.
DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Committee print entitled ‘Strategic Petroleum Reserve.’

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

2. Bill title: Strategic Petroleum Reserve

3. Bill status: Committee print, as adopted by the House Committee on Energy and Commerce, September 18, 1985.

4. Bill purpose: The bill establishes a fill rate for the Strategic Petroleum Reserve (SPR) and sets annual authorization levels for oil acquisition and SPR construction for fiscal years 1986 through 1988.

5. Estimated cost to the Federal Government: The first table below shows the costs of this bill estimated relative to current law, ****1039 *524** which assumes no authorizations for SPR acquisition or construction in fiscal years 1986 through 1988. Because this bill is intended to be part of a budget reconciliation act, the second table displays estimates relative to the budget resolution baseline. The baseline differs from current law in that it assumes reauthorization of the Strategic Petroleum Reserve, including oil acquisition at the current fill rate.

FEDERAL COSTS RELATIVE TO CURRENT LAW

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
On-budget: SPR construction/operation:					
Authorization level	136	359	157		
Estimated outlays	48	194	255	132	23
Off-budget: SPR oil acquisition:					
Authorization level	358	334	357		
Estimated outlays[1]	317	371	365	207	
Total on- and off-budget:					
Authorization level	494	693	514		
Estimated outlays	365	565	620	339	23

FN1 Includes outlays from previously appropriated funds necessary to attain the specified fill rate.

FEDERAL COSTS RELATIVE TO THE BUDGET RESOLUTION BASELINE

[By fiscal years, in millions of dollars]

	1986	1987	1988

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

On-budget: SPR construction/operation:			
Budget authority	-159	151	-4
Outlays	-56	-27	54
Off-budget: SPR oil acquisition:			
Budget authority	-1,312	-1,336	-1,331
Outlays	-1,303	-1,304	-1,367
Total on- and off-budget:			
Budget authority	-1,471	-1,185	-1,335
Outlays	-1,359	-1,331	-1,313

The budget impact of this bill falls within budget function 270.

Basis of estimates: The bill contains recommended budget authority levels for three fiscal years (1986–1988). The authorization for SPR construction and operation represents a one-year slow-down, relative to the baseline, by shifting approximately $160 million in budget authority from fiscal year 1986 to fiscal year 1987. This shift in budget authority results in outlay savings relative to the baseline over the next two years; and an increase in outlays, again relative to the baseline, for fiscal years 1988 and 1989. The net effect over the 1986–1988 period is an outlay savings of $29 million.

The bill provides authorization levels and an average annual fill rate for SPR oil acquisition and fill. The total authorization for fiscal years 1986 through 1988 is $1,049 million and the annual fill rate is 35,000 barrels per day. CBO estimates that approximately $1,072 million is required to achieve the desired fill rate. The difference ****1040 *525** in required authority can be met by using unobligated balances, currently estimated at over $800 million.

The baseline assumes an SPR fill rate of 159,000 barrels per day. Reducing the fill rate to 35,000 barrels per day will result in outlay savings of approximately $4.0 billion over the 1986–1988 period.

The bill also amends the Energy Policy and Conservation Act to require a minimum SPR fill rate of 35,000 barrels per day until the reserve contains at least 527 million barrels. If this requirement is not met, the U.S. Government is restricted from producing and selling oil from the Naval Petroleum Reserve. This limitation is consistent with the fill authorization contained in the bill; hence, there is no additional cost associated with this limitation.

6. Estimated cost to state and local governments: None.

7. Estimate comparison: None.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

8. Previous CBO estimate: None.

9. Estimate prepared by: Pete Fontaine.

10. Estimate approved by: C.G. Nuckols, (for James L. Blum, Assistant Director for Budget Analysis.)

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 24, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, 2125 Rayburn House Office Building, Washington, DC.
DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Committee print entitled 'Uranium Enrichment and Power Sales'.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANUSHECK
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Uranium Enrichment and Power Sales.

3. Bill status: Committee print as adopted by the House Committee on Energy and Commerce, September 18, 1985.

4. Bill purpose: This bill amends current policy regarding the financing of the Department of Energy's (DOE) uranium enrichment program. Under existing law, this program is funded by federal appropriations, which are offset by revenues collected from the sale of enriched uranium. Although DOE must set enrichment prices sufficient to recover the government's costs, it is not currently required to repay the Treasury for such costs. This bill changes this policy by earmarking a portion of the revenues collected in fiscal years 1986 through 1988 to repay the Treasury for federal appropriations. DOE is to deposit $110 million in 1986 and $150 million in 1987 and in 1988 for this purpose. In addition, it limits the amounts authorized to be appropriated in those three years to the estimated revenues, ****1041 *526** less the amounts to be transferred to the Treasury for repayment.

The bill also directs DOE to attempt to sell the electricity that is being purchased but not used by the enrichment program through 1992. At present, DOE is contractually obligated to purchase over 4,000 megawatts (MW) of electric power from the Tennessee Valley Authority (TWA) that are no longer needed to operate its facilities. Consistent with standard utility contracting practices, DOE must pay a minimum 'demand charge' for this surplus power, which is expected to cost about $416 million in 1986. The provisions in the bill resolve the statutory and policy uncertainties that previously prevented the sale of excess power.

5. Estimated cost to the Federal Government: The following table summarizes the budget impact of the bill, relative to spending projected both under current law and under the budget resolution baseline.

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Estimated authorization	-190	-273	-316	-30	-30
Estimated outlays	-120	-234	-297	-132	-56

The budget impact of this bill falls within budget function 270.

Basis of estimate: It is assumed for this estimate that the bill will be enacted by October 1, 1985. CBO estimates that enactment of the bill would reduce federal outlays by a total of $651 million by 1988 and by $839 million by 1990, relative to current policies as projected in the budget resolution baseline.

Most of these estimated savings are due to the provision that limits appropriations to the amount of estimated revenues available after making the specified payments to the Treasury. The baseline projects assume that, without such cap, the Congress would appropriate funds sufficient to continue enrichment activities at the 1985 level, as adjusted for inflation in future years. Because the baseline revenue projections for the fiscal years 1986–1988 are $316 million below the projected appropriations, limiting spending to the estimated revenues (with no reduction for repayment) would reduce the program's obligations by that amount. Deducting the amounts specified for Treasury payments from the amount available for appropriation would reduce spending on enrichment activities by another $410 million over the 1986–1990 period. Thus, relative to the baseline projections for this program, enactment of the three-year authorization cap would reduce federal outlays by a total of $724 million over the 1986–1990 period.

Potential revenues from marketing DOE's surplus power cannot be estimated precisely, because of the uncertainty regarding both the price and demand for such power over the 1986–1990 period. In practice, DOE's ability to sell the electricity would depend on the economic, technical, and institutional characteristics of the prospective buyers. CBO estimates that, under the conditions noted below, DOE could collect about $25 million to $30 million a year, ****1042 *527** starting in 1987. These receipts would reduce federal outlays by a corresponding amount, because the bill requires DOE to deposit such funds in the Treasury, instead of using the money to lower the price of enriched uranium.

This estimate is based on the assumption that DOE would offer power to utilities on a 'firm' basis at prices above its operating costs (about 25 mills per kilowatt hour). CBO also assumed that the DOE power would be attractive to utilities if it could replace purchased power (with fixed and variable costs), or if it would cost less than a utility's operating expense for generating its own power. To identify such markets, CBO compared DOE's average cost, as adjusted for transmission costs and losses, with the prices paid by municipal and cooperative utilities for purchased power, and with the average operating costs for power generated in the region. If DOE's delivered cost was estimated to be at least 20 percent below the potential buyer's current costs, it was assumed that a sale could occur, and that DOE and the buyer would 'split the savings' on a 50–50 basis.

The market for DOE's power also would be constrained by contractual and regulatory factors. For example, most power supply contracts specifically limit the buyer's option to reduce purchases in a given year. Likewise, a utility may need to operate a plant even if it is more costly than purchasing DOE power, in order to earn a return on its investment. Finally, fuel purchase contracts, especially for coal-fired plants, may limit a utility's purchasing flexibility. Based on such considerations and after extensive discussions with a number of utilities in the region, CBO assumed that DOE could sell power to municipal and cooperative utilities only to the extent that those buyers would be allowed to change suppliers under existing contracts. It is expected that, even if price differentials justify replacing some fossil-based generation, DOE sales could displace only 10 percent of that power because of regulatory and engineering factors.

Finally, CBO assumed that sales would not begin until 1987, because of the lead time needed to perform technical analysis and negotiate sales contracts.

6. Estimated cost to State and local governments: Enactment of this bill would lower the cost of power to municipal utilities to the extent that they substitute any DOE power for more expensive supplies. Under the assumptions used in this analysis, municipal utility costs could be reduced by about $16 million per year.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Kathy Gramp.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

****1043 *528** U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 24, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.
DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Committee print entitled 'Energy-Related User Fees'.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Energy-Related User Fees.

3. Bill status: Committee print as adopted by the House Committee on Energy and Commerce, September 18, 1985.

4. Bill purpose: The bill establishes three types of energy-related user fees. Fee assessment and collection is authorized for: (1) natural gas and hazardous liquid pipeline safety programs undertaken by the Department of Transportation, (2) regulatory programs conducted by the Nuclear Regulatory Commission (NCR), and (3) regulatory programs conducted by the Federal Energy Regulatory Commission (FERC).

5. Estimated cost to the Federal Government: The table below summarizes the bill's estimated impact on the federal budget, relative to both current law and the budget resolution baseline.

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Pipeline safety:					
Estimated budget authority	-9	-9	-10	-10	-11
Estimated outlays	-9	-9	-10	-10	-11
NRC:					

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Estimated budget authority	-160	-172	-179	-187	-196
Estimated outlays	-160	-172	-179	-187	-196
FERC:					
Estimated budget authority	-34	-34	-35	-36	-38
Estimated outlays	-34	-34	-35	-36	-38
Total:					
Estimated budget authority	-203	-215	-224	-233	-245
Estimated outlays	-203	-215	-224	-233	-245

The budget impact of this bill falls within budget functions 270 and 400.

Basis of estimate: Section 1 of the bill would require the Secretary of Transportation to assess and collect fees on users of natural gas and hazardous liquid pipelines, beginning with fiscal year 1986. The fees would be assessed to cover the annual costs of the pipeline ****1044** safety programs authorized under the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1975. Program costs would include administration, research and development, and state grants-in-aid programs. The Secretary would be required to collect the fees before the end of each fiscal year. The Secretary would also be authorized to charge additional fees to cover the costs of extraordinary events that result in an unusual drain on the pipeline safety resources of the U.S. Under current law, fees are not collected to cover any of these program costs.

CBO assumed that the Department of Transportation can administer a program that will collect sufficient receipts from used fees to cover each year's program costs, currently about $9 million, before the end of the fiscal year. CBO did not project any impact for the provision concerning extraordinary events, because such events are extremely infrequent and there is no basis to estimate the costs associated with them.

Section 2 of the bill would require the Nuclear Regulatory Commission (NRC) to assess and collect annual charges from its licensees beginning with fiscal year 1986. The fees shall be assessed to cover the cost of NRC regulation and research programs, and the amount of assessment shall take into consideration the rated capacity of each facility licensed by the NRC. The bill limits the NRC fees to one-half of the agency's annual costs for each fiscal year. Under the budget resolution assumptions, total NRC costs are estimated to be approximately $440 million for fiscal year 1986, rising to approximately $490 million by fiscal year 1990. Under current law, the NRC will collect an estimated $60 million in fees for fiscal year 1986, and approximately $50 million per year thereafter. These fees are included in the budget resolution baseline. The bill requires an increase in fees up to one-half of annual NRC costs, resulting in estimates of additional federal receipts of $160 million in fiscal year 1986, $172 million in fiscal year 1987, and $179 million in fiscal year 1988.

Section 3 of the bill requires the Federal Energy Regulatory Commission (FERC) to assess and collect annual charges from interstate natural gas pipelines, interstate oil pipeline carriers, and public utilities. The fees shall be assessed and collected in each fiscal year, beginning with 1986. When coupled with the fees assessed under current policies, these changes must recover the costs incurred with respect to the regulation of these services. For the purpose of this estimate, CBO assumes that the bill would authorize the Commission to recover all but $10 million of the $100 million spent each year. (This estimate assumes that FERC would not recover the cost of regulating cogeneration and small power production, of rulemaking and adjudicatory proceedings, and of policy initiatives.) In addition to the estimated collections of over $52 million per year under current law, this bill would increase collections and thus reduce federal outlays by $34 million to $38 million annually.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

6. Estimated cost to State and local governments: The fees mandated by this bill would affect utility rates, and thus indirectly increase the utility costs of state and local governments. This increase is not expected to be significant.

7. Estimate comparision: None.

****1045 *530** 8. Previous CBO estimate: None.

9. Estimate prepared by: Pete Fontaine, Heidi Zukoski, and Kathy Gramp.

10. Estimate approved by: C.G. Nuckols James L. Blum, Assistant Director for Budget Analysis.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 23, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.
DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Committee print entitled 'Federal Energy Conservation Savings'.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Federal Energy Conservation Savings.

3. Bill status: Committee print as adopted by the House Committee on Energy and Commerce, September 18, 1985.

4. Bill purpose: The bill authorizes the heads of federal agencies to enter into multiyear contracts for the purpose of achieving energy savings. Each contract may last for a period of up to 25 years and shall provide that the contractor incur the initial cost of implementing energy savings measures in exchange for a share of any savings resulting from such implementation.

5. Estimated cost to the Federal Government: The following table summarizes the projected budget impact of this bill, assuming that the projected savings are reflected in reduced appropriations. Since the proposed shared energy savings program is not part of current policy, the estimates below represent savings relative to the baseline, as well as relative to current law.

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated authorization level	-0.3	-2.3	-4.4	-10.4	-20.4
Estimated outlays	-0.3	-2.3	-4.4	-10.4	-20.4

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The savings from this bill would fall primarily within budget function 050, because the Department of Defense accounts for most of the government's energy consumption and is expected to be the primary user of the authorized multiyear contracts.

Basis of estimate: The average shared energy savings contract is expected to yield approximately $0.5 million in annual cost savings. The federal share of such savings may vary by contract, but is expected ****1046 *531** to average 20 percent for the first year, 30 percent for the second year, 40 percent for the fourth year, and 50 percent for the fifth and all subsequent years of a contract. Based on information provided by the Department of Energy and the Department of Defense, it has been estimated that the federal government will enter into approximately 6 shared energy savings contracts in fiscal year 1986, about 15 such contracts in fiscal year 1987, and approximately 30 contracts in fiscal year 1988.

The savings estimates assume a six-month leg between the start of the program at the beginning of fiscal year 1986 and implementation of the first six contracts half-way through the fiscal year.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Pete Fontaine.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 23, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.
DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Committee print entitled 'Charges to Cover the Cost of FCC Regulation.'

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes.

Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Charges to Cover the Cost of FCC Regulation.

3. Bill status: Committee print as adopted by the House Committee on Energy and Commerce, September 18, 1985.

4. Bill purpose: This proposed legislation would allow the Federal Communications Commission (FCC) to assess and collect new fees to recover certain regulatory costs.

5. Estimated cost to the Federal Government: The following table summarizes the budget impact of this bill, relative both to the budget resolution baseline and to current law.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated budget authority		-30	-34	-35	-35
Estimated outlays		-30	-34	-35	-35

****1047 *532** The receipts shown above would be deposited in the general fund of the Treasury and be reflected in function 370.

Basis of estimate: For purposes of this estimate, it was assumed that this legislation would be enacted on or before October 1, 1985. The estimate of receipts from fees is based on the FCC's current estimate of the number of applications for licenses and other FCC services provided by a number of bureaus within the agency. Based on information from the FCC, it is expected that approximately one year would be required to implement the new fee schedule. Consistent with the proposed legislation, which allows the FCC to adjust fees every two years, it is expected that the FCC would adjust fees beginning in 1989. For this estimate, the fee schedule was adjusted using the deflator for the Consumer Price Index that was assumed in S. Con. Res. 32.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 14, 1985. CBO prepared a cost estimate for S. 999, the Federal Communications Commission Authorization Act of 1985, as ordered reported by the Senate Committee on Commerce, Science and Transportation, April 30, 1985. In addition to authorizing new fees for the FCC, S. 999 also authorized FCC appropriations of $98.1 million in 1986, and $97.6 million in 1987, plus such additional sums as may be necesary for pay and other benefit increases in each of those years.

9. Estimate prepared by: Mary Maginniss.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised cost estimate for the committee print entitled 'Local Rail Service Assistance.'

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

2. Bill title: Local Rail Service Assistance.

3. Bill status: Committee print as adopted by the House Committee on Energy and Commerce, September 18, 1985.

4. Bill purpose: The bill prohibits new authorizations for the local rail service assistance program, beginning in fiscal year 1986. These funds are used to provide diretionary and formula grants to states, primarily for track rehabilitation and rail planning.

****1048 *533** 5. Estimated cost to the Federal Government: This bill does not authorize any funding, and therefore has no cost (or savings) relative to current law. Because the bill is also intended to be part of a budget reconciliation act, the table below displays estimates relative to the budget resolution beseline. The baseline differs from current law in that it assumes reauthorization of the program at the current rate.

FEDERAL COSTS RELATIVE TO THE BUDGET RESOLUTION BASELINE

[By fiscal years, in millions of dollars]

	1986	1987	1988
Budget authority	-19	-20	21
Estimated outlays	-4	-8	-17

The budget impact of this bill falls within budget function 400.

Basis of estimates: The savings shown reflect elimination of the budget authority assumed in the budget resolution baseline.

6. Estimated cost to state and local governments: The federal funds disbursed under this program must be matched by nonfederal funds on a $7^{0}/_{30}$ ratio. While 22 states currently have their own programs for maintenance and rehabilitation needs of railroad tracks, many of them are limited to providing the match for federal funds. The Department of Transportation maintains that elimination of the program would have a minimal effect on states, and proposed elimination of the programs in the President's 1986 budget request. However, a recent survey of state officials indicated that many states would be unable to replace the federal funds with state or local dollars, resulting in continued deterioration of the tracks, increased safety problems, and possible abandonment of the tracks.

7. Estimate comparison: None.

8. Previous CBO estimate: This estimate supersedes CBO's previous estimate of September 24, 1985, which showed incorrect savings relative to the baseline.

9. Estimate prepared by: Kathleen Kelly (226–2860)

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

TITLE V—COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HOUSE OF REPRESENTATIVES,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, DC, September 18, 1985.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, Washington, DC.

DEAR MR. CHAIRMAN: The Committee on Interior and Insular Affairs is hereby reporting recommended changes in law pursuant to the reconciliation instructions contained in S. Con. Res. 32. The ****1049 *534** recommendations are contained in the attached resolution adopted by the Committee on September 18, 1985.

Sincerely,

MORRIS K. UDALL, *Chairman*.

* * * * *

***538** CBO COST ESTIMATES

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1985.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, 1324 Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for a Resolution reporting to the Committee on the Budget a recommendation for inclusion in the Budget Reconciliation Act.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director*.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Resolution reporting to the Committee on the Budget a recommendation for inclusion in the Budget Reconciliation Act.

3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs, September 18, 1985.

***539** 4. Bill purpose: The bill provides a formula for dividing the existing 8(g) Outer Continental Shelf escrow account among the federal government and seven states. It also specifies the revenues that should be divided in the future and establishes procedures for distributing these revenues.

Section 1 of the bill requires that all revenues derived after October 1, 1985, from the leasing of federal tracts wholly or partially within three nautical miles of the state seaward boundaries, be deposited in an interest-earning account in the United States Treasury. Federal income and windfall profit taxes are excluded from the account. The states are to receive 27 percent of the funds in ****1050** this account, with the remainder assigned to the miscellaneous receipts account of the U.S. Treasury. Revenues in escrow because of federal-state boundary disputes may also be included in this account when released from escrow.

Section 2 of the bill divides funds in the section 8(g) escrow account as of September 30, 1985, among the states and the federal government. The federal government would receive $4.3 billion all additional funds in escrow would go to the states. Revenues placed in escrow after September 30, but before the release date are divided according to the formula in section 1. All funds in the existing 8(g) escrow account would be distributed prior to January 1, 1986.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 4 compensates states out of future revenues for the difference between the existing escrow account and the level of escrow account payments that would have occurred if the new definitions contained in section 1 had been applied prior to October 1, 1985. These recoupment payments are equal to 10 percent of new revenues each year, until the time when states are fully compensated. This payment is in addition to the 27 percent of new revenues that states would receive under section 1. Recoupment payments would begin October 1, 1986.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Committee recommendation:					
Estimated budget authority	-4,659	-127	-127	-127	-127
Estimated outlays	-4,659	-127	-127	-127	-127
Resolution baseline:					
Estimated budget authority	-341	-1,812	-1,540	-100	-100
Estimated outlays	-341	-1,812	-1,540	-100	-100
Estimated cost of savings (-):					
Estimated budget authority	-4,318	1,685	1,413	-27	-27
Estimated outlays	-4,318	1,685	1,413	-27	-27

The budget impact of this bill falls within budget functions 900 and 950.

Basis of Estimate: Funds in the existing escrow account are assumed to be released on December 31, 1985, with about 70 percent going to the federal government and 30 percent going to the states under the formula specified by the bill. Deposits in the new Treasury account for section 8(g) are assumed to be released 45 days ***540** after deposit. In fiscal year 1986, the federal share of new revenues would be 73 percent, with a state share of 27 percent.

Based on information from the Department of the Interior, it is estimated that under the new definitions included in section 1, the current section 8(g) escrow account would have been $7.9 billion instead of $6.1 billion. The level of the current escrow account is based on accural deposits through March 31, 1985, with additional ****1051** principal deposits assumed to be $50 million each quarter. Interest on the escrow account was estimated using budget resolution interest rate assumptions.

In the absence of legislation, CBO assumed new section 8(g) deposits of $50 million per quarter through 1990. Because this bill broadens the definition of section 8(g) tracts over that applied by the Department of the Interior in the past, it is likely that new royalties from previously leased tracts would increase if this legislation is enacted. This increase in royalties, however, is likely to be offset by a reduction in bonuses and royalties from new tracts. The Department of the Interior is expected to split future tracts along the three-mile boundary to avoid the need to put additional revenue in the Treasury account.

It is estimated that the recoupment provision of this bill entitles states to an additional payment of $0.3 billion. If new

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

revenues from section 8(g) tracts were to remain constant at $200 million each year, the recoupment provision would give states $20 million each year for 15 years. It will take less time to complete recoupment if new revenues are greater than $200 million each year. The recoupment provision causes the state share of future revenues to increase from 27 percent in fiscal year 1986 to 37 percent in fiscal year 1987.

The estimated budget impact of this bill includes $123 million in receipts in 1986 that result from giving the federal government 73 percent of revenues from the new 8(g) zone created once the Beaufort Sea boundary dispute is settled. It was assumed that in the absence of legislation the federal share would be 50 percent. The actual amount of federal revenues from Beaufort Sea tracts will depend on the eventual location of the boundary as determined by the courts.

6. Estimated cost to state and local governments: Under the Committee's recommendation, the seven coastal states would receive $2.2 billion over five years from the section 8(g) escrow account, with most of the payment in 1986. Under CBO's baseline estimate, assuming an even split of the escrow account between the states and the federal government, states would receive $3.9 billion over five years, with most of these payments in 1987 and 1988.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Eastimate prepared by: Charles Richardson.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

****1052 *541** TITLE VI—COMMITTEE ON MERCHANT MARINE AND FISHERIES

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC, October 2, 1985.

The Honorable WILLIAM GRAY,
Chairman, House Budget Committee, 214 House Annex I, Washington, DC.
DEAR BILL: In response to the reconciliation instructions imposed by S. Con. Res. 32, the First Budget Resolution for FY86, the House Merchant Marine and Fisheries Committee has agreed on the recommendations included in the enclosed package.

Briefly, the components of the Merchant Marine and Fisheries package are: a transfer of funds from the Boating Safety Account of the Aquatic Resources Trust Fund, the imposition of charges for nautical and aeronautical charts produced by the National Oceanic and Atmospheric Administration, an increase in the fees paid by foreign fishermen, a settlement of issues involving Section 8(g) of the Outer Continental Shelf Lands Act (OCSLA), OCS Revenue Sharing, a reauthorization of the Coastal Zone Management Act, a 'Buy America' provision for exploration and development activities in the U.S. OCS, and finally an amendment to the Section 607 of the Merchant Marine Act, 1936, dealing with the Capital Construction Fund.

In addition, as per our previous correspondence, while the issue of Construction Differential Subsidy (CDS) did not require legislation, the Committee has included language in our report referencing the administrative rulemaking allowing CDS payback.

In determining our total savings, the Committee used savings attributable to 8(g) only to the extent the Committee proposal exceeded the assumptions of the Budget Committee. As Budget Committee Member Mike Lowry and I indicated in our May 7, 1985, letter to you, the Merchant Marine and Fisheries Committee asserts a shared jurisdiction of the 8(g) issue with the Interior and Insular Affairs Committee. Our report addresses this issue in more detail. Within the last several days, Congressman Lowry and I have each introduced bills that addressed directly the legislative resolution of the 8(g) issue. Both bills were jointly referred to the Merchant Marine and Fisheries and Interior Committees.

As House action on the entire reconciliation package nears, I look forward to a productive conference with the Senate where each of the issues included within my Committee's recommendations can be favorably resolved.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Sincerely,

WALTER B. JONES, *Chairman*.

Enclosures.

****1053 *542** REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON MERCHANT MARINE AND FISHERIES

COMMITTEE ACTION

On Thursday, September 26, 1985, the Merchant Marine and Fisheries Committee met to mark up its recommendations to the House Budget Committee in compliance with the reconciliation instructions contained in S. Con. Res. 32, the First Concurrent Resolution on the Budget, FY86.

Committee Chairman Walter B. Jones, offered as the markup vehicle a package containing the following elements: in FY85 and FY86, a transfer of unappropriated funds from the Boat Safety Account of the Aquatic Resources Trust Fund; authority for the National Oceanic and Atmospheric Administration (NOAA) to charge for nautical and aeronautical charts; an increase in the fees paid by foreign fishermen; a settlement of issues involving Section 8(g) of the Outer Continential Shelf Lands Act (OCSLA); OCS Revenue Sharing; and the reauthorization of the Coastal Zone Management Act.

Mr. Breaux offered a substitute for the 8(g) Title; it was adopted by a voice vote.

Mr. Biaggi offered an amendment limiting the transfer of monies from the Boat Safety Fund to FY85; it was adopted by a voice vote.

Mr. Biaggi offered an amendment to add a new Title incorporating the text of H.R. 2893, amending Section 607 of the Merchant Marine Act, 1936, dealing with the Capital Construction Fund; it was adopted by a voice vote.

Mr. Bosco offered an amendment to add a new Title to include a ‘Buy American’ requirement for exploration and development activities on the U.S. outer Continental Shelf. An amendment to the Bosco Amendment was offered by Mr. Young to exempt Alaska from the ‘Buy American’ provisions. Mr. Young’s amendment was adopted by a voice vote; Mr. Bosco’s amendment, as amended, was adopted by a vote of 31 to 7.

Mr. Shumway offered an amendment to strike the OCS revenue sharing provisions; it was defeated by a voice vote.

Mr. Lowry offered, and subsequently withdrew, an amendment dealing with Coast Guard user fees.

The package, as amended, was reported to the House Budget Committee by a voice vote.

Subtitle A. Boat Safety Account

This title makes a change, to be applicable only in FY85, to 46 U.S.C. 13106(a), regarding the authorization of funds for state recreational boating safety programs.

Under current law, $45 million of the amounts annually derived from the federal tax on motorboat fuel is credited to the Boat Safety Account of the Aquatic Resources. Trust Fund. Of this amount, two-thirds, or $30 million, is authorized for state recreational boating safety programs.

Of the $30 million authorized for state recreational boating safety programs in FY85, only $13.6 million has been appropriated. This title would reduce the amounts authorized for boating safety ****1054 *543** in 1985 to an amount equal to one-third of the Boat Safety Account, or $15 million. The extra one-third of the Boat Safety Account would then be allocated to the general fund of the Treasury, and treated as proprietary receipts ascribed to the activities of the Coast Guard.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

This change, according to the Congressional Budget office, will result in a savings of $15 million in budget authority for FY86. The change will not affect the amounts appropriated for state boating programs, nor will it affect the amounts authorized for the program in or after 1986.

Subtitle B. NOAA Charts

The purpose of this title is to provide the Department of Commerce with greater discretion in determining the prices at which the National Oceanic and Atmospheric Administration (NOAA) may sell its maps, charts, and related products to the public. The acquisition, maintenance and provision of this information is necessary to support national defense as well as safe and efficient public and commercial marine and air navigation.

Section 6201(a) requires the Secretary of Commerce to increase the price of charts over a three year period to reflect the costs attributable to data base management compilation, printing and distribution. Under current law, these prices reflect only printing costs.

Section 6201(b) sets out a series of limitations and exceptions to the requirements set out in section 6201(a). For example, the Secretary of Commerce is authorized to distribute aeronautical and nautical products without charge to foreign governments or to international organizations with which the federal government has an agreement for the exchange of such products without cost. The Secretary may also establish lower prices for charts or products provided to federal employees or officers requiring them for official use, or to other persons in exchange for a voluntary contribution of information by the recipient to the National Oceanic and Atmospheric Administration.

In establishing prices, the Secretary shall not include costs attributable to the acquisition or processing of nautical or aeronautical data.

Section 6201(e) requires the Secretary to report, after three years, on the effects of the increased prices charged for aeronautical and nautical products, including the effects on air and marine safety.

The products affected by this title are enumerated in section 6201(f) and include all nautical and aeronautical charts, tide and tidal current tables, tidal current charts, coast pilots, water level products and associated data bases.

This title shall not alter or expand any duty or liability of the United States under existing law.

According to NOAA, this section will result in a gradual increase in the cost of nautical and aeronautical products to the public. The price of the typical nautical chart, for example, is expected to increase from the current level of $5.50 to between $12 and $14 in three years.

****1055 *544** The Congressional Budget Office estimates increased receipts to the federal government of $14 million in FY86, $19 million in FY87, and $23 million in FY88.

Subtitle C. Amendments to the Fishery Conservation and Management Act of 1976

Current law

Under section 204(b)(10) of the Fishery Conservation and Management Act (FCMA) (16 USC 1824(b)), the Secretary of Commerce, in consultation with the Secretary of State, is directed to collect fees from the owners or operators of foreign fishing vessels operating in the Fishery Conservation Zone (FCZ). The FCZ extends from 3 to 200 miles off the U.S. shoreline.

The fees imposed are required to be sufficient to return to the United States the cost of carrying out the FCMA during each fiscal year that is attributable to the foreign fishing effort. This is determined by ratio of fish harvested by foreigners in the FCZ compared to the aggregate amount of fish harvested by both foreign and domestic fishing vessels in the FCZ and the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

territorial sea (0–3 miles) during the preceding year.

As a practical matter, the National Marine Fisheries Service (NMFS) implements this section by estimating total costs of implementing the FCMA, including the annual costs of research, administration, enforcement and management. The NMFS then determines the total amount of fish taken in the FCZ by foreign harvesters and divides this amount by the sum of the total taken by foreigners and domestic fishermen in the FCZ and the territorial seas. The resulting percentage is then applied to the estimated FCMA costs to arrive at the total to be garnered from foreign fishing fees. This total amount is collected through poundage fees which vary in amount on a species by species basis. Once collected, the fees are deposited in the Fisheries Loan Fund.

The FCMA generally addresses the management of fisheries in the FCZ while the states manage fisheries in the territorial sea and their internal waters. Under section 306(b) of the FCMA the Secretary may preempt state management of fisheries in the territorial sea if there is a Fishery Management Plan established pursuant to the Act and if a state, through action or inaction, is substantially and adversely affecting the carrying out of the Fishery Management Plan. However, in order for this section to be applied, the fishery in question must take place predominantly in the FCZ. Section 306 of the FCMA clearly preserves state authority over the management of fisheries in the territorial seas and internal waters, except in the case of preemption. It is clear that the FCMA deals wish fisheries in the FCZ and the vast majority of FCMA costs are in the context of fisheries management in the FCZ.

Not only is the amount of fish harvested by domestic fishermen in the territorial sea included in the formula determining foreign fishing fees, but fish harvested in the states' internal waters are also included. In addition, NMFS converts the weight of shelled mollusks, which are largely harvested in internal waters and the territorial sea, to the whole shell weight form for inclusion in this ****1056 *545** formula. The current formula bears little relevance to equitability in recovery of the costs of implementing the FCMA.

The largest share of the U.S. harvest takes place in the territorial sea. For example, in 1984, 4.74 billion pounds of fish were caught by fishermen operating in the territorial sea and 2.97 billion pounds of fish were caught in the FCZ. The amount harvested in the FCZ only recently rose to very high levels, largely as the result of the proliferation of so-called 'joint-venture' fisheries, whereby United States vessels harvest fish in the FCZ and sell the catch to processing vessels at sea.

It is also worth noting that under the FCMA, initial foreign catch fees or 'poundage fees' were set at 3 ½ percent of the ex-vessel value (the value before processing and transporting to a port) of each species of fish. This fee system continued through 1980. In 1980, the American Fisheries Promotion Act (P.L. 96–561) amended the FCMA to double the fees for 1981 (see House Rept. 96–1138). This Act established the current formula under section 204(b)(10) of the FCMA and doubled the fees assessed on foreign fishermen. Although many speculated that this increase in fees would drive the foreigners out of our waters, it did not.

Proposed change

By striking 'and the territorial waters' in section 204(b)(10), the formula applied for collecting fees would be based on the aggregate amount of fish taken by foreigners in the FCZ divided by the aggregate amount taken by both foreign and domestic fishermen in the FCZ; therefore, a higher percentage of the FCMA costs would be required to be paid by foreigners through foreign fishing fees.

The National Marine Fisheries Service esimates that the total FCMA costs in FY85 will be $171 million and that they will rise to $228 million in FY86. Under the current formula, 23.6 percent of such costs will be assessed to foreign fishermen.

By striking 'territorial seas' from the formula, Merchant Marine and Fisheries Committee staff estimates that the amount of FCMA costs attributable to foreign operations will rise from 23.6 percent to approximately 39.7 percent (see chart).

Assuming that an increase in poundage fee rates would not result in a decrease in foreign fishing activity, and that fishery stock sizes would remain at the current levels, Merchant Marine and Fisheries Committee staff (and some NMFS officials) estimates that this amendment would generate additional receipts of $37 million in FY86. The additional receipts generated as a result of this change are to be placed in the general fund of the U.S. Treasury, rather than in the Fishery Loan Fund.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Congressional Budget Office estimates that this change will result in additional receipts of $24 million in FY86, $20 million in FY87, and $16 million in FY88.

****1057 *546** 1984 U.S. AND FOREIGN HARVEST

[Thousands of pounds]

	U.S. commercial harvest		U.S. Recreational harvest		Foreign (all FCZ)
	0–3 miles	**3–200 miles (FCZ)**	**0–3 miles**	**3–200 miles (FCZ)**	
		2,972,843 (directed fishing) 1,465,084 (joint ventures)	525,828	123,343	
TOTALS	4,743,346	4,437,927	649,171		3,010,426

Old Formula	**New Formula**
3,010,426	3,010,426
12,840,870 = 23.4%	7,571,696 = 39.7%

1986 FCMA costs are estimated by NMFS to be $228 million.

Based upon this estimate, foreign fishing fees for 1986 would increase from $53.4 million to $90.5 million, an increase of $37.1 million, as a result of the amendment.

NMFS's 1985 foreign fishing fee amount was $40.2 million.

****1058 *547** *Subtitle D. Amendments to the Outer Continental Shelf Lands Act (Section 8(g))*

Background

Among the changes to the Outer Continental Shelf Lands Act (OCSLA) made by the comprehensive amendments of 1978 was the addition of section 8(g). This provision calls for the 'fair and equitable disposition' of revenues derived from federal offshore oil and gas leases within three miles of state boundaries. After sharing information with the affected state regarding

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

tracts which may contain a common oil or gas 'pool or field,' the Secretary of the Interior is to offer the affected state's governor the opportunity to enter into an agreement for the 'fair and equitable division' of federal revenue. If no agreement is reached, leasing is to proceed, and

> The Secretary shall deposit in a separate account in the Treasury of the United States all bonuses, royalties, and other revenues attributable to oil and gas pools underlying both the outer Continental Shelf and submerged lands subject to the jurisdiction of any coastal state.

To date, an agreeable Federal/State disposition of 8(g) revenues has not been achieved and lengthy litigation has resulted. At the end of FY85, according to Interior Department estimates, the escrowed 8(g) revenues will amount to some $6.1 billion. Seven coastal states are currently affected by the proposed disposition of 8(g) revenues. Eventually a federal court may adjudicate a 'fair and equitable disposition' of the common pool revenues.

The Committee on Merchant Marine and Fisheries has maintained an active and longstanding role in outer Continental Shelf (OCS) activities. In the 94th Congress, the Speaker of the House, the Honorable Carl Albert, established the Ad Hoc Select OCS Committee to expedite consideration of OCSLA amendments by temporarily consolidating OCS jurisdiction in one committee. The membership of the committee was composed of representatives from the Merchant Marine and Fisheries, Interior and Insular Affairs, and Judiciary Committees. That Committee designed the provisions now codified in section 8(g) of the OCSLA.

The Select Committee was dominated by members of the Merchant Marine and Fisheries Committee. From 1975 to 1980, the life-span of the Select Committee, 44 percent of its membership came from the Merchant Marine Committee, whereas 25 percent came from the Interior Committee. This dominance of Merchant Marine and Fisheries Committee membership graphically demonstrates the prevailing interest of the Merchant Marine Committee in the OCS, and provides testimony to the Committee's central role in the design and passage of the 1978 OCS amendments. The Chairman of the Select OCS Committee was a member of the Merchant Marine Committee, as was the Ranking Minority Member from 1979–1980. Thus the Merchant Marine Committee provided leadership, as well as predominant membership on the Select Committee, demonstrating the institutional importance of the Committee in OCS affairs and specifically in the design of section 8(g).

****1059 *548** Since the disbandment of the Ad Hoc Select OSC Committee, the Committee on Merchant Marine and Fisheries has held some 35 hearings dealing with OCS matters and reported OCS-related legislation in the 96th, 97th, 98th, and 99th Congresses. Most recently, the Merchant Marine and Fisheries Committee's Subcommittee on Panama Canal/OCS received testimony on section 8(g) of the OCSLA on April 3, May 3, and July 25, 1985.

The Merchant Marine and Fisheries Committee asserts joint jurisdiction over the OCSLA, and a thorough review of referral precedents supports that assertion. (See Memorandum of September, 1985, 'Legislative Jurisdiction over the Outer Continental Shelf Lands Act: The Committees on Merchant Marine and Fisheries and Interior and Insular Affairs,' prepared by the Committee on Merchant Marine and Fisheries, Walter B. Jones, Chairman.) The understanding that the work of the Select OCS Committee did not result in any permanent changes in the jurisdictions of the standing committees over matters dealing with the OCS has been supported by the Speaker of the House, as well as the Chairman of the Interior and Insular Affairs Committee. The Committee on Merchant Marine and Fisheries agrees with this proposition and submits that such jurisdictional agreement can in no way be properly construed as to confer upon the Committee on Interior and Insular Affairs exclusive jurisdiction over section 8(g) or other OCS-related matters.

In a May 20, 1985, letter to the Speaker, Committee Chairman Walter B. Jones formally protested the omission of the Merchant Marine and Fisheries Committee from reconciliation instructions regarding 8(g). Subsequently, two bills proposing settlements of the 8(g) dispute, H.R. 3402, introduced by Mr. Lowry of Washington, and H.R. 3417, introduced by Chairman Jones, were referred jointly to the Committees on Interior and Merchant Marine. (H.R. 3402 was also refereed to the Rules Committee).

The Committee regards the inclusion of a proposed 8(g) settlement in its budget reconciliation package as a proper assertion of its jurisdictional prerogative, and a necessary step in reaching a 'fair and equitable' resolution of the 8(g) issue.

SECTION-BY-SECTION ANALYSIS OF SUBTITLE D

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 6401—National policy for the Outer Continental Shelf

Section 6401 inserts an additional paragraph in the Outer Continental Shelf Lands Act (OCSLA). The effect of the addition is to declare that it is a policy of the United States that: since OCS activities will have significant impacts on coastal states and, in recognition of the national interest in the effective management of the marine and coastal environment, the distribution of a potion of the section 8(g) receipts will provide affected states and localities with funds which shall be used for the mitigation of adverse economic and environmental effects related to the development of OCS resources.

Section 6402—Revision of section 8(g)

Section 6402 amends the existing provisions of Section 8(g) of the Outer Continental Shelf Lands Act, as amended (OCSLA). These ****1060 *549** amendments rewrite the existing section in its entirety and address issues including, but not limited to: the information that must be shared by the Secretary with coastal state governors as well as the timing and procedures for releasing certain information; the proper handling by the Secretary of the Interior, of Federal bonuses, rents, royalties, and other revenues received from federal leasing activities; the method by which the Secretary and the Governor of affected coastal states deal with Federal or state leasing activities that result in either a federal or state lessee tapping into an oil or gas reservoir common to lands underlying both State submerged lands and the federal continental shelf; the method to be followed by the Secretary of the Treasury in investing monies from Federal lease tracts that are escrowed pursuant to the legislation; the procedures for handling monies that result from federal leasing when there is a dispute between the federal and State governments regarding the location of state's seaward boundary; and the method for resolving and dividing revenues from federal leasing activites where such revenues are generated from lease tracts that lie in whole or in part within three nautical miles of the seaward boundary of two or more adjacent states.

The first paragraph of the revised Section 8(g) provides that when the Secretary of the Interior is soliciting nominations for the leasing of lands which contain tracts wholly or partially within three nautical miles of the seaward boundary of any State, and subsequently as new information is obtained or developed by the Secretary, the Secretary shall provide the Governor of such State: (1) an identification and schedule of the areas and regions proposed to be offered for leasing; (2) at the request of the Governor of such state, all information from all sources concerning the geographical, geological, and ecological characteristics of the tracts contained within such area; (3) an estimate of the oil and gas reserves in such areas; and (4) at the request of the Governor of such state, an identification of any field, geological structure, or trap located wholly or partially within such three mile area, including all information relating to the entire field, geological structure or trap.

In order to resolve existing problems that certain states have encountered in regards to their ability to obtain agreements between that State and the Secretary of the Interior under Section 26 of the OCSLA, the revised provisions of paragraph 8(g)(1) provide that only the first sentence of Section 26(c), as well as the provisions of subsections 26(e) through (h), apply to the release, by the Secretary of the Interior, of any information to any coastal State under this paragraph, when the information is applicable to the immediately adjacent three mile area seaward of the coastal State's boundary. Subsections 26(c) and 26(e) through (h) apply to the release, by the Secretary to the coastal State of any information relating to federal lands beyond three nautical miles of the seaward boundary of such coastal State. Thus, when the information released by the Secretary to the coastal State relates to those tracts or portions thereof within the three nautical mile area immediately adjacent to the state's coastal boundary, the Secretary is not required to obtain the concurrence of the federal lessee or permittee to that information transfer. This section also clarifies that the information sharing obligations of the Secretary under this provision relate only to information ****1061 *550** that the Secretary already has, or subsequently obtains in the normal course of business and that certain information must be requested by the coastal State Governor.

The revised Section 8(g)(2) provides that the Secretary shall deposit into a separate account in the Treasury of the United States all bonuses, rents, royalties, and other revenues, excluding Federal income and windfall profits taxes, derived from any lease of any federal tract which lies wholly or partially within three nautical miles of the seaward boundary of any coastal state. By including the phase 'other revenues, excluding Federal income and windfall profits taxes', at this and other points in these amendments, the Merchant Marine and Fisheries Committee intends to clarify the applicability of these provisions to any revenues derived pursuant to any of the alternative bidding systems authorized in section 8(a)(1) of the OCSLA. As a general rule, not later than the last business day of the month, following the month in which these revenues are deposited in the Treasury, the Secretary is required to transmit to such coastal State 27 percent of those revenues, together with all accrued interest. The remaining balance of such revenues is to be transmitted simultaneously to the miscellaneous receipts account of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

the United States Treasury. The Merchant Marine and Fisheries Committee has, for the specific purpose of these amendments, rejected the accounting concept developed by the Interior Department in 1981 known as 'surface acreage prorationing', as well as a subsequently developed concept related to the presence, or lack of, of common pools.

The Merchant Marine and Fisheries Committee amendment contains a provision in the revised Section 8(g)(3) which requires the Secretary or the Governor of a coastal State to notify the other party, in writing, when it is determined that a common, potentially hydrocarbon-bearing area may underline both the federal and State boundary. This provision further stipulates that, if the Secretary has leased or intends to lease such tract or tracts, the Secretary and the Governor of the coastal State may enter into an agreement to divide the revenues from production of any such area by unitization or other royalty sharing agreement, pursuant to existing law. Any revenues received by the United States under such an agreement are subject to the $^{27}/_{73}$ percent division as outlined under the revised Section 8(g)(2). In approving this provision, the Merchant Marine and Fisheries Committee is aware of the fact that several States and the United States have entered into unitization or other royalty sharing agreements with the Federal Government when it has been determined that the leasing activities by either the federal or State government has resulted in the drainage of oil or gas resources underlying the lands of the other party. The Merchant Marine and Fisheries Committee believes that these types of historical arrangements are a satisfactory method to be followed in ensuring that each party is 'made whole' for the loss of resources which belong to the other.

The revised section 8(g)(4) stipulates that deposits made to the Treasury account by the Secretary of the Interior are to be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to ****1062 *551** the needs of the account and yielding the highest available interest rates.

The revised Section 8(g)(5) stipulates that for all existing and future disputes between the United States and any State regarding the location of that State's seaward boundary, the Secretary is to deposit in the separate Treasury account described in the revised Section 8(g)(2), all revenues not put into a separate escrow account of the Treasury, pursuant to Section 7 of the OCSLA. Revenues to be so deposited are those attributable to tracts which are wholly or partially within three nautical miles of the seaward boundary claimed by the coastal State involved in that dispute. Upon final agreement of the parties, or upon a final determination by a court of competent jurisdiction, resolving the dispute, the Secretary shall distribute the revenues contained in this escrow account under the formula prescribed in the revised Section 8(g)(2). This paragraph further clarifies that after a final agreement or court ordered resolution of any dispute between the Federal Government and a State government regarding that State's seaward boundary, which has led to the escrowing of funds under Section 7 of the OCSLA that portion of any remaining revenues attributable to lease tracts wholly or partially within three nautical miles of the State's seaward boundary, as established by that agreement or court decree, shall be deposited and then distributed in accordance with the process established under the revised Section 8(g)(2). Finally, this provision clarifies that these rules pertain to the existing litigation between the United States and the State of Alaska, including the revenues attributable to leased tracts sold in the Federal/State Joint Beaufort Sea Oil and Gas Lease Sale.

Paragraph 8(g)(6) stipulates that this entire section shall be deemed to take effect on October 1, 1985, for the purpose of determining the amounts to be deposited in the separate account in the future and the State's shares of those funds, as described in the revised Section 8(g)(2).

Finally, Section 8(g)(7) stipulates that when the Secretary leases any tract which lies wholly or partially within three miles of the seaward boundary of two or more States, the revenues from such tract or tracts shall be distributed as otherwise provided by this section, except that the State's share of such revenues that would otherwise result under this section shall be divided equally among such States.

Section 6403

Sets forth the future rules that will govern the deposits and division of Federal revenues from the so-called 8(g) tracts, and sets forth the manner for distributing the amounts that have been escrowed pursuant to existing law and stipulates that such distribution are the fair and equitable distribution of those escrowed revenues.

Subsection 6403(a) requires that prior to January 1, 1986, the Secretary shall distribute to certain coastal States the sum of: (1) the amounts due and payable to each State under paragraph (2) of the revised Section 8(g) for the period between October 1, 1985 and the date of such distribution; and (2) the amounts due each such ****1063 *552** State under subsection (b) of this

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section for the period prior to October 1, 1985.

Subsection (b)(1) indicates that as to the amounts attributable to bonuses, rents, and accrued interest that were deposited in the separate account in the Treasury under Section 8(g)(4) of the OCSLA which was in effect prior to October 1, 1985, their fair and equitable disposition requires payment to the affected coastal States as follows:

[In millions of dollars]

Louisiana	635
Texas	424
California	375
Alabama	73
Alaska	56
Mississippi	15
Florida	0.03

Subsection (b)(2) further requires the Secretary to distribute to each coastal State 27 percent of the royalties derived from any lease of Federal lands within three miles of the seaward boundary of such coastal State and accrued interest thereon which has been deposited through September 30, 1985.

Subsection (b)(3) requires that after the State's have received payment, as stipulated above, the remaining amount shall be transferred to the miscellaneous receipts account of the United States Treasury.

Subsection (b)(4) stipulates that acceptance of payment under this subsection shall satisfy and release any and all claims against the United States arising under, or related to, former Section 8(g) of the OCSLA.

Section 6404

Section 6404 contains an amendment to the Submerged Lands Act which simply stipulates that where a boundary between a State and the United States has been, or is hereafter, fixed by coordinates under a final decree of the United States Supreme Court, such boundary shall remain immobilized at the coordinates provided under that decree and shall not be ambulatory.

Section 6405

Section 6405, consistent with the rules enunciated under Section 6402, provides a means for ensuring that the coastal States, off whose coasts federal leasing has occurred since 1978, are fully compensated for inadequacies and shortfalls in the Department of the Interior's handling of the escrow account since that date. In essence, this provision provides a benchmark

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

of amounts that should have been escrowed by the Federal Government from monies received as a result of leases issued in the so-called 8(g) zone between September 18, 1978 and September 30, 1985. These monies are all bonuses, rents, royalties and other revenues, excluding federal income and windfall profits taxes, and accured interest from that date generated from any federal lease tract wholly or partially within three nautical miles of the seaward boundary of a particular coastal State. Having determined that number on a State by State basis, and having determined what each particular State's 27 ****1064 *553** percent share of such revenues are, this provision would require the federal government to, in essence, pay each effected State, on a proportional basis, an additional amount from a special escrow account composed of monies representing 10 percent of all revenues deposited in escrow after October 1, 1986, from leasing by the Federal Government in the 8(g) zone. This additional escrowing and payment would continue from that date until such time as the benchmark figure, minus the amounts paid to each affected State under Section 403, above, has been reached.

Section 6406

This section requires, as a general rule, States receiving money under the authority of Section 6402, 6403 or 6405 to pass through to local coastal government 33 percent of the money it receives. An exception to this general rule applies to those States whose Constitutions provide for another use of these monies or who have pending, as of the date of enactment, a constitutional amendment that provides for another use of this money, assuming the pending amendment is subsequently approved.

Subtitle E. Ocean and Coastal Resources Management and Development Block Grant Act

Background

Subtitle D of the Merchant Marine and Fisheries Committee's reconciliation recommendations establishes a regime for the distribution of OCS revenues derived from nearshore tracts. That provision is based on an existing subsection in the Outer Continental Shelf Lands Act that provided for a fair and equitable division of federal revenues from leasing in the area immediately adjacent to state submerged lands.

Presently, there is no program for the sharing of revenues derived from OCS leasing and development from areas beyond the nearshore zone. To rectify this situation, the Merchant Marine and Fisheries Committee has included in its reconciliation recommendations the text of Title I of the Conference Report on S. 2463 from the 98th Congress (Rpt. 98–1006).

Title I of S. 2463 contains the conference agreement on the establishment of an Ocean and Coastal Resources Management and Development Block Grant Program, generally referred to as OCS Revenue Sharing.

General OCS revenue sharing has been an issue before the House for the last three years, and has demonstrated increasing levels of support as indicated by recorded votes in 1982, 1983, and 1984.

During the 97th Congress, an OCS revenue sharing bill (H.R. 5543) was approved by the House on a 260–134 vote. In the 98th Congress, a similar bill (H.R. 5), was passed by the House by a 301–93 margin on September 14, 1983.

On June 26, 1984, the House amended S. 2463 (a Senate fisheries bill) with the text of H.R. 5, insisted on its amendments, and requested a conference. On September 10, 1984, the Conference Report was filed in the House (H. Rpt. 98–1006), and was passed on September 13, 1984, by a 312–94 vote.

****1065 *554** Thus, inclusion of Title I of the Conference Report on S. 2463 as subtitle E of the Merchant Marine and Fisheries Committee's reconciliation recommendations does not represent the insertion of a new issue before the House. It has been thoroughly considered by the Merchant Marine and Fisheries Committee, debated by the full House on three separate occasions, and approved by a House/Senate Conference in 1984. The Conference Report was debated in the Senate at the close of the 98th Congress, but no final action was taken.

General background information on the need for, and the premises underlying, the OCS revenue sharing title are contained in

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

the Conference Report 98–1006 (S. 2463) and House Report 98–206 (H.R. 5).

In general, subtitle E of the Merchant Marine and Fisheries Committee's reconciliation recommendations has a dual purpose: first, to help promote balanced leasing and development of the outer Continental Shelf by providing coastal states with a more direct financial interest in the federal OCS program; and second, to provide a long-term, predictable source of funds for states to apply to the mitigation of coastal impacts caused by OCS and other energy-related development and to maintain effective and efficient programs for the management of the coastal zone.

Subtitle E summary

Subtitle E establishes an Ocean and Coastal Resources Management and Development Fund. Annually, beginning in FY88, an amount equal to four percent of the average amount of OCS oil and gas leasing receipts received by the Federal Government during the three previous years will be deposited into the Fund. The Fund is limited to $150 million in FY88 and $300 million in FY89. Thereafter the Fund may grow by no more than five percent per year.

No money shall be removed from the Fund except by appropriations acts. Appropriated funds will provide coastal and Great Lakes states and U.S. territories with block grants for ocean and coastal management. Block grants will be allocated by a formula which includes both energy- and coastal-related factors. No state with an approved Coastal Zone Management (CZM) program shall receive less than 1.62 percent of available funds, and no territory less than 0.5 percent. Each state and territory must provide an audit of annual expenditures of block grant funds. The Secretary of Commerce is authorized to enforce compliance with the title.

With the following exceptions, subtitle E of the Merchant Marine and Fisheries Committee's reconciliation recommendations is identical to Title I of the Conference Report on S. 2463 in the 98th Congress: the short title and findings sections have been deleted; the commencement of the Fund has been delayed until FY88; the first year's ceiling on the Fund has been reduced to $150 million; the provision for a National Coastal Resources Research and Development Institute has been deleted because it was established under prior law; the definition of boundary provision has been deleted because it is now contained in Section 404 of the Merchant Marine and Fisheries Committee's reconciliation recommendations; and the 180 day requirement for the issuance of regulations has been deleted because of the deferred starting date for the program.

****1066 *555** SECTION-BY-SECTION ANALYSIS OF SUBTITLE

Section 6501—Definitions

Section 6501 defines 12 terms appropriate to the Ocean and Coastal Resources Management and Development block grant program.

(1) 'block grant' means a national ocean and coastal resources management and development block grant.

(2) 'coastal population' is to be applied in association with section 306 of the Coastal Zone Management Act (CZMA), and is included in the regulations published in the Federal Register of May 17, 1982. It is defined by reference to the regulations.

(3) 'coastal-related energy facilities' is defined by merging two definitions found within section 304 of the CZMA—'coastal energy activity' and 'energy facilities'. The term, which encompasses coal facilities, includes any energy facility that is or is likely to be sited, constructed, expanded, or operated in, or in close proximity to, a coastal zone of any state because of technical requirements.

(4) 'coastal state' is defined to mean the Commonwealth of Puerto Rico and any state of the United States in, or bordering on, the Atlantic Ocean, the Pacific Ocean, the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

(5) 'coastal territory' is defined to include the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, American Samoa, or Guam.

(6) 'Fund' means the Ocean and Coastal Resources Management and Development Fund.

(7) 'local government' is defined by reference to section 304(11) of the CZMA and, with respect to Alaska, unincorporated communities, including Alaska native villages.

(8) 'outer Continental Shelf planning area' is defined to mean one of the geophysical regions of the outer Continental Shelf which is so designated in the OCS leasing program, dated July 21, 1982, or as so designated in subsequent OCS leasing programs. The term is used in the block grant allocation formula in section 503(d).

(9) 'proportionately' is defined to mean in the same ratio as a state's allocation. States which have developed federally approved CZM programs and, subsequent to the calculation of formula allocations receive less than the established minimum share for such states, shall receive additional funds sufficient to provide that state with the minimum allocation. Amounts necessary to provide the funds required for the minimum shares are to be subtracted from the grants of all states which receive more than the minimum allowance; such funds are to be subtracted from each state in proportion to the amount each state receives pursuant to the formula calculations.

(10) 'Secretary' means the Secretary of Commerce.

(11) 'shoreline mileage' is a term that is applied in association with section 306 of the CZMA. It is included in the regulations published in the Federal Register of May 17, 1982. The term is defined by reference to the regulations.

****1067 *556** (12) 'state' means any coastal state or coastal territory.

Section 6502—Ocean and Coastal Resources Management and Development Fund

This section establishes the Ocean and Coastal Resources Management and Development Fund, and sets forth the mechanisms by which the Fund is to be financed and by which proceeds are to be drawn from it.

Section 6502(b) establishes the basis for financing the Fund. Beginning in FY88, and in each fiscal year thereafter, the Treasury Secretary is to deposit in the Fund an amount equal to four percent of the average of all sums deposited in the Treasury under section 9 of the OCSLA during the prior three fiscal years. The deposit in the Fund in each fiscal year is to occur not later than 60 days after the end of the previous fiscal year. This subsection also provides that no more than $150 million may be deposited in the Fund in FY88. In FY89, the amount deposited shall not be greater than $300 million. In FY90, and in each fiscal year thereafter, the amounts deposited in the Fund shall not exceed 105 percent of the amounts deposited in the Fund in the prior fiscal year.

Section 6502(c) provides that any amounts derived from the Fund shall be subject to Appropriations Acts and shall be used by the Secretary to carry out the purposes of this Title.

Section 6503—National Ocean and Coastal Resources Management and Development Block Grants

This section requires the Secretary to provide each coastal State, beginning in FY88 and in each subsequent fiscal year, with a National Ocean and Coastal Resources Management and Development Block Grant from amounts paid into, and appropriated from, the Fund.

Section 6503(b)(1) establishes a pre-granting report requirement. (See discussion at section 6506.)

Section 6503(c) provides for the establishment of a trust fund by each state which receives a grant under this Title. Because the Secretary has primary responsibility to ensure that state block grants are expended for the purposes enumerated in the Title, it is necessary that the Secretary have access to a clear record of the receipt and expenditure of block grant funds. The

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

establishment of a trust fund will facilitate the exercise of such responsibility and provide for better federal oversight of the program.

Section 6503(d) establishes the allocation formula for determining each state's proportion of the amount appropriated from the Fund in any fiscal year. The formula is composed of five equally weighted criteria: (1) actual OCS activity incuding (a) actual acreage leased and (b) OCS oil and gas first landed; (2) planned OCS leasing; (3) coastal-related energy facilities; (4) shoreline mileage and (5) coastal population. For greater specificity and a technical explanation of the formula, see Appendix A of the House Report on H.R. 5 (H. Rpt. 98–206).

No state may receive credit for either shoreline mileage or coastal population criteria unless that state has developed a CZM program which has been approved by the Secretary, or is making satisfactory progress toward such approval. For any state for which ****1068 *557** the Secretary has not approved a CZM program, the coastal-related energy facilities criterion shall be reduced by 50 percent.

Section 6503(e) provides that a state shall receive credit for the coastal population and shoreline mileage criteria in the formula if it is making satisfactory progress toward the development of an approvable CZM program. This status may be renewed only once and for a period not to exceed one additional fiscal year. This subsection also provides that no state should receive more than 30 percent of the amounts attributable to either shoreline mileage or coastal population.

Section 6503(f) establishes the minimum grant provision of the Title. It provides that coastal states with a federally approved CZM program shall receive not less than 1.62 percent of the total appropriated amounts and that coastal territories with such programs shall receive not less than one-half of one percent of such amounts.

Under section 6504(b), the Secretary may reduce the block grant of any coastal state by up to 30 percent of the grant which is attributable to the shoreline mileage and coastal population criteria of the formula if the Secretary makes the determination that the coastal state is failing to make significant improvement in achieving the CZM objectives specified in section 303(2)(A)–(I) of the CZMA. The Secretary is granted similar authority under section 312(c) of the CZMA. This provision constitutes an important tool available to the Secretary in implementing the CZMA and in ensuring state compliance with the national objectives of that Act. Paragraph 3 of section 503 authorizes the Secretary to reduce the block grant of a state below the established minimum allocation if necessary to implement section 6504(b).

Section 6503(g) establishes a maximum grant level by providing that no state may receive more than 15 percent of the funds appropriated in any fiscal year under this Title.

Section 6504—Requirements on the Use of Block Grants

The first sentence of section 6504 provides broad guidance to the states as to the individual uses which might be eligible for the application of block grant funds. In general, the block grants are to be used for the enhancement and management of ocean and coastal resources and for the ameliortion of any adverse impacts that result from the siting, construction, expansion, or operation of coastal-related energy facilities.

Subsection (a) requires states to spend block grant funds on each of four categories and exclusively on the range of activities outlined by those categories. These categories include activities authorized by the CZMA; the coastal energy impact program under CZMA; the enhancement, management and development of living marine resources; and the preservation, enhancement and management of natural resources, including coastal habitats. More detailed discussions with respect to the specific activities authorized under this section can be found in Appendix B of House Report 98–206.

Any project that had previously received state or federal approval for funding pursuant to the CZMA (including section 308 of that Act), but did not receive funds because of the lack of federal appropriations, should be given serious consideration by states in initial ****1069 *558** decisions with respect to the use of block grant funds. Eligible uses would include retirement of state and local bonds guaranteed under section 308(d)(2) as well as loans made under section 308(d)(1) of the CZMA. It is important to note that a state is not required to have a federally approved CZM program as a prerequisite to the expenditure of funds under this section.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 6505—Local Governments

This section establishes requirements on recipient states for consultation and coordination with its local governments, establishes priorites for certain activities with respect to block grant allocations to local governments, and contains a requirement that no less than one-third of each block grant be passed through to local governments.

Section 6505(a)(1) does not specify the mechanism to fulfill the consultation and coordination requirements of this provision. Generally, no elaborate mechanisms are required. The intent of this paragraph is to ensure that states, in allocating block grant funds for the purpose of local government activities, are fully aware of the priorities and needs of their local communities, and that this consultative process be documented and involve public participation.

Section 6505(a)(2) requires that states allocate block grant funds among local governments after taking into consideration the responsibilities of the local governments in carrying out the activities eligible for funding.

Section 505(b) provides that states, in allocating block grant funds, give particular emphasis to the activities of local governments in responding to the effects of coastal energy activities.

Section 6505(c) provides that each state allocate no less than 33 ⅓ percent of each block grant to its local governments. The use of state allocations to local governments are subject to the requirements of section 504 and the responsibility for ensuring compliance in borne by the State. Such compliance is enforceable by the Secretary.

Section 6506—Audit and section 503(b)(1)—Pre-grant Report

While the block grant program established in Subtitle E will result in reduced federal control compared to the requirements under existing categorical programs, the legislation offers three important opportunities for federal oversight: (1) prior to the annual distribution of block grants, when each state must submit a pre-grant report; (2) during periodic federal evaluations of state CZM programs, under section 312 of the CZMA; and (3) subsequent to block grant awards, when each state must submit a detailed financial audit of its block grant trust fund.

Pre-grant Report. Section 6503(b)(1) requires that each state, prior to the receipt of annual block grants, submit to the Secretary a report which specifies the state's proposed allocation of a block grant among the various categories of eligible uses enumerated under this Title and describes each activity which is proposed to receive funds from the block grant, including the amounts proposed to be expended for each activity.

****1070 *559** The pre-grant report required by this Subtitle is not to constitute an application for federal assistance. This report should provide information of sufficient detail to allow the Secretary to make determination that the state proposes to expend its block grant in conformance with sections 504 and 505. If a State submits a report in compliance with these requirements, the Secretary must release that state's block grant. However, the amount of the block grant may be reduced if the Secretary makes the determinations provided under sections 6504(b) or 6506(c) of this Title.

Coastal Program Evaluations. Pursuant to section 312 of the CZMA, the Secretary is directed to conduct a continuing review of the coastal management performance of states with approved CZM programs. These reviews are to result in detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary and addressed the coastal management needs identified in section 303(2)(A)–(I) of the CZMA. Information from state coastal program evaluations will be an important consideration in implementation of section 6504(b) of this block grant program.

Post-grant Audit. The annual post-grant audit required pursuant to section 6506 of this Subtitle is the final stage of federal review. Subsection (a) provides that a state must submit to the Secretary a financial audit of the trust fund established under section 6503(c).

Subsection (b) specifies the information that is to be contained in each audit, the type of entity which is to conduct such an audit, and the standards for the audit.

Subsection (c) requires the Secretary to make a preliminary evaluation of each audit submitted. If the findings of this

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

evaluation indicate that either all or any part of the block grant has been misused, the Secretary must publish notice of such a finding in the Federal Register. Also, the Secretary may suspend and place in escrow an amount from any future block grant which is equivalent to the amount misused. Such amounts are to be held in escrow until the Secretary has provided the state with an opportunity for a hearing, the Secretary has made a final determination, and any appeal of the final determination is resolved. The authority to withhold funds based upon a preliminary evaluation of the state audit gives the Secretary sufficient authority to make an early identification of any misuses of block grant funds and to prevent further misuse pending more complete review through the application of the authority to suspend block grant funds.

Section 6507—Rules and regulations

This section provides that the Secretary shall promulgate rules and regulations as may be necessary to carry out the provisions of this Subtitle. It is expected that the Secretary will propose such rules well in advance of FY88 to allow time for the Merchant Marine and Fisheries Committee to review the proposed rules and, possibly, to conduct oversight hearings thereon.

Subtitle F. Amendments to the Coastal Zone Management Act

Enacted in 1972 and amended several times since (most recently in 1980), the Coastal Zone Management Act (CZMA) is intended to encourage coastal states to develop coastal management programs ****1071 *560** which meet certain minimum federal standards, yet which are tailored to the individual and varying needs of each state. State programs must address the national goals established by Congress in Section 303(2)(A)–(H) of the Act.

The two main incentives for states to develop coastal management programs are provision of federal financial assistance of up to 80% of program development and implementation costs and federal consistency. In essence, the latter is an assurance that federal agencies, in conducting activities, issuing permits, and granting financial assistance, will act in a manner which is consistent with the approved state coastal management programs.

To the extent that 28 out of 35 U.S. coastal states or territories have voluntarily developed and implemented federally-approved coastal state management programs, the CZMA has largely been successful in accomplishing one of its major intentions. In recognition of this Act's successes, the Merchant Marine and Fisheries Committee has considered and reported H.R. 2121, to reauthorize portions of the CZMA of 1972.

Two hearings were held on CZMA reauthorization. The first, on March 28, 1985, focused on the national interest served by the CZM program, its effectiveness, and the need for reauthorization. The second, on April 2, 1985, was held on the National Estuarine Sanctuary Program and the consistency provision.

As a result of the two hearings, the Oceanography Subcommittee decided to proceed with the markup of a reauthorization bill. H.R. 2121, introduced on April 18, 1985, by Subcommittee Chairwoman Mikulski and six cosponsors, including Messrs. Breaux, Foglietta, and Tallon, was the markup vehicle. The Subcommittee reported, by unanimous voice vote, an amended bill to the Full Committee on Merchant Marine and Fisheries. The Full Committee marked up and reported H.R. 2121 by unanimous voice vote, to the Full House. A Committee Report (H. Rpt. 99–103) was filed on May 15, 1985. Subsequently, H.R. 2121 was granted a Rule on July 9, 1985 (Report No. 99–191). It passed the House, by voice vote, on July 30, 1985.

The Merchant Marine and Fisheries Committee has included the text of H.R. 2121 as Subtitle F of its reconciliation recommendations. There are two minor changes to the bill as passed by the House on July 30, 1985. The FY86 authorization levels were removed from the bill because the Merchant Marine and Fisheries Committee is confident that the 1986 CZM appropriations will be forthcoming and because it determined that the inclusion of this year's authorization figures could lead to budgetary confusion. Subtitle F reauthorizes the CZMA from FY87 through FY90.

Also, a provision in the House-passed bill involving the suspension of implementation grants pending federal approval of state-initiated amendments to their management programs, was clarified with greater procedural specificity.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

SECTION-BY-SECTION ANALYSIS OF SUBTITLE F

Section 6601—Short Title

This Section states the short title of the bill, which is the 'Coastal Zone Management Reauthorization Act of 1985'.

****1072 *561** *Section 6602—Reference*

This Section states the changes in existing law made by this bill shall be changes made to the Coastal Zone Management Act of 1972, as amended, unless otherwise specified.

Section 6603—Reduction of Administrative Grants

Section 6603(a) of the bill amends Section 312(c) of the CZMA to add a new requirement that the Secretary reduce financial assistance extended to any coastal state under Section 306, and withdraw any unexpected part of the reduction, if the Secretary determines that the coastal state is failing to make satisfactory progress in providing, in its approved CZM program, for inventorying and designating areas containing coastal resources of national significance, and for providing protection for such resources, as described in Section 306(i), (A) and (B) of the CZMA. Other requirements of Section 312(c) are not substantively affected. Any reduction in financial assistance would be subject to the other requirements of Section 312(c) with respect to the percentage by which that assistance may be reduced.

Section 6603(b)(1) of the bill amends Section 306(a) of the CZMA to allow the Secretary to make grants to any coastal state for the purpose of administering that state's management program, if the state provides for the applicable fiscal year: 20 percent of the grant for Fiscal Year 1986; 30 percent of the grant for Fiscal Year 1987; 40 percent of the grant for Fiscal Year 1988; and 50 percent of the grant for each fiscal year thereafter. The Secretary may make the grant only if the Secretary makes the findings and approvals specified in Section 306(a)(1), (2) and (3).

This amendment is intended to reduce gradually to 50 percent the federal share of grants awarded under Section 306. NOAA's practice generally has been to award grants to states under circumstances in which NOAA paid 80 percent of the grant, and states were required to put up a 20 percent matching share. This amendment is not intended to alter the mechanism by which NOAA has historically determined state matching shares. The annual appropriation and NOAA's allocation formula derived from Section 306(b) will continue to govern the Secretary's determination of the maximum grant that may be awarded to each coastal state in any fiscal year.

Section 6603(b)(2) of the bill amends Section 306A(d)(1) of the CZMA, to allow the Secretary to make grants under that section to any coastal state for the purpose of carrying out the project or purpose for which a grant may be awarded under that section, if the state provides for the applicable fiscal year: 20 percent of the grant for Fiscal Year 1986; 30 percent of the grant for Fiscal Year 1987; 40 percent of the grant for Fiscal Year 1988; and 50 percent of the grant for each fiscal year thereafter.

Under current law, no grant may be made under Section 306A(d)(1) exceeding 80 percent of the cost of carrying out the purpose or project for which it is awarded. This amendment would increase the required percentage which the state must provide of the grant from 20 percent in Fiscal Year 1986; up to 50 percent in Fiscal Year 1989, and thereafter, according to the scheduled described ****1073 *562** in the amendment with respect to each applicable fiscal year.

The amount of any grant awarded will be determined by the Secretary, will be governed by available appropriations and other constraints such as Section 306A(d)(3), and need not constitute any mimimum or maximum percentage of the total cost of the purpose or project for which the grant is awarded.

These amendments to Section 306(a) and 306A(d)(1) in no way preclude a coastal state from 'over-matching' (i.e., actually paying more than the required percentage of the grant), or from paying additional monies (i.e., other than the state match for the grant) towards payment of the total cost of the coastal zone program or related projects. These amendments also do not

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

decrease any authority of, or objections upon, the Secretary under any section of the CZMA (such as Section 306(i) or 312(c)) which allows or requires the Secretary to reduce, withdraw, or withhold a grant.

Section 6603(c) of the bill amends Section 306(g) of the CZMA by deleting the second sentence and substituting language to clarify Congressional intent that all program changes must be promptly submitted for review and approval by the Secretary of Commerce, and that all substantive program amendments are fully reviewed and approved prior to any expenditure of federal funds for the implementation of any amendment. The Committee recognizes that in certain instances this latter provision may cause undue hardship for a state which has made an otherwise good-faith effort to comply with the requirements of this subsection. In such cases, it may be appropriate for the Secretary to authorize and release federal implementation funds on the basis of a preliminary finding that: (a) the state is justified in deviating from the approved program; (b) the procedural requirements of section 306(c) have been met; (c) if ultimately approved, the amendment will not require significant modification of the findings made in originally approving the program; and (d) on the basis of consultation with the state and other affected parties, implementation prior to final approval is of paramount importance to continuation of balanced coastal protection and development and compliance with the national objectives of the CZMA. The Committee intends paragraph (1) of this subsection to include all program changes, including amendments, modifications and routine program implementations (RPIs). Paragraphs (2) and (3) refer only to amendments.

Section 6604—National Estuarine Reserve Research System

This section replaces current Section 315 of the CZMA. This section establishes the National Estuarine Reserve Research System ('System'), renames the existing estuarine sanctuaries as national estuarine reserves, and provides guidance to NOAA and the coastal states regarding the research purposes to the estuarine reserves. The amendments in this section also clarify the education and interpretation responsibilities of the program, to increase public awareness of the importance of estuarine areas.

The amendment provides that the Secretary may designate an estuarine area as a national estuarine reserve only if certain specified requirements are met, including the requirement that the Governor ****1074 *563** of the coastal state in which the area is located nominate the area for designation as a national estuarine reserve.

The amendment requires the Secretary to develop guidelines for the conduct of research within the System. The guidelines are to help promote the coordination of research within the System, establish common research principles and objectives, encourage uniform research methodologies which will ensure comparability of data, and encourage the maximum use of the System for research purposes. The research guidelines also must consider additional sources of funds for estuarine research and strategies for encouraging the use of these additional funds within the System. The amendment also requires the Secretary to take necessary action to promote and coordinate the use of the System for research purposes, including requiring that NOAA, when conducting or supporting estuarine research, give priority consideration to research that uses the System. The Secretary also is required to consult with other federal and state agencies to promote use of one or more reserves within the System by those agencies when they are conducting estuarine research.

The amendment allows the Secretary to make grants to a coastal state for purposes of acquiring lands and waters, or for acquiring property interests in lands or waters less than fee simple ownership, as are necessary to ensure the appropriate long-term management of an area as a national estuarine reserve. The Secretary also may issue grants for purposes of: operation or management of a national estuarine reserve; construction of appropriate facilities; or conduct of educational or interpretive activities. The Secretary also may make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under new Section 315(c). The amount of financial assistance provided with respect to acquisition of lands and waters or property interests therein, for any one national estuarine reserve, may not exceed 50 percent of the cost of the lands, waters, and interests therein, or $4 million, whichever is less. The amount of financial assistance provided for purposes of operating or managing a reserve, constructing facilities, conducting educational or interpretative activities, or supporting research and monitoring, may not exceed 50 percent of the cost to achieve those purposes with respect to a particular reserve.

The amendment also requires the Secretary to evaluate periodically the operation and management of each national estuarine reserve. If the evaluation reveals that operation and management of the reserve is deficient, or that the research being conducted in the reserve is not consistent with the research guidelines developed under new Section 315(c), the Secretary

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

may suspend the eligibility of that reserve for further financial assistance under new Section 315(e) until the deficiency or inconsistency is corrected. The amendment also authorizes the Secretary to withdraw the designation of an estuarine area as a national estuarine reserve if the evaluation reveals that the basis for one or more of the required findings regarding designation of the area as a reserve no longer exists, or if a substantial portion of the research conducted within the area, over ****1075 *564** a period of years, has not been consistent with the research guidelines developed under new Section 315(c).

The amendment requires the Secretary to provide an annual report to the Congress describing new designations of estuarine reserves, expansion of existing reserves, the status of the research program being conducted in the System, and a summary of the evaluations of any reserves.

Section 6605—Repeals

This Section repeals: Section 310 of the CZMA, relating to research and technical assistance programs and grants; Section 314 of the CZMA, relating to the Coastal Zone Management Advisory Committee; and Section 15(c) of the Coastal Zone Management Act Amendments of 1976, relating to the establishment of four additional persons for positions which were intended to be filled with individuals carrying out functions relating to the Coastal Energy Impact Program.

Section 6606—Authorization of appropriations

This Section amends section 318 of the CZMA. The Effect of the amendment is to:

1. Reauthorize sections 306 and 306a in an amount not to exceed $36.6 million for FY87; $37.9 million for FY88; $38.8 million for FY89; and $40.6 million for FY90. Appropriations for each fiscal year for grants under sections 306 and 306A are to remain available until expended;

2. Reauthorize section 309 in an amount not to exceed $1.5 million for each fiscal year through FY90. Appropriations for each fiscal year for grants under section 309 are to remain available until expended;

3. Reauthorize section 315 in an amount not to exceed $3.8 million for FY87; $4.5 million for FY88; $5.0 million for FY89; and $5.5 million for FY90. Appropriations for each fiscal year for grants under section 315 are to remain available until expended;

4. Reauthorize monies for administrative expenses incident to administration of the CZMA, in an amount not to exceed $3.3 million for FY87; $3.3 million for FY88; and $4.0 million for FY89 and FY90.

These amendments freeze the authorization levels at FY85 levels, plus an increase each year to accommodate the 4 ½ percent per year expected rate of inflation.

Section 6607—Technical amendment

This Section changes the words ‘subsections (c)(1)’ to ‘subsections (c)’ in Section 308(h). The amendment clarifies that Section 308(c)(2) grants to assist State participation in Outer Continental Shelf leasing, may be financed through the coastal energy impact fund. It does not alter Congressional intent, nor deviate from current agency practice in administering this provision. CZMA amendments in 1976, 1978 and 1980 established the Coastal Energy Impact (CEIF) and made the CEIF available for specified purposes. The 1978 amendment added section 308(c)(2) relating to ‘OCS participation’ grants, established a separate authorization (outside the CEIF) for section 308(c)(2) in section 318(a)(4), and limited use of the ****1076 *565** CEIF by amending section 308(h). The 1980 amendment deleted section 318(a)(4), and added a reference to section 308(c)(2) into section 318(b), making 308(c)(2) grants eligible for financing via the CEIF. However, the 1980 amendment failed to remove the restrictions on CEIF usage which were added to section 308(h) in 1978. The proposed amendment conforms the restrictions in section 308(h) to complement the uses of CEIF funds now allowed under section 318(b).

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Subtitle G. Merchant Marine Act Amendments

Subtitle G, offered as an amendment by Mr. Biaggi, incorporates the text of H.R. 2893, a bill to amend section 607 of the Merchant Marine Act, 1936, dealing with the capital construction fund (CCF).

This amendment was adopted with the expectation that the tax reform measure under consideration by the Committee on Ways and Means proposes to repeal the capital construction fund program. Because tax legislation is generally on a 'fast-track' once it emerges from the Committee on Ways and Means, the Merchant Marine and Fisheries Committee has determined to provide to the House its expertise on those matters in the tax bill that are within its juridiction. This amendment was offered, therefore, to reaffirm the Committee's jurisdiction over the CCF program, and to demonstrate the way in which the program should be reformed, either along or as part of a larger tax reform objective.

H.R. 2893 was introduced on June 27, 1985, and was referred solely to the Merchant Marine and Fisheries Committee, as have other bills on the same subject. The Subcommittee on Merchant Marine held an oversight and legislative hearing on July 11, 1985. The subcommittee reviewed the status of the CCF program, and the detrimental economic implications for the maritime industry if the CCF program were eliminated.

Subtitle G modifies the capital construction fund section of the Merchant Marine Act of 1936 in several ways:

First, it amends the definition of an 'eligible vessel'. Therefore, deposits in the fund may now be made from proceeds derived from a vessel either documented under the laws of the United States or owned by a United States controlled foreign corporation. This deletes the domestic construction requirement in the determination of eligibility to establish a CCF fund. The proceeds of a CCF fund still may be withdrawn only for the construction of vessels in the U.S. The amendment also permits tax deferred funds from the operation of U.S.-controlled, foreign-flag shipping to be repatriated without immediate recognition of tax liability on those deferred amounts. Upon tax deferred repatriation, those amounts could now be reinvested in domestically constructed, U.S.-flag shipping.

Second, substitle G amends the definition of a 'qualified vessel' to expressley allow withdrawals from the fund to build vessels for the support of exploration, exploitation, or production of offshore mineral or energy resources. This is in response to a recent report of the Department of Transportation's Inspector General that questioned the legality of the Maritime Administration's approval of certain withdrawals from existing capital construction fund accounts on the basis that the trading practices of the vessels involved ****1077 *566** were contrary to statutory authorization. Specifically, the Inspector General questioned the legality of utilizing capital construction funds for the operation of vessels to be used primarily for: (1) supporting certain foreign operations; (2) lightering vessels in U.S. and foreign waters; (3) salvaging operations; and (4) assisting ships in domestic ports. The Inspector General questioned the withdrawal of $173.8 million for the acquisition of 81 vessels engaged in those service trades.

Third, subtitle G modifies the administrative provisions applicable to the establishment and management of a capital construction fund. It requires that a fundholder submit to the Secretary of Transportation a schedule of projected deposits and withdrawals in a capital construction fund for a period of not less than 10 years. The Secretary must approve this proposal. This is intended to result in closer administrative supervision of both existing and new capital construction funds in the construction and reconstruction of replacement vessels. This requirement is consistent with the underlying intent of the capital construction fund program, which is to encourage accelerated capital formation through the timely replacement of capital equipment. This is especially important in view of the traditionally, highly cyclical earnings in the shipping service industry.

Subtitle H. Use of American-Built Rigs for OCS Drilling

Subtitle H, offered as an amendment by Mr. Bosco, was motivated by a growing concern about the number of structures and vessels being built overseas for the U.S. outer Continental Shelf (OCS) oil and gas market. Japanese and Korean yards have received the contracts to build the last nine platforms ordered for U.S. west coast operations. Foreign-built launch barges have been used to transport platforms from U.S. ports to the OCS. In addition, foreign-built warehouse ships and supply vessels have been used to support exploratory drilling operations in the Navarin Basin.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

This subtitle adds a new subsection (j) to section 5 of the OCS Lands Act (43 U.S.C. 1334). Paragraph 1 of the subsection requires any structure that is used on the OCS to be built in the United States. One-half (by cost) of the supplies, materials, or articles used in the building of the structure must be of U.S. origin. This paragraph applies to all platforms, rigs, warehouse vessels, and supply ships used for the purpose of exploration or production of oil and gas on the OCS.

Paragraph 2 'grandfathers' in any of the structures or vessels referred to in paragraph 1 that were built, were under construction, or for which a building contract had been executed, on or before October 1, 1985. Foreign-built structures or vessels may be used on the OCS if they meet one of these requirements.

Paragraph 3(A) allows a waiver of the 50% U.S.-origin supply requirement if the Secretary of the Interior determines that one-half of the supplies necessary for the construction of the OCS structure cannot be mined, produced, or manufactured in the United States.

Paragraph 3(B) allows the Secretary of the Interior to waive the requirement that all OCS structures or vessels on a specific lease ****1078 *567** be U.S.-built if, upon application, it is determined that at least one-half will be U.S.-built, by number and by weight.

Title H was amended to apply only to the OCS south of the 49th parallel. In effect, the title does not apply to any of the Alaskan OCS planning areas.

***568** ADDITIONAL VIEWS REGARDING THE RECONCILIATION RESOLUTION OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES BY THE HONORABLE MIKE LOWRY (D.-WA.)

On September 26, the Committee on Merchant Marine and Fisheries marked up its response to the Budget Committee's reconciliation instructions. As a member of both the Budget Committee and the Merchant Marine and Fisheries Committee, I view this as a very important exercise and an important opportunity for the Merchant Marine and Fisheries Committee to assert its role in the budget process.

One of the more contentious issues faced by the committee in this process was the settlement of claims under Section 8(g) of the Outer Continental Shelf Lands Act. I have been involved with the 8(g) issue for several months. As Chairman of the Subcommittee on Panama Canal/Outer Continental Shelf, I held hearings on this subject earlier this year. As a member of the Budget Committee, I participated in that committee's deliberations on the issue. On September 20, Mr. Studds, Ms. Mikulski, and I introduced H.R. 3402, which I believe provides a fair and equitable solution to the 8(g) issue.

At the Merchant Marine and Fisheries Committee markup, members from the '8(g) states,' with the leadership of the gentleman from Louisiana, Mr. Breaux, were able to secure passage of Mr. Breaux's substitute 8(g) proposal. This proposal provides a generous settlement to the 8(g) states, including Louisiana, Texas, California, Alaska, Mississippi, Alabama and Florida. While I have reservations about some of the elements of his bill, I support and will continue to support a legislative settlement of the 8(g) issue, and I applaud Mr. Breaux on his effectiveness throughout the entire period of consideration of the 8(g) matter.

The 8(g) bill reported by the Committee on Interior and Insular Affairs includes an amendment to Section 19 of the Outer Continental Shelf Lands Act. The Merchant Marine and Fisheries Committee reconciliation bill contains several items dealing with the Outer Continental Shelf, including 8(g), revenue sharing, Coastal Zone Management Act reauthorization, and a 'Buy America' provision. Although the Merchant Marine and Fisheries Committee chose not to address the Section 19 issue in the reconciliation markup, I believe that an amendment similar to that offered by the Honorable George Miller in the Interior Committee would provide a much-needed balance in the overall package.

****1079** The Subcommittee on Panama Canal/Outer Continental Shelf has held several hearings on the leasing process. One of the most contentious issues that has arisen is the role of the states in the leasing process. The states have a significant responsibility for protection of coastal and marine resources, and should play an active ***569** role in the leasing process. The Supreme Court ruled in a 1984 decision that Section 307(c)(1) of the Coastal Zone Management Act did not apply to OCS lease sales. Testimony before the subcommittee has indicated that the present leasing process is not working. A Section 19 amendment could restore some of the balance in the leasing process.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

By amending Section 19, I do not intend to give the coastal states a veto over offshore leasing activities. I would, however, like to increase their negotiating leverage with the Secretary of the Interior with regard to lease stipulations and tract selection. This would facilitate the resolution of disputes at the lease sale stage, and would lead to greater certainty in the leasing process.

I intend to follow this legislation closely as the Budget Committee, the Rules Committee, the House of Representatives, and the Conference Committee consider the bill. I will continue to seek an amendment to deal responsibly with one of the most controversial issues involving OCS leasing—the state's role in the leasing process. Such an amendment will make the leasing program more responsive to state concerns, less litigation—prone, and more effective in meeting the nation's energy needs, while protecting living marine resources and other coastal resources.

MIKE LOWRY.

* * * * *

***586** LEGISLATIVE JURISDICTION OVER THE OUTER CONTINENTAL SHELF (OCS) LANDS ACT: THE COMMITTEES ON MERCHANT MARINE AND FISHIERS AND INTERIOR AND INSULAR AFFAIRS

1. The central role of the Committee on Merchant Marine and Fishiers in a broad range of offshore activities, including the resources of the OCS, reflects the seaward expansion of U.S. jurisdiction

The responsibility of the Merchant Marine and Fisheries Committee centers upon the civilian marine affairs of the United States. Originally oriented largely to marine transportation, the jurisdiction ****1080 *587** of the Committee over U.S. marine affairs has evolved with the seaward expansion of national jurisdiction over offshore resources in the last four decades. Jurisdiction over the resources of the OCS is a central component of these expanded resource claims.

At the turn of the century, the U.S. exercised full sovereignty and control over a three-mile territorial sea in which the primary federal responsibilities were shipping and navigation. Beyond three miles, the U.S. exercised very limited jurisdiction for the exclusive purpose of enforcing its customs, sanitary, and fiscal regulations; otherwise, the area constituted international high seas.

Beginning in 1945 and continuing through 1983, the U.S. unilaterally expanded its jurisdiction over marine resources beyond the territorial sea, culminating in a general claim to resources within 200 miles of the coast. The claims extended by the U.S. are limited to jurisdiction over marine resources and pollution of the marine environment. They do not constitute claims of sovereignty or territorial authority over this area. In all other aspects, the area beyond three miles continues to constitute international high seas.

Three specific claims mark this seaward expansion of federal resource jurisdiction. In each of these, the Committee on Merchant Marine and Fisheries has played an important, and in some cases, a dominant legislative role, demonstrating its responsibility for civilian marine affairs in the House of Representatives.

First, on September 8, 1945, President Truman issued Proclamation 2667 in which he declared, on behalf of the U.S., jurisdiction over the living and non-living resources of the subsoil and seabed of the continental shelf. The domestic legislation implementing the non-living resource aspects of the Truman Proclamation is the Outer Continental Shelf Lands Act (OCSLA). That law, originally reported by the Judiciary Committee and enacted in 1953, was substantially amended in 1978 through the effort of the Select Committee on the OCS, in which the Merchant Marine and Fisheries Committee played a predominant role.

The second major claim occurred in 1976 with enactment of the Magnuson Fishery Conservation and Management Act (MFCMA), which extended offshore jurisdiction over living marine resources within 200 miles. Although it required another 23 years to implement the fisheries element of the Truman Proclamation, the OCSLA and the MFCMA both share their historical roots in that 1945 decree. Jurisdictionally, the type of authority exercised over marine fisheries is identical to the authority over mineral deposits on the OCS. The MFCMA, in essence, did for the fishery resources what the OCSLA did for the mineral resources of the continental shelf, i.e., extend exlusive jurisdiction over those resources for the benefit of the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

American people. In the House, this law was written by the Committee on Merchant Marine and Fisheries.

Third, in March 1983, the U.S. claimed on 'Exclusive Economic Zone' (EEZ) which comprises the water column, continental shelf, and sea floor out to 200 miles. Within EEZ, the U.S. has asserted exclusive sovereign rights over living and non-living resources, and jurisdiction over the marine environment. The EEZ Proclamation makes clear that except for these limited claims, the EEZ remains an international area subject to traditional high seas freedoms.

****1081 *588** The legitimate jurisdiction of the Merchant Marine and Fisheries Committee over EEZ-related legislation has been recognized in the last two Congresses. In the 97th Congress, Representative Breaux introduced H.R. 7225, to establish an EEZ adjacent to the territorial sea of the U.S. The bill was referred to the Committees on Interior and Insular Affairs, Foreign Affairs, Ways and Means, and Merchant Marine and Fisheries. In the 98th Congress, Mr. Breaux introduced a similar bill, H.R. 2061, which was also referred to the same four committees.

Furthermore, legislative efforts in the House to extend domestic marine pollution authorities have originated with the Committee on Merchant Marine and Fisheries. The ocean's primary pollutants result from the intentional dumping of materials and discharges from vessels. In both categories, as the U.S. extended its seaward jurisdiction over the marine environment, the Merchant Marine Committee developed legislation to implement those authorities. These legislative enactments include the Marine Protection, Research and Sanctuaries Act of 1972, which governs ocean dumping and the designation of protected marine areas (marine sanctuaries) to the fullest reach of U.S. jurisdiction, and amendments to section 311 of the Clean Water Act, which implement the expanded seaward jurisdiction of the U.S. over vessel pollution.

Finally, efforts by the House to develop procedures under which U.S. citizens would mine the mineral resources of the deep seabed further support the jurisdiction of the Merchant Marine Committee over offshore resources. The legislative record on this matter is particularly revealing, given the close relationship between mining marine resources on and beyond the continental shelf.

In February, 1972, the Speaker referred H.R. 13076, a deep seabed mining bill, to the Merchant Marine Committee—a referral which was disrupted by the Interior Committee. In a letter of March 13, 1972, the Speaker indicated that the Merchant Marine Committee referral should stand, citing the continuing interest of the Committee in mineral exploration and development of the seabed. Subsequently, the Committee played the central role in enactment of the 1980 Deep Seabed Hard Mineral Resources Act, although the Interior, Foreign Affairs, and Ways and Means Committees shared jurisdiction.

As the U.S. has expanded its jurisdiction over various aspects of the oceans, including the management and control of the resources on the OCS and beyond, the Merchant Marine Committee has been the key House body in coordinating the legislative and oversight responsibilities necessitated by that expansion. Its record of taking the lead role in developing legislation that encompasses the exploration, production, and protection of ocean-based resources is without parallel.

2. The historical pattern of membership on the Merchant Marine and Fisheries Committee identifies it as the principal forum for ocean and coastal interests and strengthens its position as the Civilian Ocean Committee in the House.

The Committee system itself is founded on the proposition that smaller groups of legislators with expertise and political interest in specific areas should review legislative proposals in those areas. An ****1082 *589** examination of the membership of the Merchant Marine and Interior Committees, from the 94th through the 99th Congresses, reveals that the former has far more extensive coastal district representation. (See Appendix I.)

The institutional importance of the Committee on Merchant Marine and Fisheries is overwhelmingly recognized by Members who represent ocean and coastal constituencies. And, largely as a result of the composition of its membership, the Merchant Marine Committee has consistently exhibited a greater and more immediate interest in ocean and coastal resources. Moreover, the record of OCS-related activities of these two committees during the same time period provides evidence that the Merchant Marine Committee Members have a far greater interest in OCS issues than do Interior Committee Members. (See Appendix II.) The establishment of the OCS Subcommittee in the Merchant Marine Committee at the beginning of the 97th Congress is a further manifestation of this interest.

The Merchant Marine Committee's coastal county representation has averaged more than twice that of the Interior

Committee over the last decade. This general pattern of predominance in coastal representation was found to hold true in every Congress examined, i.e., from 1975 to 1985.

Representation of coastal districts by Merchant Marine Committee Members, traditionally high, increased by 10.5 percent from 1975 to 1985. Whereas in 1975, 29 of the 40 Members (72.5 percent) came from coastal county districts, in the current session of Congress, 35 of the 42 Members (83.3 percent) represent such districts.

Representation of coastal districts on the Interior Committee, always significantly lower than on the Merchant Marine Committee, has actually decreased in recent years. There are 11.9 percent fewer Members from coastal districts on the Interior Committee than there were in 1975. In that year, 18 of a total of 43 Committee Members (41.9 percent) represented coastal constituents. Presently, only 12 of the 40 Committee Members (30.0 percent) provide such representation.

Additionally, the activities of the Merchant Marine Committee place for more emphasis on coastal and OCS issues. Since disbandment of the Select Committee on the OCS in 1980, the Merchant Marine Committee has held 29 OCS-related hearings and investigative trips. Six of these were field hearings convened in the Gulf of Mexico, New England, and Alaska. The Interior Committee has held seven hearings, two of which were in California.

By virtue of its member interest and expertise, the Merchant Marine and Fisheries Committee is the Committee most able to advise the House of legislation dealing with complex ocean and Merchant Marine Committee's pivotal role in the design and passage of the 1978 OCSLA amendments. The obvious nexus between coastal districts and activities that occur offshore of those districts, particularly OCS oil and gas development, argues strenuously for jurisdiction of the Committee over such activities. Additionally, jurisdiction of the Committee over all civilian ocean activities will allow its Members to affect ocean policy and strengthen their representation of their individual coastal districts.

****1083 *590** *3. The predominant role of the Merchant Marine and Fisheries Committee in developing the 1978 OCS Amendments demonstrates the institutional importance of the Committee in OCS affairs*.

The Speaker established the Select OCS Committee to expedite consideration of OCSLA amendments by temporarily consolidating OCS jurisdiction in one committee. The membership of the Committee was composed of representatives from the Merchant Marine and Fisheries, Interior and Insular Affairs, and Judiciary Committees.

The Select Committee was dominated by Members of the Merchant Marine Committee. Appendix III demonstrates that from 1975 to 1980, the lifespan of the Select Committee, 44 percent of its membership came from the Merchant Marine Committee, whereas 25 percent came from the Interior Committee. This dominance of committee membership graphically demonstrates the prevailing interest of the Merchant Marine Committee on the OCS and provides testimony to the Committee's central role in the design and passage of the 1978 OCS amendments.

Moreover, House debate on the OCS bill recognized the pivotal role played by the Merchant Marine Committee on the Select OCS Committee. On June 4, 1976, when H. Res. 1217, the rule for H.R. 6218 (the OCS bill) was debated on the floor, Congressman Moakely stated:

> The (Select OCS) Committee was constituted from the membership of the Committees on Merchant Marine and Fisheries, Judiciary, and Interior and Insular Affairs. *The chairman of the subcommittee having principal jurisdiction was appointed to chair the ad hoc Committee*. (emphasis added)

Mr. Moakley's reference was to the Chairman of the Oceanography Subcommittee, who subsequently became Chairman of the full Merchant Marine and Fisheries Committee while retaining the chairmanship of the Select OCS Committee. Also, from 1978–80, the Ranking Minority Member of the Select Committee was a Member of the Merchant Marine Committee. Thus, the Merchant Marine Committee provided leadership, as well as predominant membership on the Select Committee, demonstrating the institutional importance of the Committee in OCS affairs.

4. Jurisdiction over OCS activities constitutes a core component of the jurisdiction and institutional role of the Merchant Marine Committee, whereas OCS matters are peripheral to the responsibilities of the Interior Committee

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Governing the exploration and development of the mineral resources of the OCS represents a major component of federal mine resource responsibilities. Together with fisheries, offshore mineral resources constitute the core of the extended resource claims of the United States during the twentieth century. Jurisdiction over these responsibilities, in turn, lies at the heart of the institutional role of the Merchant Marine Committee as the oceans committee in the House of Representatives. This is demonstrated by the historical involvement ****1084 *591** of the Committee in these claims, the referral precedents over bills relating to these responsibilities, and the membership patterns of the Committee.

On the other hand, jurisdiction over the OCS represents only a peripheral interest of the Interior Committee. The core responsibilities of the Interior Committee have traditionally evolved around the public land holdings of the U.S.—as evidenced by its original designation as the Committee on Public Lands. These include the public lands themselves, Indian lands over which the U.S. exercises trustee responsibilities, and the territorial possessions of the U.S.

However, the responsibility of the Interior Committee over the mineral resources of the 'public lands' provides no basis for its interest in offshore lands since the OCS does not constitute public land. The term 'public lands' enjoys two centuries of well-established meaning as it has been used by the U.S. Congress and interpreted by the Supreme Court. Two fundamental criteria determine whether or not a land area constitutes public lands; the holding of title to the area and the ability to sell or otherwise dispose of it. The Ninth Circuit recently held that the mere possession of mineral rights to an area by the U.S. does not qualify it as public land, an issue which is directly analogous to the OCS setting. In *Columbia Basin Land Protection Ass'n* v. *Schlesinger*, 643 F. 2d 585, 602 (1981), the Court stated:

> The United States Supreme Court has consistently held that 'public lands' means lands which are subject to 'sale or other disposition under general laws,' *Northern Lumber Co.* v. *O'Brien*, 204 U.S. 190, 196, 27 S.Ct. 249, 251, 51 L.Ed. 438 (1907) (unanimous opinion); *Bardon* v. *Northern Pacific Railway*, 145 U.S. 535, 538, 12 S.Ct. 856, 857, 36 L.Ed. 806 (1892) (unanimous opinion); *Newhall*, 92 U.S. at 763, and does not include '(a)ll land, to which any claims or rights of others have attached.' *Payne* v. *Central Pacific Railway*, 255 U.S. 228, 237–38, 41 S.Ct. 314, 316–17, 65 L.Ed. 598 (1921) (unanimous opinion); *Northern Lumber Co.*, 204 U.S. 196, 27 S.Ct. at 250; *Bardon*, 145 U.S. at 538, 12 S.Ct. at 857; See *United States* v. *Hemmer* 241 U.S. 379, 385–86, 36 S.Ct. 659, 662, 60 L.Ed., 1055 (1916) (unanimous opinion). This has been held to be the meaning habitually used in acts of Congress, unless the statute explicitly provides for a different meaning for the term. *Bardon*, 145 U.S. at 543, 12 S.Ct. at 859. Moreover, this meaning has been used continually in many congressional acts that the Secretary of the Interior has had to interpret. *Payne*, 255 U.S. 231, 41 S.Ct. 314; *Minnesota* v. *Hitchcock*, 185 U.S. 373, 22 S.Ct. 650, 46 L.Ed. 954 (1902); *Newhall*, 92 U.S. 761, 23 L.Ed. 769.

The U.S. does not hold title to the OCS, nor is the OCS subject to 'sale or other disposition under general laws.' As opposed to full dominion and control, the U.S. has claimed only limited sovereignty over the exploration and development of the natural resources on and within the OCS. The U.S. in no way exercises title to or sovereignty over the area itself. Except for the resources related claims of jurisdiction over the fisheries and mineral deposits of the OCS, the area is international and beyond U.S. control, as recently ****1085 *592** reiterated by the President's Exclusive Economic Zone Proclamation.

The responsibility of the Interior Committee over mining and mining interests constitutes the sole basis of its interest in the OCS. The Rules of the House and the historical origins of the Committee as the successor to the Committee on Mines and Minerals affirms its jurisdiction over mining interests generally. Thus, the Interior Committee has an interest in mining on the OCS by virtue of its general jurisdiction over mining. Neither this narrow jurisdictional thread based on the Rules of the House nor past precedents (see section 5) sustain a position of Interior Committee exclusivity with respect to OCS matters.

5. The Merchant Marine and Interior Committees share interests in the mining of OCS resources, as demonstrated by the history of referrals prior to, and during the work of, the Select OCS Committee and the creation of the Select Committee itself.

A review of the precedents in referring general OCS legislation, and related bills, provides compelling evidence in support of the jurisdictional interests of the Committee on Merchant Marine and the Committee on Interior. These precedents demonstrate that both committees have a broad range of interests in the federal OCS program. Appendix IV lists non-revenue and non-moratoria OCS legislation from the 93d through the 99th Congresses.

The original jurisdiction of the Judiciary Committee over OCS legislation reflected the fact that the juridical issues relating to

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

international and federal-state relations in the oceans resulting from the Truman Proclamation required resolution. Enactment of the Submerged Lands Act and the OCSLA in 1953 largely settled these legal questions.

After enactment of the OCSLA, legislative activity relating to the OCS declined sharply until the early 1970's when the Arab oil embargo led to increased demands for accelerated development of our offshore energy resources. In recent years, legislation has focused on the need for substantive changes in the areas of leasing policy, environmental and coastal protection, and offshore safety. Thus, responsibility for OCS legislation has shifted to the Merchant Marine and Interior Committees.

The Interior Committee has itself acknowledged the legitimate interests of the Merchant Marine Committee regarding the development of OCS resources. During the 89th Congress, two bills (H.R. 5884 and H.R. 6009) were introduced to establish 'a program of marine exploration and development of the resources of the Continental Shelf.' Initially, the Speaker referred both bills to the Interior Committee because they dealt with the development of the land mass beneath the sea. However, on March 15, 1965, and again on March 17, 1965, Chairman Aspinall of the Interior Committee obtained unanimous consent to have his Committee discharged from further consideration and to have the bills re-referred to the Committee on Merchant Marine and Fisheries (See Deschler's Precedents, Chapter 17, Section 44.14). In effect, both Committees have broad jurisdiction over the OCS and legislation pertaining thereto, and this shared jurisdiction has been traditionally respected ****1086 *593** by both the Interior Committee and the House of Representatives.

In point of fact, prior to development of the system of joint referral in the 94th Congress, both the Merchant Marine and Interior Committees received exclusive referral of one or more bills proposing comprehensive amendments to the leasing program established under the OCSLA. (See H.R. 1836 and H.R. 17527 in the 93d Congress.) These referrals recognized the principal interests of both Committees in matters dealing with the OCS.

It is important to point out that, because of the absence of a multiple referral system, the exclusive referral of a bill to one Committee before the 94th Congress cannot be taken to imply a lack of jurisdiction on the part of another Committee. As the commentary on the Rules of the House (99th Congress, at page 341) points out, '(p)rior to the 94th Congress, a bill could not be divided among two or more committees, although it contained matters properly within the jurisdiction of several committees . . .'.

For example, H.R. 1836 (Peyser), referred to the Merchant Marine Committee, most likely would have been referred to the Committees on Merchant Marine and Interior if multiple referrals were allowed during the 93d Congress. In fact, when Congressman Peyser introduced a similar bill (H.R. 1363) in the 94th Congress, both committees received referral. H.R. 17257 contained an OCS research and development provision and an impacted coastal state fund. Although referred to the Interior Committee in the 93d Congress, when reintroduced in the 94th (H.R. 2772), it was referred to the Committees on Judiciary, Merchant Marine, Interior, and Science and Technology. Furthermore, a number of the OCSLA bills during the 93d Congress dealing with deepwater port facilities, were referred to the Interior Committee. Subsequent deepwater port bills had multiple referrals, including to the Merchant Marine and Fisheries and Public Works and Transportation Committees.

Referral of legislation during the 94th Congress—both before and after the establishment of the Select OCS Committee—demonstrated the shared jurisdictional interests of the Merchant Marine and Interior Committees. As a result of the newly instituted system of multiple committee referrals, the vast majority of proposals to amend the OCSLA were referred jointly to both committees, in addition to a number of others. At this time, of course, the only viable OCS bill was H.R. 6218, which was being considered by the Select OCS Committee. The general pattern of multiple referrals continued through the 95th Congress while the Select Committee completed its legislative work.

Finally, the establishment of the Select Committee was, in itself, an explicit recognition of broadly shared interests among the Merchant Marine, Judiciary, and Interior Committees.

The resolution establishing the Select Committee recognized each of the three constituent committees on a coequal basis and vested in the Speaker the authority to appoint the members and the Chairman. Presumably, such appointments would be made on the basis of member interest and expertise. As noted, the Speaker exercised this authority by appointing a plurality of members and the Chairman from the Merchant Marine Committee.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

****1087 *594** *6. The proposition that the Select Committee did not affect the OCS jurisdiction of standing committees, while accepted by the Merchant Marine Committee, fails to account for the altered nature of OCS legislative matters resulting from the work of the Select Committee*

The Speaker's letter of April 29, 1981, stated that the Select OCS Committee did not result in any permanent changes in the jurisdictions of the standing committees over matters dealing with the OCS. A similar assertion was made by Chairman Udall on May 24, 1982, in a letter to the Speaker. The Committee on Merchant Marine and Fisheries agrees with this proposition and assumes it means that standing committees should not lose any of the OCS jurisdiction they had prior to the establishment of the Select Committee.

Section 5 reviewed the referral of OCS bills prior to and during the term of the Select Committee and confirmed the jurisdiction of the Merchant Marine Committee. In fact, the pattern of referrals for general and comprehensive OCS legislation clearly involved the joint jurisdiction of both committees in question. If the principle of returning to the existing jurisdiction of the committees prior to the establishment of the Select Committee had been maintained, many of the concerns of the Merchant Marine and Fisheries Committee would be attenuated.

Nevertheless, a portion of the Committee's concern is based on a failure to take into account the significantly changed nature of OCS legislative matters that occurred during the 1970's and continues today.

Issues that had earlier been confined to juridical matters involving positions of international law and U.S. federalism questions, i.e. establishing jurisdictional zones in the ocean, were transformed into questions involving a balance between an expanded offshore leasing program and the protection of the marine and coastal environment. National debate on the OCS was dramatically changed on January 28, 1969, when a blowout from offshore oil drilling in the Santa Barbara Channel resulted in the largest oil spill in U.S. history. Five years later, on January 23, 1974, President Nixon directed that OCS leasing be accelerated to accommodate the sale of 10 million acres in 1975. That represented for a single year the total amount of acreage that had been leased under the federal offshore program since its beginning in 1953.

Intense and immediate concern was registered by coastal state governors, environmental organizations, local governmental public officials, citizen organizations, and a variety of other institutions concerned about such a significant break from past leasing practices. It was obvious to all that the 1953 OCS law, which was very brief and provided the Interior Department with enormous discretion, needed to be modernized. Recognizing that overlapping committee jurisdictions in the House would seriously impede a comprehensive review of the OCS law, the Speaker created the Ad Hoc Select Committee, using new authorities just established at the beginning of the 94th Congress.

The reasons for the formation of the Select OCS Committee were expressed by Representative John Murphy of New York. Required ****1088 *595** changes to the OCS law, he said, 'resulted from public concern about the Department of the Interior's accelerated OCS leasing schedule.' (Congressional Record, January 18, 1979, p. E96.)

The Select Committee, then, was a result of the confluence of both external events and internal rule changes, the establishment of which was coterminous with the advent of the multiple referral process. As already demonstrated, the new process recognized the shared jurisdiction of the Merchant Marine and Interior Committees as well as the historical involvement of Judiciary. In his 1981 correspondence, the Speaker stated:

> The creation of the Select Committee on the Outer Continental Shelf was necessitated by the urgency of enacting comprehensive but specific legislation regulating management of the Shelf, notwithstanding *the shared jurisdiction over matters relating to that subject* (among the Committees on Interior and Insular Affairs, the Judiciary, and Merchant Marine and Fisheries). (Emphasis added.)

Since the end of the Select OCS Committee, however, the changing role of the Judiciary Committee illustrates the fact that committee jurisdictions tend to evolve over time and are not absolutely static. The Judiciary Committee, although a constituent Member of the Select Committee, has not asserted any claim over the OCSLA since 1980. The changing nature of OCS issues (from juridical to environmental) and the resulting lack of interest on the part of the Judiciary Committee documents the evolution of jurisdictional precedents in this area. On the other hand, the Merchant Marine Committee and, to a more limited extent, the Interior Committee have demonstrated a continuing interest and involvement in OCS matters since the demise of the Select Committee.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Merchant Marine Committee, therefore, strongly supports the proposition that those standing committees which have strong precedential claims and a demonstrated interest and expertise in OCS matters should not lose any jurisdiction that existed prior to the Select Committee.

However, there is another factor that should be considered when analyzing the impact of the Select Committee on standing committee jurisdictions, involving the status of the OCS law itself prior and subsequent to the work of the Select Committee. It is a commonly accepted principle that a committee reporting a bill that is enacted into law is presumed to acquire the duty to oversee implementation of that law and to suggest amendments to it. If a more comprehensive law is enacted which supplements earlier legislation, the committee reporting the more comprehensive law would not only retain jurisdiction over the new law, but could be presumed to acquire legislative interest in the earlier measure as well. This, of course, assumes that the committee had some clear precedential history in the subject matter of the law.

The charge to the Select Committee was to rewrite the OCSLA. With the exception of four substantive and five minor and technical sections of the original 1953 statutes, all other sections were completely rewritten and thirteen new sections, extensive 'findings' and 'purposes' provisions, eight miscellaneous matters, and a new statement of national policy were added to the law. In the ****1089 *596** case of the Select Committee, it would therefore appear reasonable that the constituent committees would retain jurisdiction over the legislative product of that Committee. Moreover, the predominant role of the Merchant Marine and Fisheries Committee in the Select Committee butteresses the application of this principle to the continued jurisdiction of the Merchant Marine and Fisheries Committee over the 1978 amendments.

7. The rubric 'administration of leasing' as a principle for distinguishing committee jurisdictions lacks clear precedential origins, fails to recognize the nature of the 1978 OCS Amendments, and has worked to restrict the proper involvement of the Merchant, Marine Committee in OCS matters

The Speaker's letter of April 29, 1981, indicates that the Interior Committee has primary jurisdiction over certain OCS matters that deal 'only with the administration of leasing' because the Committee '. . . has general jurisdiction over all leases for the extraction of oil, gas, and minerals from the public lands'. The fact that the OCS is not the public lands of the United States has already been noted. Nevertheless, the rationale of 'the administration of leasing' has been used to the serious disadvantage of the Merchant Marine Committee with respect to the referral of a number of OCS bills (see Section 8C below).

A. The concept lacks clear precedential origins

The Speaker's letter was the first reference, within the knowledge of the Merchant Marine Committee, to OCS leasing administration as a referral principle. A review of precedents, written communications, and other relevant sources indicates that this principle had never been used before to distinguish among committee jurisdictions.

Paragraph (1) of rule X, clause 1, of the Rules of the House stipulates the jurisdiction of the Committee on Interior. Nowhere in the rule itself is the word 'lease' used. The extensive notes to the rule only use the word 'lease' or 'leasing' twice. One refers to the reinstatement of a U.S. oil and gas lease (August 5, 1959) and the other to bills that 'exclude certain lands in the outer continental shelf from mineral leasing provisions of the Outer Continental Shelf Lands Act.'

The former involved a private bill providing for the reinstatement of an *onshore* lease in Oklahoma that had been terminated because of a billing error in rental payments. The latter reference is to a 1963 bill that would have reserved, for the use of the Department of the Navy, certain OCS areas. Theae areas would be excluded from the mineral leasing provisions of the OCSLA. The Judiciary Committee, which had received the initial referral of an executive communication that contained such a proposal, requested that the communication be re-referred to the Committee on Interior. The unanimous consent request was agreed to, and when a bill to this subject (H.R. 6417) was introduced on May 20, 1963, it was referred to the Committee on Interior and Insular Affairs (Deschler's Precedents, Chapter 17, Section 40.15.)

Of course, these two minor precedents occurred before the multiple referral process in the 94th Congress. During the time that the ****1090 *597** Select OCS Committee was created, the Members of the Merchant Marine Committee never understood

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

that the administration of the OCS leasing program was only within the jurisdiction of the Interior Committee. Additionally, there was no formal recognition of this principle in either the debate leading to establishment of the Select Committee, or in the subsequent deliberations of that committee.

The 1963 Navy exclusion was an extraordinarily narrow issue. The referral of H.R. 15395 (Gunter) in the 93d Congress and H.R. 11934 (Sikes) in the 94th Congress were presumably based on this precedent. On the other hand, the referral of H.R. 1836 in the 93d Congress to the Merchant Marine Committee had, it was assumed, established jurisdiction of the Committee over the exclusion of OCS areas to be held in trust until certain specific findings about the environmental effects of leasing could be made. Narrow precedents, as in the Navy case, do not form strong underpinningg for the principle of distinguishing among committee jurisdictions in the far broader area of OCS leasing matters.

B. The concept fails to recognize the nature of the 1978 OCS Amendments

A comparison of the 1953 law with the 1978 amendments illustrates quite clearly that the environmental concern of the 1970's was the driving force behind the modernization of the OCS law. The 1953 statute contained practically nothing about environmental protection; the marine, coastal, or human environment; the coastal zone of the U.S.; environmental impact statements; oil spill issues; the role of coastal state governments; coastal zone management; offshore safety; the submission of exploration and development plans; OCS oil and gas information programs; procedures for balancing environmental risks among different regions of the country; requirements for assessing the economic, social, and environmental values of the renewable and non-renewable resources of the OCS; new bidding systems to enhance competition on the OCS; or the 5-year leasing program.

During the floor consideration of the Select Committee's funding resolution, the Chairman of the Committee noted:

> We have to remember that the situation today is vastly different than when the basic Outer Continental Shelf Lands Act was passed in the Eisenhower Administration in 1953. Since then we have become aware of the importance of the marine and coastal environments, as witness the passage of the ocean dumping and coastal zone management program. Whereas the purpose of the OCS act was singular—get the oil and gas to shore—today's climate requires a more sophisticated approach. That too is what this legislation is all about.
>
> We must avoid damage to the coastal regions while drilling offshore . . .
>
> This legislation will help bring about a balance between our need to proceed with offshore oil and gas exploration and the demands of coastal State citizens that their needs and problems be taken into account.
>
> ****1091 *598** We want to provide safeguards against pollution accidents and we need to see that the States are involved in the Federal decisionmaking process that leads to an offshore lease sale.
>
> We want to make sure that the coastal States working on their coastal zone management programs do not wake up one day to find that a major operation such as offshore oil and gas has been planned in an unsuitable location. (Congressional Record, May 22, 1975, p. H. 4604.)

Sections 5 and 8 of the 1953 law dealt with the administration of leasing, and the leasing of the OCS, respectively. They were extremely brief sections that provided the Secretary of the Interior with broad discretion. The only reference to any factor that could be considered environmental was in section 5(a)(1):

> The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, . . .
>
> In the enforcement of conservation laws, rules, and regulations the Secretary is authorized to cooperate with the conservation agencies of the adjacent states.

It was the brevity of such sections that led, in part, to the demand for major change to the law and, eventually, the establishment of the Select OCS Committee. The environmental, safety, and coastal state elements added by the 1978

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

amendments cannot be distinguished from 'the administration of leasing'. The factors that led to congressional action to update the OCS statute and the establishment of the Select OCS Committee are reflected throughout the fabric of the new law. Trying to distinguish the environmental factors from pure administration of leasing elements is practically impossible and, in effect, a distinction without a difference. Certainly, the narrow 1963 Navy OCS area exclusion precedent cannot be the basis for the administration of leasing distinction that apparently divides committee jurisdictions.

C. The concept has restricted the proper involvement of the Merchant Marine Committee in OCS matters

Almost a year and a half after the Speaker's letter had introduced the 'administration of leasing' concept, Congressman Breaux sponsored H.R. 7076. It was a bill that would have amended a number of the leasing provisions of the OCSLA, particularly section 5 (Administration of Leasing of the OCS) and section 8 (Leasing of the OCS). Some of the changes proposed included: authorizing the Secretary to extend the basic term of a lease under certain circumstances; establishing time limits for federal agency OCS permits; changing the timing of a final notice of sale and limiting legal challenges to such sales; authorizing the payment of interest on bids when the decision to accept the bids is overturned by a court; modifying the criminal penalties section of the law; and providing protection of the proprietary data that are submitted to the Secretary.

****1092 *599** H.R. 7076 was, in effect, a bill that was replete with changes to the administration structure of the OCS program. It contained no other matters. The bill was jointly referred to the Merchant Marine and Interior Committees.

Based on the referral of H.R. 7076, the Merchant Marine Committee understood the 'administration of leasing' doctrine to be narrowly construed. The types of leasing administration elements that had been added by the 1978 amendments and which were the subject of Mr. Breaux's bill were *shared* by both the Merchant Marine and Interior Committees. This, at least, was the Merchant Marine Committee's understanding until the 98th Congress and explans why the Committee did not protest the Speaker's 1981 letter. As Chairman Jones stated in his May 20, 1985 letter to the Speaker:

> I accepted the ruling which you expressed in a letter of April 29, 1981, without protest because I understood it in the context of the specific decision at hand and because I considered it to satisfactorily protect the interests of this Committee. I have publicly acknowledged that ruling on several occasions. Subsequently, however, this specific ruling has been applied out of context to further restrict the interests of my Committee in matters relating to the OCSLA. In my view, the Committee on Merchant Marine and Fisheries is being progressively excluded from legislative responsibility over OCS issues which, under your ruling of April 29, 1981, I understood to be clear. I consider such responsibilities as central to this Committee's role in shaping our Nation's ocean policy.

The House is not well-served when distinctions without real differences form the bases of committee referral decisions, when such distinctions have on discernible precedential origins, when committees with long-standing expertise and direct constituency interests are excluded from the consideration of important policy matters, and when the role of such committees in the complete revision of a law is ignored in subsequent legislative jurisdiction over that law.

8. Post-95th Congress OCS referrals have ignored the principles and historical patterns of referral in at least three specific areas, resulting in a serious erosion in the traditional interests and institutional role of the Merchant Marine and Fisheries Committee

Referral of legislation subsequent to enactment of the OCSLA amendments in 1978 documents a clear erosion of the OCS jurisdiction of the Merchant Marine Committee. The fist break in the pattern of OCS referrals occurred in the 96th Congress. Although two broad OCS matters, H.J. Res. 573 an H.R. 8232, both introduced by Congressman Forsythe, were referred to the Interior and Merchant Marine Committees, among others, H.R. 7512 and H.R. 7855, which authorized the Secretary of the Interior to retain certain OCS lands as national reserves, were referred only to the Committee on Interior. These measures were very similar to H.R. 1836 of the 93d Congress which designated a National Marine Minerals Resources Trust and was referred exclusively to the Committee on ****1093 *600** Merchant Marine and Fisheries. Because H.R. 7512 and H.R. 7855 were introduced late in the session and did not appear to be moving, the Merchant Marine Committee did not formally protest their referral. However, when similar bills, H.R. 164 and H.R. 1267, were reintroduced at the beginning of the 97th Congress, the Chairman of the Merchant Marine Committee questioned the sole referrals to the Interior Committee in a letter to the Speaker dated March 17, 1981.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The referral of H.R. 164 and H.R. 1267 further eroded prior OCS referral precedents and this pattern continued when, in the 98th Congress, two bills proposing comprehensive amendments to the OCSLA (H.R. 3862 and H.R. 3864) were referred only to the Interior Committee. These referrals were made despite the similarity of these bills to earlier measures that had multiple referrals, inclusive of the Committee on Merchant Marine and Fisheries. This erosion in the jurisdiction of the Merchant Committee is further explicated by reviewing referrals in three specific OCS areas.

A. Disbursements of OCS revenues generally

From the 93d Congress to date, some 40 individual bills pertaining to the distribution of OCS leasing receipts have been introduced. This legislation is catalogued in Appendix V. Referral of these bills unequivocally confirms the jurisdiction of the Merchant Marine and Fisheries Committee over disbursements of OCS revenues to coastal states and contradicts claims that such jurisdiction resides with the Interior Committee.

During the 93d Congress, several measures were introduced which fall generally into the category of OCS revenue sharing legislation. Each of these bills proposed to alter directly the distribution of OCS leasing receipts. For example, H.R. 9132 (O'Neill), H.R. 12973 (Gunter), and H.R. 17238 (Price) proposed to establish special funds for the handling and distribution of OCS revenues, including specific provisions for the funding of marine conservation and development programs and for grants or direct payments to states. Similarly, H.R. 1927 (Waggonner), H.R. 12622 (Young), and H.R. 17337 (Roe) also provided for direct payments to adjacent states. All of these measures were referred exclusively to the Judiciary Committee.

Interest in such legislation continued in the 94th Congress. All of the revenue sharing initiatives proposed to directly allocate a portion of leasing receipts to affected coastal states. However, the referral of legislation during this Congress began to reflect the new practice of joint referrals. Committee referrals were expanded, and in some cases restricted, apparently to include the committees with principal programmatic jurisdiction over the activity to be funded through the distribution of OCS revenues. For example:

—H.R. 376 (Chappell) proposed establishment of a Marine Conservation and Development Fund to which all OCS leasing receipts would be distributed. Revenues from the fund would support general resource conservation and development programs. The bill was referred jointly to the Judiciary, Merchant Marine, and Interior Committees;

—H.R. 2928 (Talcott) proposed establishment of a Coastal States Fund to which would be disbursed ten percent of OCS leasing ****1094 *601** revenues. The fund would be used to assist coastal states affected by OCS leasing activities. The bill was referred exclusively to the Committee on Merchant Marine and Fisheries, as were other similar bills (H.R. 3124 and H.R. 3481); and

—H.R. 9171 and H.R. 9733 (Ketchum) proposed direct allocation of 37.5 percent of OCS rental and royalty receipts to adjacent states. Funds were to be provided to coastal states '. . . to be added to their general revenues and used as they deem to be in their best interests'. These bills were jointly referred to the Committees on Judiciary and Merchant Marine.

The precedent established during the 94th Congress substantiates the major interest of the Merchant Marine and Fisheries Committee in the distribution of OCS leasing receipts. This precedent does not indicate any overriding, and clearly no exclusive jurisdictional interest on the behalf of the Interior Committee.

Legislative activity regarding the distribution of OCS leasing receipts was somewhat reduced during the 95th Congress. One measure, H.R. 811 (Conte) again proposed establishment of a marine resources conservation and development fund to receive 40 percent of leasing receipts and proposed distribution of the remaining 60 percent to adjacent coastal states. That measure was referred jointly to the Committees on Judiciary, Merchant Marine and Fisheries and Government Operations. Congressman Hughes' bill, H.R. 5630, amended the Coastal Zone Management Act and authorized annual appropriations equal to 25 percent of OCS leasing receipts to assist coastal states affected by leasing activities. This measure was referred exclusively to the Committee on Merchant Marine and Fisheries.

Once again, precedent established in the 95th Congress reinforces the jurisdictional claim of the Committee on Merchant Marine and provides no basis for an assertion of exclusive interest on behalf of the Interior Committee. In fact, the referral of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

OCS revenue sharing legislation during the 95th Congress, as well as the bulk of legislation during the 94th Congress, recognized no clear jurisdictional interest on the part of any single committee. The attention of the 96th Congress focused primarily on the implementation of the 1978 Amendments to the OCSLA. No individual legislation dealing specifically with the distribution of leasing receipts was introduced during that Congress.

During the 97th Congress, several bills were introduced that departed from conventional OCS revenue sharing legislation. Specifically, they proposed to use OCS generated funds for purposes other than the traditional coastal state impact purpose. These bills were generally referred to committees based on the final use of OCS funds and appeared to support the precedent that no committee had an exclusive interest in the use of OCS receipts; referrals would be based on the context of the legislation.

For example, H.R. 1047 and H.R. 4486 would have allocated OCS revenues to the Social Security trust fund. Both bills were referred exclusively to the Committee on Ways and Means. H.R. 5063 would have allocated OCS revenues to a strategic petroleum reserve account and to a national defense stockpile transaction fund for the acquisition of strategic minerals. This bill was referred to the Committes ****1095 *602** on Energy and Commerce, Interior, Armed Services, and Rules.

In the second session of the 97th Congress, referrals of OCS revenue sharing legislation began to depart from the precedential pattern established in the previous three Congresses. H.R. 4597, a multi-titled bill that included provisions to directly allocate OCS revenues to coastal states, was referred jointly to the Committees on Merchant Marine and Interior. Discussions with the House Parliamentarian revealed the opinion that legislation to allocate offshore receipts was within the jurisdiction of the Interior Committee virtue of its jurisdiction over revenues derived from leasing.

Perhaps, part of the Interior Committee's claim could be its jurisdiction over the Land and Water Conservation Fund Act (LWCF) of 1965; during the 88th Congress, that committee reported the LWCF which was subsequently enacted as P.L. 88–578. To assure adequate funding, it was changed in 1969 to provide that OCS mineral leasing receipts could be added as an additional source of revenue. From this point on, the LWCF has been the center-piece of the Interior Committee's jurisdictional interest in OCS leasing receipts.

In fact, the Committee on Merchant Marine has also demonstrated strong jurisdictional interest in the Land and Water Conservation Fund. During the 93d Congress, the Merchant Marine and Fisheries Committee reported H.R. 37 making funds from the LWCF available for the acquisition of national wildlife refuges to provide protection for endangered or threatened species (P.L. 93–205).

Most recently, the Merchant Marine Committee reported the Emergency Wetlands Resources Act—H.R. 1203 (99th Congress, first session). Since the LWCF receives more than 90 percent of its budget from OCS oil and gas receipts, the referral of H.R. 1203, to the Merchant Marine Committee, with a one-day sequential referral to the Interior Committee, is in direct contradiction to the position that the Interior Committee has exclusive jurisdiction over revenues derived from leasing. That bill contains both minor and substantive amendments to the Land and Water Conservation Fund. Most applicable are the amendments of sections 208(c) and 210. The former authorizes an annual transfer of $75 million from the LWCF into the Wetlands Conservation Fund for an 'effective period' extending through FY 1995. The latter reauthorizes the fund through FY 1995.

Additionally, other uses of revenues derived from OCS leasing have clearly not been within the Interior Committee's jurisdiction. Title III of the OCSLA amendments of 1978 established the Oil Spill Compensation Fund based on a per barrel fee on oil obtained from the OCS. The Committee on Merchant Marine and Fisheries has jurisdiction over this title, which involves the collection and utilization of revenues derived from OCS leasing.

Finally, Title IV of the 1978 amendments authorized a $2 million Fishermen's Contingency Fund. This fund is based on a levy on holders of OCS leases. Again, the Merchant Marine Committee has jurisdiction over this title. Subsequent amendments to the Fishermen's Fund, contained in H.R. 3816 in the 97th Congress, were referred exclusively to the Committee on Merchant Marine and Fisheries.

****1096 *603** *B. Section 8(g) revenues*

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The claim that the Interior Committee prossesses exclusive jurisdiction over OCS revenues has precluded the Merchant Marine Committee from considering recent modifications to section 8(g) of the OCSLA.

During consideration of the 1978 OCS amendments by the Select Committee, important provisions evolved that are now embodied in section 8(g). Those provisions were written by the Select Commitee in an attempt to address the drainage of State resources by federal lessees. The language originally provided for joint federal-state leasing of OCS lands contiguous to state submerged lands (i.e. a three-mile band extending from the outer edge of the states' territorial sea). Similar joint federal-state leasing provisions were contained in H.R. 935 (Hughes) in the 95th Congress, a bill that was referred to the Committees on Interior, Judiciary, and Merchant Marine.

The final section 8(g) language was changed by the Select OCS Committee in the 95th Congress and represents a completely new section of law. It addresses a difficult federal-state matter regarding state coastal zone resources that may be lost as a result of federal leasing. The role of the Merchant Marine Committee in the Select OCS Committee operations has been discussed above and the principle that the constituent committees should maintain jurisdiction over the revisions made by the Select Committee applies here. Because it was new law, there was no referral precedent, other than the principle noted, to guide future referrals. Jurisdiction over section 8(g) receipts is a matter that is clearly within the jurisdiction of both the Merchant Marine and Interior Committees.

Nevertheless, joint jurisdiction over section 8(g) has not been recognized in recent referrals. In the 98th Congress, Congressman Breaux introduced H.R. 6214, which proposed to mandate a 50–50 split in revenues held in escrow under section 8(g) of the OCSLA. While a portion of the bill amending the Coastal Zone Management Act was referred to the Merchant Marine Committee, the provisions dealing with the distribution of the 8(g) revenues were referred exclusively to the Committee on Interior. During conversation between Mr. Breaux's staff and representatives of the Parliamentarian's office, the principal justification offered in explanation of this referral decision was the Interior Committee's exclusive jurisdiction over revenues derived from OCS leasing. Until the referral of H.R. 6214, the Merchant Marine Committee always understood that it had shared jurisdiction over section 8(g) of the OCSLA.

Mr. Breaux reintroduced the 8(g) bill at the beginning of the 99th Congress (H.R. 641) and it received the same referral. The Office of the Parliamentarian relied exclusively on the precedent established by referral of H.R. 6214 and no recognition was given to past precedent in the referral of legislation dealing with OCS revenue distributions. Despite subsequent protests on the part of the Committee on Merchant Marine (see letters dated May 20, 1985, to the Speaker and May 17, 1985, to Chairman Gray of the Budget Committee), the Parliamentarian has refused to recognize the Committee's legitimate ****1097 *604** and historical interest in OCS revenue disposition, particularly with respect to section 8(g).

The historical jurisdiction of the Merchant Marine and Fisheries Committee over legislation regarding OCS revenue sharing with coastal states provides additional ground to support the Committee's claim of jurisdiction over section 8(g) of the OCSLA.

Unambiguous precedents demonstrate the longstanding interests of the Merchant Marine Committee in the area of OCS revenue sharing with coastal states. The interests lend direct support to the claims of the Committee regarding section 8(g). As noted, the original provision was designed as a mechanism to compensate states for drainage by federal lessees of oil and gas underlying state lands. However, the proposal which was broadly outlined in the House Budget Resolution for Fiscal year 1986, and which is now espoused by the Administration, does not propose compensation for direct drainage of state resources. Rather, the current proposal simply provides for direct allocation to adjacent coastal states of section 8(g) OCS revenues being held in escrow; 27 percent of all bonus and rental receipts from tracts within three miles of state waters.

Moreover, the Administration has testified in support of a 'prospective' solution rather than a simple allocation of currently disputed revenues. The legislation in response to the Budget Resolution can thus be expected to implement a permanent program of coastal state revenue sharing from the 8(g) tracts. As earlier demonstrated, the referral of similar legislation in past Congresses clearly illustrates the legitimate interests of the Merchant Marine Committee regarding such legislative proposals.

C. Moratoria legislation

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Recent referrals of proposals to impose moratoria on the leasing of certain offshore tracts exclusively to the Interior Committee have been explained on precedential grounds. Appendix VI, however, indicates a mixed referral pattern with respect to OCS moratoria legislation based on environmental and coastal zone management considerations. During the 93d Congress, for example, four bills and one concurrent resolution that, in whole or in part, would have prohibited the issuance of OCS leases under certain circumstances were all referred to the Merchant Marine and Fisheries Committee. Three of the bills and the concurrent resolution were amendments to the Coastal Zone Management Act, whereas H.R. 1836 was a more comprehensive revision of the OCSLA that included setting aside certain offshore lands in trust until environmental and development needs were assessed. When reintroduced in the 94th Congress, H.R. 1836 was jointly referred to the Merchant Marine and Interior Committees, as were the other coastal zone management bills that had been exclusively referred in the 93d Congress.

Bills comprehensively amending the OCSLA which included moratoria provisions (H.R. 3808 and H.R. 4113, 94th Congress; and H.R. 812 and H.R. 2287, 95th Congress), were jointly referred to the Committee on Merchant Marine and Interior, and, in some cases, other committees. On the other hand, freestanding bills and amendments to the OCSLA proposing leasing moratoria provisions ****1098 *605** have generally been referred only to the Committee on Interior. Since the 96th Congress, in particular, area-specific moratoria bills have been the exclusive domain of the interior Committee. Again, this appears to be another example of the erosion of the jurisdiction of the Merchant Marine Committee since the demise of the Select OCS Committee.

As noted, several recent bills (H.R. 164 and H.R. 1267) have been the subject of correspondence between the Speaker and the Chairman of the Merchant Marine Committee. The Speaker's letter indicated that the moratoria bills were referred to the Interior Committee because it has general jurisdiction over all leases for minerals from the public lands and over the administration of leasing.

Sections 4 and 7 above have analyzed both the public lands and leasing administration issues at length. Two points are clear. First, the OCS is not part of the public lands of the U.S. Although the Committee on Interior clearly ahs jurisdiction over mining interests, there is no precedent for granting that Committee exclusive jurisdiction over the leasing of ocean areas which are not public lands. Second, applying the rubric 'administration of leasing' with respect to the referral of moratoria legislation illustrates its fundamental shortcomings in usefully differentiating among committee jurisdictions.

During the 97th Congress, the Merchant Marine Committee received a joint referral of H.J. Res. 575, prohibiting implementation of the 5-year OCS leasing program. On June 9, 1982, pursuant to a unanimous consent request by Chairman Udall, Executive Communication No. 3956 was referred jointly to the Merchant Marine and Fisheries Committee. That executive communication transmitted the Department of the Interior's proposed final 5-year OCS leasing program. This joint jurisdiction over the executive communication is now reflected in the Rules of the House. The jurisdiction of the Merchant Marine Committee over section 18 of the OCSLA (5-year leasing program) was subsequently affirmed by the joint referral (to Merchant Marine and Interior) of H.R. 3595 in the 98th Congress. The bill included a direct amendment to section 18.

A lease moratorium is simply a negative subset of the larger 5-year leasing program. It would, in effect, interfere with the implementation of the program, pursuant to section 18 of the OCSLA—a new section added by the Select OCS Committee. Separating the broad program from specific area portions of the program is, once again, a distinction without a difference and bears no relationship to a reasonable referral process for committee jurisdictions.

Third, the Select Committee included a moratorium provision in the 1978 OCS amendments, thus establishing the precedent of putting certain areas off limits to leasing. It provided that no leasing could occur within fifteen miles of the Point Reyes (California) National Seashore (section 11(h)). Again, the principle that the constituent members of the Select Committee should maintain jurisdiction over those amendments argues against single-committee exclusivity. The Point Reyes moratorium provision was part of the 'development vs. environmental protection' balance for which the Select Committee was created and with which it had to contend during its five-year tenure. Subsequent moratoria bills are simply more recent manifestations of that debate.

****1099 *606** Even if one were to assume that there is a difference between the leasing program and leasing moratoria, the fact is that practically every bill that would set aside areas from leasing has been proposed for marine environmental protection purposes. If the bill language does not specify such a purpose, statements in the Congressional Record

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

accompanying the introduction of the bills clearly indicate that the moratoria bills are intended to protect fisheries and wildlife resources, endangered species, the coastal zone, and the marine ecosystem in general. These are all matters, acknowledged by the Speaker, to be within the jurisdiction of the Merchant Marine Committee.

One particularly noteworthy case is H.R. 3864, introduced by Congressman Weaver in the first session of the 98th Congress. The bill was referred on to the Interior Committee. The findings and purposes sections of the Weaver bill addressed the need for adequate assessments of environmental risks, the inability of coastal states to plan for rapid and massive leasing, the rejection of coastal state recommendations by the Interior Department, the failure of the 5-year program to give due consideration to adverse environmental impacts caused by the leasing, the special environmental sensitivities of OCS areas with environmental value, and the fact that 'other uses of the sea, such as fishing, tourist industries, subsistence culture of Alaska Natives, and marine sanctuaries have not received sufficiently careful and balanced examination . . .'

The Weaver bill amended section 18 (over which the Merchant Marine Committee shares jurisdiction) by calling for more analysis of environmental risks for states within any portion of the coastal area, adding 'marine sanctuaries' to the list of factors to be considered by the Secretary in the development of the program, and establishing that cumulative environmental effects of OCS operations were also to be considered. The responsibility of the Merchant Marine Committee to protect the marine environment is an integral part of its jurisdiction and relates directly to the OCS leasing program, including specific area moratoria bills. The referral of H.R. 3864 was in error.

Another 98th Congress OCS moratoria bill that was referred only to the Interior Committee also deserves mention. Mr. Panetta introduced H.R. 2059 to put certain areas near the coasts of Massachusetts and California off limits to OCS leasing. The bill also provided that 'notwithstanding sections 11 and 25' of the OCSLA the Secretary of the Interior may not grant any licenses or permits for any activity which affects the geographical areas described in the bill and involves drilling for oil and gas.

These referenced sections involve extensive provisions for the submission of exploration plans (section 11) and development and production plans (section 25) to the Secretary and to the coastal states in the post-lease phase of the process. These two sections were the heart of the work of the Select Committee and involve a variety of environmental, regulatory, and safety matters that deal essentially with the conditions required for a leasee to proceed with development after the lease has been granted.

The use of the 'notwithstanding' clause, of course, effectively means ignoring the work of the Select Committee in those key sections. And, it was in these two provisions that the Merchant ****1100 *607** Marine Committee was solely responsible for the insertion of Coastal Zone Management federal consistency language, with specific cross reference to the CZMA. H.R. 2059 touched the jurisdiction of the Merchant Marine Committee directly; its referral was also in error.

Finally, the interest of the Merchant Marine Committee in the OCS program goes beyond the issue of marine environmental protection. As a key component of the Select OCS Committee, the Merchant Marine Members played an important role in the development of the findings and purposes section of the 1978 amendments. Section 102(1) of the amendments states that one of the purposes of the OCSLA is to:

> . . . establish policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf which are intended to result in expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade;

Other purposes of the Act addressed the protection of the coastal environment and other resource conservation goals. To remove areas from leasing may be based on sound environmental analysis. This, in and of itself, provides a strong jurisdictional claim on the part of the Merchant Marine Committee. On the other hand, it may seriously affect the policy of expedited OCS development and thus address an equally important jurisdictional interest of the Committee.

This nation's policy with respect to the OCS is not the single prerogative of any one committee. Moratoria legislation can be viewed as an interference (perhaps necessary) with the processes established by the 1978 amendments. The Merchant Marine Committee stands in equal partnership with others in maintaining oversight with respect to those processes and OCS policy in

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

general. Such matters are too complex and important to be the exclusive domain of any individual committee based on the artificial distinction of 'administration of leasing'.

9. The jurisdictional statement made by Chairman Jones on September 14, 1983, was a reiteration of referral principles which did not reflect historical committee relationships and referral precedents

On September 14, 1983, during floor debate on H.R. 5, Chairman Jones stated that the Committee on Merchant Marine and Fisheries: '. . . has no jurisdiction over the administration of leasing on the OCS or the revenues derived from it.' This statement was made under the pressure of moving a major piece of legislation to the floor, without the benefit of time to research past precedents on OCS receipts-sharing legislation, and was essentially based on referral principles being espoused by the House Parliamentarian. This statement was, in fact, a simple reiteration of those referral principles and its validity rests on the validity of those principles.

****1101 *608** The precedential evidence reviewed in this analysis demonstrates that those referral principles are in fundamental contradiction to well established precedents in the referral of OCS legislation and, thus, are in error. Consequently, those portions of the floor statement that imply exclusivity of interest on behalf of the Interior Committee regarding broad lease administration policy and disposition of leasing receipts are not accurate. Likewise, the statement that the Merchant Marine Committee has no jurisdiction over such matters is equally inaccurate.

CONCLUSION

Since the multiple referral process was approved by the adoption of the 1974 Committee Reform Amendments, over 4,000 bills have been referred to more than one committee. The Committee on Merchant Marine and Fisheries has been the recipient of many of these. Unfortunately, in one of the Committee's prime areas of expertise and interest—the Outer Continental Shelf—its properly shared jurisdiction has been slowly, but continually, eroding. This is particularly evident since the dissolution of the Select OCS Committee, an ad hoc unit on which the Merchant Marine Committee played a predominant role.

This analysis has documented the erosion of the Committee's jurisdiction by reviewing the historical record of precedents, immediately before, during, and after the operation of the Select Committee. It has also raised serious questions about the origins of those concepts which have been used, in recent years, to distinguish among committee OCS-related jurisdictions.

The pattern of historical OCS referral precedents, in the view of the Merchant Marine Committee, is clear. During the early and middle years of the decade of the seventies, the Committee was considered by the House leadership to be one of the key committees in dealing with a broad range of OCS issues, including those dealing with the distribution of leasing receipts. Based on this, the leadership and membership of the Select Committee was constructed to reflect this consideration. Toward the end of the decade, however, and into the eighties, the pattern was broken in small and seemingly inconsequential steps. While perhaps individually insignificant, the cumulative effect of recent referrals is the erosion of the legitimate interests of the Merchant Marine Committee.

The damage to the Merchant Marine Committee has resulted from the application of referral principles that do not reflect established precedents and that rest on unworkable and artificial distinctions.

The damage to the House itself may potentially by even more serious. The 1974 Select Committee on Committees noted that joint referrals would facilitate inter-committee cooperation, infuse flexibility into the committee system, and bring to bear the wisdom and perspective of different committees. Furthermore, the Committee believed that the 'complexity of much legislation and the overlapping jurisdiction characteristic of the congressional committee system made it desirable that various bills, or titles thereof, be capable of referral to two or more House committees.' (Committee ****1102 *609** Reform Amendments of 1974, H. Rept. 93–916, Part II, 93d Congress, 2d Session, p. 59, March 21, 1974.)

The complexity of OCS issues requires thorough analysis and study. Such analysis should be carried out by those committees that have shown the interest, the expertise, and the historical involvement in the letter and spirit of the OCS law. The House is best served when a broad range of views by knowledgeable and interested Members is encouraged.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

With respect to the OCS, the work of the House is short-changed when the 'oceans' committee is denied equal jurisdiction over any aspect of the resources of the sea, including oil and gas.

The Committee on Committees also observed that 'from the outset, the (Merchant Marine and Fisheries) Committee was primarily *ocean-oriented* . . .' (Monographs on the Committees of the House of Representatives, p. 110, emphasis in original). That Committee concluded that over time '. . . the functional field of concern to the House Merchant Marine and Fisheries Committee was itself broadened to serve the national interest by advancing the Nation's understanding of the physical (ocean) environment . . .' Nonetheless, the Committee on Committees recommended abolition of the Merchant Marine Committee. The House, however, refused to accept that recommendation and thus demonstrated its support for an oceans committee as articulated by the Merchant Marine Chairman, the Honorable Leonor Sullivan:

> . . . The Merchant Marine and Fisheries Committee is one unified ocean-oriented jurisdiction, with all the various marine and maritime jurisdictional entities superimposed one on the other and interacting on each other. It does not make any sense to tear apart this ocean-oriented fabric which already exists and replace it with disparate ocean-related jurisdictional responsibilities which can only lead to chaos and confusion as far as the increasingly important ocean interests of the Nation are concerned. *(Congressional Record*, September 30, 1974, p. 32998.)

Jurisdiction over the development of marine resources such as OCS oil and gas is an integral thread in tis 'ocean-oriented fabric' and as such, lies at the heart of the Merchant Marine Committee's institutional role in the House. To deny such jurisdiction would constitute *de facto* implementation of at least a portion of the very recommendation which the House rejected in 1974.

In recent years, the jurisdictional imbalance in OCS legislation has been skewed in favor of the Interior Committee. The Merchant Marine Committee is not, in any way, attempting to seize the existing jurisdiction of the Interior Committee. In fact, the shared jurisdictin of the Committee on Interior and Insular Affairs is happily acknowledged. Exclusivity or primacy of jurisdiction are the key objections, particularly when based on mysterious, murky, and extraordinarily narrow origins.

A cursory examination of the jurisdictions of the Merchant Marine and Interior Committees shows, with great clarity, that the Interior Committee has substantial and broad jurisdiction over several important resource related issues. In fact, the more numerous ****1103 *610** and diverse responsibilities of the Interior Committee have precluded it from giving OCS the attention it deserves.

However, the loss of OCS from the Merchant Marine Committee's jurisdiction, which is the direction in which recent referrals have proceeded, would be devastating to the resource work of the Committee. Given the Merchant Marine Committee's record of interest, expertise, and involvement on OCS matters, the House will be poorly served if the Committee continues to be precluded from an equal share of leasing administration, revenue sharing, moratoria, or any other ocean-based resource legislative jurisdiction. A reassessment of the recent trend in OCS referrals is in order to restore jurisdictional balance in the House and, thus, enhance its institutional expertise.

APPENDIX I.—TOTAL AND COASTAL MEMBERSHIP OF THE COMMITTEES ON MERCHANT MARINE & FISHERIES—INTERIOR & INSULAR AFFAIRS, 1975–85

	Merchant Marine and Fisheries			Interior and Insular Affairs		
	Total	Coastal only[1]	Percent coastal	Total	Coastal only[1]	Percent coastal
99th Congress: 1985	42	35	83.00	40	12	30.00

98th Congress:						
1984	40	32	80.00	42	14	33.33
1983	40	32	80.00	41	13	31.70
97th Congress: 1982/1981	36	29	80.56	42	14	33.33
96th Congress: 1980/1979	40	32	80.00	43	15	34.88
95th Congress:						
1978	41	32	78.05	46	17	36.96
1977	41	31	75.61	46	17	36.96
94th Congress:						
1976	40	29	72.50	43	17	39.54
1975	40	29	72.50	43	18	41.86

FN1 Coastal membership refers to members who represent districts which contain coastal counties. Great Lakes states are not included.

APPENDIX II.—HEARINGS ON OUTER CONTINENTAL SHELF RELATED ISSUES: COMPARISON OF MERCHANT MARINE AND INTERIOR COMMITTEES, 1975–85

	Merchant Marine and Fisheries Committee	**Interior and Insular Affairs Committee**
94th CONGRESS:		
1975	Apr. 29, 30; June 11; July 14; Sept. 3: Oceanography Subcommittee hearings on H.R. 3981, H.R. 3807, H.R. 1776, H.R. 6090 and similar and identical bills, to amend the Coastal Zone Management Act to help coastal states assess and plan	Feb. 4: Public Lands Subcommittee hearing on whether the U.S. is getting maximum production from oil wells, including the OCS.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

	for the effects of Outer Continental Shelf (OCS) energy-related activities and facilities on their coastal zones.	
	Nov. 12: Oceanography Subcommittee briefing by the Coastal States Organization on H.R. 3981, concerning OCS energy-related development in the coastal zone.	
1976	Only Ad Hoc Select Committee Hearings.	
95th CONGRESS:		
1977	Only Ad Hoc Select Committee Hearings.	
1978	Only Ad Hoc Select Committee Hearings.	
96th CONGRESS:		
1979	Sept. 8, 9: Full Committee field hearings on the Mexican oil spill, Corpus Christi, Texas.	Hearing on energy exploration and production on the OCS, DOE land lease.
	Oct. 5: Fish/Wildlife Subcommittee oversight field hearing on oil/gas permits in Louisiana wetlands, New Orleans, Louisiana.	
1980	May 13: Merchant Marine Subcommittee oversight hearing on the maritime transportation of Alaskan gas, including OCS gas.	March 13: Mines and Mining Subcommittee hearing on H.R. 5769, a bill to reinstate and validate the Pauley Group's two leases in the Santa Barbara Channel.
	Aug. 26: Oceanography Subcommittee oversight hearing on the availability and capability of oil containment and cleanup equipment in OCS oil/gas drilling activities, and on policy concerning effluent discharges during OCS oil/gas	

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

drilling activities.

97th CONGRESS:

1981	March 31: Panama Canal/Outer Continental Shelf (PC/OCS) Subcommittee oversight hearing on the OCSLA regarding the interrelationship of federal and state governments in the decision-making process.	June 24: Mines and Mining Subcommittee hearing on H.R. 1946, concerning the Pauley Group's leases in the Santa Barbara Channel.
	May 5: PC/OCS Subcommittee oversight hearing on the effectiveness of the 1978 OCSLAA, and GAO reports on OCS oil/gas leasing, exploration and production.	
	June 2: PC/OCS Subcommittee oversight hearing on the status of implementation of the OCSLAA of 1978, and proposed amendments to the Act.	
	Sept. 16: Oceanography Subcommittee oversight hearing on H. Con. Res. 166, concerning certain Coastal Zone Management Act (CZMA) consistency regulations, with specific reference to Interior Department OCS leasing program.	
	Sept. 22: PC/OCS oversight hearing on proposed legislative change to the OCSLAA and the CSMA.	
	Oct. 28: PC/OCS oversight hearing on the Department of Interior's (DOI) new proposed 5-year leasing plan.	
1982	Jan. 21: PC/OCS oversight field hearing on DOI's new 5-year leasing program, problems associated with federal-state	

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

	resources (section 8(g) of the OCSLAA), in Houston, Texas.	
	July 7: PC/OCS briefing on the proposed final 5-year oil/gas leasing program.	
98th CONGRESS:		
1983	April 26: PC/OCS Subcommittee hearing on the impact of OPEC's policies on the domestic oil and support industry with respect to the OCS.	July 2: Mining, Forest Management and Bonneville Power Administration (Mining) Subcommittee field hearing on oil/gas moratoria off selected areas of California and Massachusetts, in San Francisco, California.
	June 16: PC/OCS Subcommittee hearing on offshore safety.	Sept. 12: Mining Subcommittee field hearing on OCS development and earthquake hazards, in San Diego, California.
	June 27: Oceanography Subcommittee field hearing on environmental issues related to the North Atlantic Georges Bank and oil/gas exploration activities, in Boston, Massachusetts.	Sept. 20: Mining Subcommittee hearing on H.R. 3864, to place a moratorium on oil lease sales off California and Massachusetts in certain areas, and for greater participation by coastal States in the decisionmaking process.
	Oct. 12: PC/OCS Subcommittee oversight field hearing on offshore oil/gas activity and its socioeconomic and environmental influences on Humble, Texas.	Sept. 22: Mining Subcommittee hearing on H.R. 3864 continuing the September 20th hearing
1984	March 9: PC/OCSSubcommittee field hering on the socioeconomic and environmental influences of offshore oil/gas activity on Houma, Louisiana.	July 22: Oversight and Investigations Subcommittee hearing on Lease Sale 82 and the federal-state relationship concerning Georges Bank.
	March 21: PC/OCS Subcommittee oversight hearing on OCS leasing program as it relates to domestic labor and the steel and shipyard	

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

	industries.	
	March 27: Oceanography Subcommittee hearing on H.R. 4589, CZMA federal consistency provisions, including OCS oil/gas lease sales.	
	April 25: PC/OCS Subcommittee oversight hearing on the status of the current 5-year OCS leasing schedule, the pace of the leasing, and other OCS-related issues.	
	June 12: PC/OCS Subcommittee oversight hearing on the Congressional moratoria affecting oil/gas leasing on the OCS.	
	June 26: Full Committee hearing on H.R. 4589 to review the recent Supreme Court consistency decision relating to OCS lease sales, and the administration and application of the federal consistency provision with respect to offshore oil.	
	June 27: PC/OCS Subcommittee oversight hearing on the costs to the U.S. of protecting foreign oil/gas supplies.	
	Oct. 4: PC/OCS Subcommittee hearing on H.R. 6291 to amend the OCSLA to improve safety at manned offshore installations.	

99th CONGRESS:

1985	Apr. 2: Oceanography Subcommittee hearing on CZMA reauthorizaton and the federal consistency provision, particularly as it relates to OCS oil/gas lease sales.	May 14: Energy and Environment Subcommittee hearing on OCS leasing.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Apr. 3: PC/OCS Subcommittee hearing on the status of the 5-year offshore leasing plan.

May 3: PC/OCS Subcommittee oversight hearing on the 'fair and equitable' distribution of OCSLAA Section 8(g) revenues.

May 9: PC/OCS hearing on the report by the Office of Technology Assessment: Oil and Gas Technologies for the Arctic and Deepwater.

June 26: PC/OCS Subcommittee hearing on the 5-year plan and state-federal consultation.

July 25: PC/OCS Subcommittee hearing on the OCS 5-year plan and state-federal consultation.

Aug. 5: PC/OCS Subcommittee field hearing on OCS oil/gas activities in Anchorage, Alaska.

Aug. 6: PC/OCS Subcommittee oversight field trip concerning OCS operations in Cook Inlet, Kenai, Alaska.

Aug. 10: Joint PC/OCS Subcommittee and Interior Committee field trip to the Prudhoe Bay offshore oil and gas production facilities, the Beaufort sea oil and gas exploration facilities, and the Alaska National Wildlife Refuge for oversight on Arctic OCS oil/gas activities.

May 16: Energy and Environment Subcommittee hearing on OCS leasing.

July 29: Energy and Environment Subcommittee on Section 8(g) of the OCSLAA.

****1106 *613** APPENDIX III.—MEMBERSHIP OF THE SELECT OUTER CONTINENTAL SHELF COMMITTEE, BY STANDING COMMITTEE MEMBERSHIP 1975–80

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

	Total members	Merchant Marine		Interior		Judiciary		Others	
		T[1]	Percent total[2]	T	Percent total	T	Percent total	T	Percent total
96th Congress:									
1980	18–(21)[3]	9	42.86	5	23.81	2	9.52	5	23.81
1979	18–(21)	8	38.10	5	23.81	2	9.52	6	28.57
95th Congress:									
1978/77	19–(24)	11	45.83	6	25.00	5	20.83	2	8.33
94th Congress:									
1976	19–(22)	10	45.45	6	27.27	6	27.27	0	0
1975	16–(19)	9	47.37	5	26.32	5	26.32	0	0

FN1 Total Members representing the above Committee on the Select OCS Committee.

FN2 Ratio of Members representing the above Committee to Total Select OCS Committee Membership.

FN3 Some Members were on two of the Committees comprising the Select OCS Committee; this is taken into account in the calculations. ‘T’ is divided by the number in the parenthesis, which represents total Committee appointments rather than Members.

NOTE

The information in Appendices IV, V, and VI was compiled by the Congressional Research Service (CRS) at the request of the Committee on Merchant Marine and Fisheries. The information was obtained by a computer search, using the LEGIS System, under the key terms ‘Continental Shelf and OCS,’ ‘Mineral Leasing and Revenue Sharing,’ and ‘Merchant Marine and Fisheries Leasing’. It is important to note that the appendices contain only information on bills considered to be applicable to pending jurisdictional disputes. There were a number of additional bills involving subject matter within the general area of OCS, but over which jurisdiction is considered to be well established; such bills are not included in these appendices. For example, in the 94th Congress, Congressman Forsythe introduced H.R. 3719 and two similar bills to amend NEPA, requiring a supplemental EIS prior to OCS leasing. These bills were referred to the Merchant Marine Committee. Mr. Studds, and others, introduced a series of bills (H.R. 10756, et. al.) that were amendments to the FWPCA and addressed oil spill liability. These bills were generally referred to the Merchant Marine and Public Works Committees. In the 95th Congress, Mr. Roe introduced H.R. 1234 which was similar to the Forsythe bills in the 94th Congress, and was referred to the Merchant Marine Committee. Finally, during the 97th Congress, Mr Breaux introduced a bill (H.R. 3667) to amend Title III of the OCSLA—Fishermen’s Contingency Fund. That bill was also referred to the Merchant Marine and Fisheries Committee.

APPENDIX IV.—CONTINENTAL SHELF AND OCS RELATED LEGISLATION: 93d–99th CONGRESSES

93d Congress

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

H.R. 1738 (Downing): Grant to each coastal state mineral rights in OCS extending 12-miles from the coast; referred to Committee on Judiciary.

H.R. 1836 (Peyser): Amends OCSLA; establishes, within the Department of the Interior, and Advisory Committee on the Marine ****1107 *614** Environment and an Interagency Committee on Marine Resources Management; designates all unleased OCS resources as the National Marine Mineral Resources Trust to be held in unleased status until the Secretary, with concurrence of CEQ, makes specific factual findings regarding environmental effects of leasing; provides that no leasing of OCS lands shall occur except in strict compliance with management plan; establishes procedures to be followed in development of such plan; referred to Committee on Merchant Marine.

H.R. 1927 (Waggonner): Amends OCSLA and Mineral Leasing Act; stipulates that all state laws providing for conservation of natural resources shall apply to actions taken under those laws; provides for distribution of lease receipts to states; referred to Committee on Judiciary.

H.R. 3027 (Wolff): Authorizes investigation by National Academy of Sciences on coastal hazards from OCS drilling; referred to Committee on Interior.

H.R. 3506 (Sandman): Similar to H.R. 1738; same referral.

H.R. 3509 (Sandman): Prohibits any federal agency from constructing, licensing, or approving any offshore facility without notifying the EPA Administrator and receiving the approval of affected coastal states; referred to Committee on Public Works.

H.R. 7500 (Saylor): Requires certains actions regarding specific OCS leases within the Santa Barbara Channel; referred to Committee on Interior.

H.R. 7501 (Saylor): Amends OCSLA to authorize Interior Secretary to regulate construction and operation of deepwater port facilities; referred to Committee on Interior.

H.R. 9329 (Milford): Similar to H.R. 7501; referred to Committee on Interior.

H.R. 9496 (Wilson): Similar to H.R. 7501; referred to Committee on Interior.

H.R. 10637 (Keating): Similar to H.R. 7501; referred to Committee on Interior.

H.R. 15395 (Gunter): Provides that Interior Department may not lease areas or facilities required for defense programs prior to military and environmental review and approval by Appropriations and Interior Committees of the Congress; referred to Committee on Interior.

H.R. 16008 (Harrington): Amend OCSLA to establish an OCS Operations Advisory Board; required Secretary to ‘designate’ leasing areas on the OCS; no leasing of ‘designated’ areas prior to 60-day Congressional review period; referred to Committee on Interior.

H.R. 17257 (Bingham): Amend OCSLA; calls for a 10-year leasing plan; a survey of OCS oil and gas resources; an R&D program to improve OCS technology; establishes strict liability limits; establishes Impacted Coastal State Fund; and makes other miscellaneous revisions to OCSLA; referred to Committee on Interior.

94th Congress

H.R. 1363 (Peyser): Amend OCSLA; similar to H.R. 1836 (93d Congress); referred to Committees on Merchant Marine and Interior.

****1108 *615** NOTE.—Similar bill (H.R. 1836) was referred solely to the Committee on Merchant Marine and Fisheries during the 93d Congress.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

H.R. 2772 (Bingham): Amend OCSLA; similar to H.R. 17257 (93d Congress); referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 2892 (Howard): Amend OCSLA; establishes national policy for managing the resources of the OCS; revises bidding and lease administration provisions; referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 3638 (Forsythe): Amend OCSLA; establish strict liability for damae caused by oil spills; limits liability to $500 million per incident; establish OCS research fund; referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 3808 (Studds): Amend OCSLA; establish policy for management of OCS oil and gas; revise bidding and lease administration provision; referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 3811 (Wolff): Amend OCSLA to ensure that OCS oil and gas leases are issued only to U.S. Citizens; referred to Committee on Interior.

H.R. 3982 (Murphy): Amend OCSLA; require NOAA to conduct OCS environmental studies and monitoring programs; provide for Congressional disapproval of leasing plans; directs Secretary of Interior to prepare a leasing program for OCS development; referred to Committees on Merchant Marine and Interior.

H.R. 4112 (Yates): Amend OCSLA; similar to H.R. 2892 and H.R. 3808; referred to Committees on Judiciary, Merchant Marine, Interior and Science and Technology.

H.R. 4301 (Forsythe): Amend OCSLA; similar to H.R. 3638; referred to Committees on Judiciary, Interior, Science and Technology and Mechant Marine.

H.R. 4374 (Eilberg): Grant each coastal state mineral rights in subsoil and seabed in OCS extending 12-miles from coast; directs Secretary of Interior to establish coastal baselines; establishes a Boundary Advisory Committee to consult with Canada and Mexico concerning mutual seaward boundary with U.S.; referred to Committees on Interior and Foreign Affairs.

NOTE.—During 93D Congress all bills proposing to extend state OCS mineral rights were referred to the Committee on Judiciary. See H.R. 1738 and similar bills in the 93D Congress.

H.R. 4518 (Howard): Amend OCSLA; similar to H.R. 2892 and H.R. 3808; referred to Committees on Judiciary, Merchant Marine, Interior, ad Science and Technology.

H.R. 4750 (Conte): Amend OCSLA; similar to H.R. 3808; referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 5043 (Downey): Amend OCSLA; similar to H.R. 2892 and H.R. 3808; referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 5222 (DuPont): Amend OCSLA; grant Congressional consent for any two or more states to enter into agreements or compacts establishing one or more OCS oil and gas leasing advisory boards; requires Secretary to seek comments and recommendations of such ****1109 *616** boards; provides that federal action be consistent with such recommendations; referred to Committees on Judiciary and Interior.

H.R. 5746 (Harris): Amend OCSLA; authorizes Secretary to enter into contracts for exploration, drilling, extracting and storing OCS oil and gas; authorizes promulgation of regulations and sets forth procedure for Congressional disapproval of such regulations; referred to Committees on Interior and Rules.

H.R. 5917 (Forsythe): Amend OCSLA; similar to H.R. 3638; referred to Committees on Judiciary, Merchant Marine,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Interior, and Science and Technology.

H.R. 6218 (Murphy): Amend OCSLA; outline findings and purposes with respect to managing OCS resources; directs Secretary of Interior to administer OCS leasing and prescribe regulations; authorizes new methods of competitive, sealed bid; limits oil and gas leases to five years with possible five-year extension; directs Secretary to provide governor of relevant states with identification and schedule of areas offered for leasing; *provides that governor of state and Secretary may jointly lease certain areas;* requires leases to submit exploration and development plans; requires preparation of OCS oil and gas leasing program; authorizes state governors to establish regional OCS Advisory Boards; requires NOAA to conduct environmental studies programs; authorizes citizen suits; establishes Offshore Oil Spill Pollution Fund; referred to Ad Hoc Select Committee on OCS.

H.R. 6256 (Studds): Amend OCSLA; similar to H.R. 3808; referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 8691 (Studds): Amend OCSLA; similar to H.R. 3808; referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 9724 (Hechler): Establish OCS Research, Development, and Resource Assessment Project; assess oil and gas resources; conduct research and studies with assistance of NOAA and U.S. Fish and Wildlife Service into environmental effects of OCS development; conduct R&D program on OCS technology; referred to Committees on Science and Technology, and Interior.

H.R. 10763 (Harrington): Amends CZMA and OCSLA; authorizes interstate compacts for coordination of CZM; provides that no development of any OCS lease occur unless the development plan meets requirements of coastal state compact; directs Secretary of Interior to carry out a federal OCS oil and gas exploration program; referred to Committees on Interior, Merchant Marine, and Judiciary.

H.R. 11333 (Hechler): Similar to H.R. 9724; referred to Committees on Science and Technology, and Interior.

H.R. 15525 (Rinaldo): A bill to reorganize the Executive Branch of the Government to improve OCS management; establish Assistant Secretary for OCS Matters; transfer to Interior Secretary certain functions of other agencies; referred to Committee on Government Operations.

****1110 *617** *95th Congress*

H.R. 812 (Conte): Amend OCSLA; similar to H.R. 4650 (94th Congress); referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 935 (Hughes): Amend OCSLA; establishes findings and purposes with respect to managing OCS resources; revises bidding and leasing procedures; *requires Secretary to provide governors of affected coastal states with the opportunity for joint leasing of certain lands;* requires preparation of oil and gas leasing program; authorizes establishment of regional OCS Advisory Boards; authorizes NOAA to conduct OCS environmental studies program; establishes Offshore Oil Pollution Fund; amends CZMA; referred to Committees on Interior, Judiciary, and Merchant Marine.

H.R. 1306. (Roe): Establish Bureau of Natural Resources Information within Commerce Department; direct Secretary of Interior to compile and maintain an inventory of natural resources in public lands, including the OCS; referred to Committees on Interstate and Foreign Commerce, and Interior.

H.R. 1367 (Wolff): Amend OCSLA to ensire that OCS leases are issued only to U.S. Citizens; referred to Committee on Interior.

H.R. 1614 (Murphy): Amend OCSLA; similar to H.R. 3982 and H.R. 6218 (94th Congress); referred to Ad Hoc Select Committee on OCS.

H.R. 2287 (Yates): Amends OCSLA; similar to H.R. 4112 (94th Congress); referred to Committees on Interior, Judiciary,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Merchant Marine, and Science and Technology.

H.R. 5095 (Wolff): Amend OCSLA; similar to H.R. 1367; referred to Committee on Interior.

96th Congress

H.J. Res. 573 (Forsythe): Directs President to remove administrative restrictions not required by federal law or court order which impede OCS leasing; requires President to institute policies giving priority to expeditions OCS leasing; requires President to direct that leasing priority be given to OCS areas with highest hydrocarbon potential; sets forth conditions for issuance of OCS leases; referred to Committees on Interior, Agriculture, and Merchant Marine.

H.R. 4978 (Treen): Amends Fish and Wildlife Conservation Act; establishes minimum periods for consultations under that Act with regard to permits and licenses under OCSLA; referred to Committee on Merchant Marine.

H.R. 7512 (Panetta): Authorizes Secretary of Interior to retain, as a national reserve, OCS lands in proposed Lease Sale #53; referred to Committee on Interior.

NOTE.—The provisions of this bill are quite similar to the provisions in H.R. 1836 (93rd Congress) designating a National Marine Mineral Resources Trust. That bill was referred exclusively to the Committee on Merchant Marine and Fisheries.

H.R. 7855 (Clausen): Similar to H.R. 7512; referred to Committee on Interior.

H.R. 8232 (Forsythe): Amend OCSLA, CZMA, and Federal Water Pollution Control Act; revises procedures for issuance or amendment ****1111 *618** of regulations under OCSLA; revises leasing and bidding systems; amends Offshore Oil Spill Pollution Fund; referred to Committees on Interior, Merchant Marine, Public Works, and Rules.

97th Congress

H.J. Res. 300 (Forsythe): Similar to H.J. Res. 573 (96th Congress); referred to Committees on Agriculture, Armed Services, Energy and Commerce, Interior, and Merchant Marine.

H.J. Res. 545 (Studds): Prohibiting Secretary of Interior from implementing the five-year, OCS program; referred to Committees on Interior and Merchant Marine.

H.R. 164 (Clausen): Similar to H.R. 7512 (96th Congress); referred to Committee on Interior.

H.R. 1267 (Panetta): Similar to H.R. 7512 (96th Congress); referred to Committee on Interior.

H.R. 1946 (Patterson): Provides for reinstatement of two OCS leases within the Santa Barbara Channel; referred to the Committee on Interior.

H.R. 2792 (Forsythe): Amendments to OCSLA, Titles II, IV and V; exempting vessels from manning requirements; amending Fishermen's Contingency Fund and CZMA; referred to Committee on Merchant Marine.

H.R. 4597 (Jones): Amend OCSLA and CZMA; revise OCS oil and gas leasing procedures; revise scope of liability under Title III of OCSLA; amend consistency provisions of CZMA; establish Ocean and Coastal Resource Management Fund; referred to Committees on Interior and Merchant Marine.

H.R. 6648 (Breaux): Establish National Offshore Operators Safety Advisory Committee; review safety aspects of all OCS operations; referred to Committees on Merchant Marine and Interior.

H.R. 7076 (Breaux): Amends OCSLA; revises bidding and leasing provisions; prohibits civil action to enjoin a lease sale unless filed within 45 days of notice of such sale; eliminates requirement for access to interpreted data and information;

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

referred to Committees on Interior and Merchant Marine.

98th Congress

H.R. 3595 (D'Amours): Amend OCSLA; direct Secretary of Interior to give equal weight to potential for environmental for damage, potential for discovery of oil and gas, and potential for adverse coastal impacts in making OCS leasing decisions; require use of best available and safest technologies; referred to Committees on Interior and Merchant Marine.

H.R. 3862 (Markey): Amends OCSLA; directs Secretary after consideration of nominations, comments, and recommendations, to establish a schedule for OCS exploration, development, and production; only tracts receiving high interest and no negative state recommendations may be included on schedule; Secretary must consider all direct and indirect chronic and cumulative effects of OCS activities; provides that Secretary's determination to override state recommendations must be based upon substantial evidence; referred to Committee on Interior.

H.R. 3864 (Weaver): Amend OCSLA; similar to H.R. 3862; referred to Committee on Interior.

****1112 *619** *H.R. 3970* (Jones): Establishes a National Offshore Operators Safety Advisory Committee; referred to Committees on Merchant Marine and Interior.

H.R. 5021 (Levitas): Terminates certain Congressional veto provisions in OCSLA; referred to Committee on Interior.

H.R. 6189 (Jones): Amends OCSLA; delete provisions requiring Secretary of Interior to submit certain annual reports; referred to Committees on Interior and Merchant Marine.

H.R. 6214 (Breaux): Amends CZMA to prohibit issuance of OCS lease unless affected coastal state governor and Secretary of Interior have reached agreement which meets requirements of section 8(g) of OCSLA; amends OCSLA requiring that state and Federal Government share equally any revenues generated from tracts subject to section 8(g); requires all funds deposited in escrow pursuant to section 8(g) to be divided equally between Federal Government and coastal states; referred to Committee on Interior; limited referral (Title I-CZMA Amendment) to Committee on Merchant Marine.

H.R. 6291 (Tauzin): Amends OCSLA; requires manned standby vessel in immediate vicinity of all manned OCS installations; referred to Committee on Merchant Marine.

99th Congress

H.R. 641 (Breaux): Similar to H.R. 6214 (98th Congress); same referral.

H.R. 1748 (Tauzin): Amends OCSLA; requires manned standby vessel in immediate vicninity of all manned OCS installations; referred to Committee on Merchant Marine.

H.R. 1983 (Jones): Amends OCSLA; eliminates certain reporting requirements of Interior Secretary regarding OCS leasing and production program; refereed to Committees on Merchant Marine and Interior.

APPENDIX V.—OCS REVENUE SHARING LEGISLATION: 93d–99th CONGRESSES

93d Congress

H.R. 1927 (Waggonner): Provides for distribution of leasing receipts; 37.5 percent to adjacent state; 62.5 percent to remaining states based on population; referred to Judiciary Committee.

H.R. 9132 (O'Neill); Establish Marine Resources, Conservation and Development Fund financed from OCS leasing receipts; funds to be used to support broad range of marine resource conservation programs; referred to Committee on Judiciary.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

H.R. 12073 (Gunter): Similar to H.R. 9132; referred to Committee on Judiciary.

H.R. 12622 (Young): 50 percent of leasing revenues to adjacent state; 25 percent to other states; 25 percent to U.S. Treasury; referred to Committee on Judiciary.

H.R. 16228 (Harrington): Establishes a Coastal Zone and Energy Production Coordination Fund from 5 percent of total OCS revenue; referred to Committee on Merchant Marine.

NOTE.—Referral of this bill constituted the first break in the pattern of referring all OCS revenue bills to the Judiciary Committee.

****1113 *620** *H.R. 17238* (Price): Establish OCS Revenues Energy Trust Fund consisting of all OCS leasing revenues and authorizing payments to states from the fund; referred to Committee on Ways and Means.

H.R. 17257 (Bingham): Outer Continental Shelf Energy Policy Act; comprehensive OCSLA amendments, including establishment of Impacted Coastal State fund; referred to Committee on the Interior.

H.R. 17337 (Roe): Similar to H.R. 12622; referred to Committee on Judiciary.

94th Congress

H.R. 376 (Chappell): Establish a Marine Conservation and Development Fund from all OCS receipts; referred to Committees on Judiciary, Merchant Marine, and Interior.

H.R. 1199 (Young): Similar to H.R. 12662 (93D Congress); referred to Committees on Judiciary and Government Operations.

H.R. 1776 (Bauman): Amends CZMA; authorizes assistance to coastal states for impacts associated with OCS activity; establish Coastal States Fund from amount equal to 10 percent of OCS revenues; referred to Committee on Merchant Marine.

H.R. 2928 (Talcott): Establish a Coastal States Fund; deposit into fund ten percent of annual OCS revenues (up to $200 million); referred to Committee on Merchant Marine.

H.R. 3124 (Bauman): Similar to H.R. 2928; referred to Committee on Merchant Marine.

H.R. 3481 (Roe): Similar to H.R. 2928; referred to Committee on Merchant Marine.

H.R. 4920 (O'Neill): Establish a Marine Conservation and Development Fund for distribution of all OCS receipts; referred to Committees on Judiciary, Merchant Marine, and Interior.

H.R. 6090 (Treen): Amend CZMA; establish Marine Resources Conservation and Development Fund; 17.5 percent of OCS revenues; grants to affected states (coastal *and* non-coastal); referred to Committee on Merchant Marine.

H.R. 6378 (Young): Establish a Coastal State Fund consisting of ten percent of federal OCS revenue or the equivalent of $.40 per barrel of OCS oil produced, whichever is less (up to $200 million); proceeds from fund to support grants to impacted states; referred to Committees on Judiciary, Merchant Marine, and Government Operations.

H.R. 6599 (Rinaldo): Establish a Coastal State Fund; similar to H.R. 6378; referred to Committees on Merchant Marine and Government Operations.

H.R. 7680 (O'Neill): Establish a Coastal State Impact Assistance Trust Fund; for receipt of all revenues collected under OCSLA; referred to Committees on Judiciary, Merchant Marine, and Government Operations.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

H.R. 9171 (Ketchum): Allocate 37.5 percent of OCS rental and royalty revenues to adjacent state; exempt all monies paid to LWCF; referred to Committees on Judiciary and Merchant Marine.

H.R. 9733 (Ketchum): Similar to H.R. 9171; referred to Committees on Judiciary and Merchant Marine.

H.R. 10763 (Harrington): Amend CZMA/OCSLA; alter disposition of OCS revenues providing for payments to interstate coastal compacts ****1114 *621** or compact member states *to be used as they deem appropriate;* referred to Committees on Interior, Merchant Marine, and Judiciary.

95th Congress

H.R. 811 (Conte): Establish Marine Resources, Conservation and Development Fund; 40 percent of OCS revenues to fund; 60 percent to states under distribution formula; referred to Committees on Judiciary, Merchant Marine, and Government Operations.

H.R. 5630 (Hughes): Authorize appropriations equal to 25 percent of annual OCS leasing revenues to coastal states; referred to Committee on Merchant Marine.

NOTE.—Subsequently, during House consideration of 1978 OCSLA Amendments (H.R. 1614), Mr. Hughes offered a similar measure as an amendment (providing 20 percent of annual OCS leasing revenues for grants to affected states). That amendment (H.A. 816) was adopted by a roll call vote (#33) 279–120. However, the provision was subsequently deleted in Conference Committee.

96th Congress

No individual OCS revenue sharing legislation was introduced during the 99th Congress.

97th Congress

H.R. 1047 (Parris): Allocate all OCS revenues to Social Security Trust Fund; excepting revenues distributed to LWCF; referred to Committee on Ways and Means.

H.R. 4486 (Nelligan): Similar to H.R. 1047; referred to Committee on Ways and Means.

H.R. 4597 (Jones): Establish an Ocean and Coastal Resource Management Fund consisting of 5 percent of all OCS leasing revenues (up to $300 million); referred to Committees on Merchant Marine and Interior.

H.R. 5063 (Patton): Allocate 80 percent of OCS revenue to a Strategic Petroleum Reserve account; 20 percent to National Defense Stockpile Transaction Fund for acquisition of strategic materials; referred to Committees on Interior, Energy and Commerce, Armed Services; and Rules.

H.R. 5134 (Patman): Similar to H.R. 5063; same referral.

H.R. 5543 (Jones): Establish Ocean and Coastal Resources Management and Development Fund consisting of an amount equal to ten percent of annual increases in OCS leasing receipts (up to $300 million); authorizes block grants to coastal states; referred to Committee on Merchant Marine.

H.R. 7077 (Breaux): Similar to revenue sharing provision in H.R. 4597; referred to Committees on Merchant Marine and Interior.

98th Congress

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

H.R. 5 (Jones): Similar to H.R. 5543 (97th Congress); referred to Committee on Merchant Marine.

H.R. 1047 (Parris): Similar to H.R. 1047 (98th Congress); referred to Committee on Ways and Means.

H.R. 2846 (Patman): Twenty percent of OCS revenues to acquire strategic minerals; referred to Committees on Interior and Rules.

****1115 *622** *H.R. 3334* (Bonker): Establish a Technology Education Trust Fund from three percent of annual revenues under OCSLA and Mineral Lands Leasing Act; referred to Committees on Education and Labor, Science and Technology, and Interior.

H.R. 6214 (Breaux): Title I amending Coastal Zone Management Act; Title II amending OCSLA section 8(g) providing for 50–50 split of funds held in escrow; referred to Committee on Interior; Title I only referred to Committee on Merchant Marine.

99th Congress

H.R. 5 (Jones): Similar to H.R. 5 (98th Congress); referred to Committee on Merchant Marine.

H.R. 624 (Young): Establish a Coastal Resource and Economic Development Fund from 3 percent of annual OCS bonuses and royalties (up to $350 million); provide for grants to coastal states and local governments; referred to Committees on Merchant Marine and Interior.

H.R. 641 (Breaux): Similar to H.R. 6214 (98th Congress); referred to Committee on Interior; Title I only referred to Committee on Merchant Marine.

H.R. 655 (Young): Similar to H.R. 624 except does not provide for direct allocation of OCS revenues; only provides for appropriation of ‘amounts equivalent;’ referred to Committee on Merchant Marine.

APPENDIX VI.—OCS MORATORIA LEGISLATION: 93d–99th CONGRESSES

93d Congress

H. Con. Res. 687 (Bauman): Amend CZMA; probibit leasing prior to development of state programs under CZMA; referred to Committee on Merchant Marine.

H.R. 1836 (Peyser): Amend OCSLA; establish a National Marine Mineral Resources Trust consisting of all unleased oil, gas, sulfur, and other OCS minerals; resources in trust to be held unleased until certain findings regarding environmental protection and need for resource development are made; referred to Committee on Merchant Marine.

H.R. 3177 (Teague): Provides for establishment of a federal ecological preserve in OCS waters of the Santa Barbara Channel; prohibit oil and gas development within preserve; referred to Committee on Interior.

H.R. 3178 (Teague): Provides for a federal moratorium on OCS development in the Santa Barbara Channel; referred to Committee on Interior.

H.R. 5091 (Sullivan): Prohibits construction or operation of largescale offshore structures until it is certified that such facility will have no unacceptably adverse environmental effects; referred to Committee on Merchant Marine.

H.R. 17508 (Bauman): Prohibits issuance of OCS lease prior to federal approval of state coastal zone program; referred to Committee on Merchant Marine.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

H.R. 17571 (Bauman): Amends CZMA; similar to H.R. 17508; referred to Committee on Merchant Marine.

****1116 *623** *H.R. 17633* (Anderson): Amends CZMA; similar to H.R. 17508; referred to Committee on Merchant Marine.

94th Congress

H. Con. Res. 103 (Hinshaw): Similar to H.R. 17508 (93D Congress); referred to Committees on Merchant Marine and Interior.

H.R. 1236 (Anderson): Amends CZMA; similar to H.R. 17508 (93D Congress); referred to Committees on Merchant Marine and Interior.

H.R. 1363 (Peyser): Similar to H.R. 1836 (93D Congress); referred to Committees on Merchant Marine and Interior.

H.R. 1777 (Bauman): Amends CZMA; similar to H.R. 17508 (93D Congress); referred to Committees on Merchant Marine and Interior.

NOTE.—During the 93D Congress, similar legislation (H.R. 17508, H.R. 17571, and H.R. 17633) were referred exclusively to the Committee on Merchant Marine and Fisheries.

H.R. 2889 (Hinshaw): Similar to H.R. 1777; same referral.

H.R. 2929 (Talcott): Similar to H.R. 1777; same referral.

H.R. 3079 (Bell): Amend OCSLA; establish procedure for Congressional review and approval of any OCS lease; referred to Committee on Interior.

H.R. 3637 (Forsythe): Amends CZMA; prohibits federal authorization of OCS exploratory or production activities prior to development of state CZM program and state approval of proposed activity; referred to Committees on Merchant Marine and Interior.

H.R. 3808 (Studds): Amends OCSLA; comprehensive amendments, including moratorium on leasing in frontier areas; referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 4112 (Yates): Similar to H.R. 3808; same referral.

H.R. 4300 (Forsythe): Similar to H.R. 3637; same referral.

H.R. 4518 (Howard): Similar to H.R. 3808; same referral.

H.R. 4570 (Conte): Similar to H.R. 3808; same referral.

H.R. 4658 (Bell): Similar to H.R. 3079; same referral.

H.R. 5043 (Downey): Similar to H.R. 3808; same referral.

H.R. 5588 (Hughes): Amends OCSLA; prohibits lease sales until end of 94th Congress, or until passage of OCSLA Amendments revising leasing program; referred to Committee on Interior.

NOTE.—H.R. 3808 and similar legislation introduced previously during 94th Congress, and containing moratoria provisions were referred jointly to several committees, including the Committee on Merchant Marine and Fisheries. Those bills, however, were proposals to comprehensively amend the OCSLA, and included many provisions in addition to the moratoria provisions. In contrast, H.R. 5588 was exclusively a moratoria bill.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

H.R. 5916 (Forsythe): Similar to H.R. 3637; same referral.

H.R. 6130 (Bell): Similar to H.R. 3079; same referral.

H.R. 6256 (Studds): Similar to H.R. 3808; same referral.

H.R. 8691 (Studds): Similar to H.R. 3808; same referral.

H.R. 11934 (Sikes): Amends OCSLA; prohibits leasing in Gulf of Mexico in areas reserved for defense training and testing; referred to Committee on Interior.

****1117 *624** *95th Congress*

H.R. 812 (Conte): Amends OCSAL; comprehensive amendments including provisions prohibiting leasing in frontier areas where geological or environmental conditions make such development hazardous; referred to Committees on Judiciary, Merchant Marine, Interior, and Science and Technology.

H.R. 1304 (Roe): Amends OCSLA; establishes procedure for Congressional disapproval of OCS leasing proposals; referred to Committees on Interior and Rules.

H.R. 2287 (Yates): Amends OCSLA; similar to H.R. 812; same referral.

96th Congress

H.R. 3813 (Bielenson): Establish the Channel Islands National Park and Preservation Area; provide protection to areas of California coast; restricts leasing within designated area; referred to Committees on Interior and Merchant Marine.

H.R. 7512 (Panetta): Prohibits leasing of OCS lands in proposed Lease Sale #53 unless otherwise provided by the President and not disapproved by Congress; referred to Committee on Interior.

H.R. 7855 (Clausen): Similar to H.R. 7512; referred to Committee on Interior.

97th Congress

H. J. Res. 545 (Studds): Prohibits implementation of five-year OCS leasing program; referred to Committees on Interior and Merchant Marine.

H.R. 164 (Clausen): Similar to H.R. 7512 (96th Congress); referred to Committee on Interior.

H.R. 1267 (Panetta): Similar to H.R. 7512 (96th Congress); also extends prohibition to area contained in proposed Lease Sale #73; referred to Committee on Interior.

98th Congress

H.R. 1089 (Lagomarsino): Prohibits leasing in certain OCS areas offshore California; referred to Committee on Interior.

H.R. 2059 (Panetta): Imposed moratorium on OCS leasing, licensing, and permitting with respect to areas offshore California and Massachusetts; referred to Committee on Interior.

H.R. 2581 (Lowery): Imposed moratorium on OCS leasing, licensing, and permitting with respect to areas offshore California; referred to Committee on Interior.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

H.R. 2736 (Lowery): Similar to H.R. 2581; referred to Committee on Interior.

H.R. 3640 (Bates): Imposes moratorium on OCS leasing, licensing, and permitting with respect to areas offshore California; authorizes studies of effects of seismic activity; referred to Committee on Interior.

H.R. 3864 (Weaver): Amends OCSLA; comprehensive amendments, including provisions prohibiting additional leasing in areas offshore California and Massachusetts until January 1, 2000; referred to Committee on Interior.

NOTE.—During the 94th Congress, several bills proposing comprehensive amendments to the OCSLA and including general moratorium provisions were introduced and referred to several committees, ****1118 *625** including the Committee on Merchant Marine and Fisheries. While substantially analogous to those earlier bills, this bill was referred exclusively to the Committee on Interior.

H.R. 5403 (Bosco): Prohibits leasing of certain OCS areas of the Gorda Ridge under either the Deep Seabed Hard Minerals Resources Act or the OCSLA; referred to Committees on Merchant Marine and Interior.

H.R. 6214 (Breaux): Amends CZMA and OCSLA; prohibits issuance of leases unless state governor and Interior Secretary agree on distribution of revenues pursuant to provisions of section 8(g) of OCSLA; referred to Committee on Interior, and Committee on Merchant Marine for CZMA section only.

99th Congress

H.R. 641 (Breaux): Similar to H.R. 6214 (98th Congress); referred to Committees on Interior and Merchant Marine.

H.R. 1440 (Panetta): Imposes moratorium on OCS leasing, licensing, and permitting with respect to areas offshore California and Massachusetts; referred to Committee on Interior.

H.R. 2068 (Bosco): Prohibit leasing of hard mineral OCS resources in Gorda Ridge area of Pacific Ocean; referred to Committees on Interior and Merchant Marine.

CBO COST ESTIMATES

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1985.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.
DEAL MR. CHAIRMAN: As you requested, I am providing you with an estimate of the savings resulting from the Department of Transportation (DOT) rule permitting repayment of construction differential subsidies.

On May 7, 1985, DOT issued a final rule that permits the total repayment of construction differential subsides (CDS) for U.S. tanker vessels, provided full repayment is received by June 6, 1986. The full repayment amount will consist of the unamortized CDS, with compounded interest on that amount. The rule applies to all tanker vessels with no restrictions as to size. Once the subsidies have been repaid, the vessels may be used without restriction in the domestic trade. The rule has been in effect since June 6, 1985.

As a result of this rule, on July 26, 1985, ARCO repaid $86.5 million to the federal government for CDS on two Very Large Crude Carriers. Five additional applications for CDS payback, worth $188 million, are pending. Final approval of these applications depends on a number of uncertain financial and economic conditions for the two companies involved, Seatrain and Petrofina.

CBO projects that this rule will result in a total savings of approximately $200 million in fiscal year 1986, relative to the CBO baseline, without any legislative action. This estimate is net of possible defaults on Title XI loan guarantees by vessels

currently in ****1119 *626** the domestic trade that might suffer from the increased competition.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1985.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for a resolution to comply with reconciliation instructions to the House Merchant Marine and Fisheries Committee under the First Concurrent Budget Resolution for fiscal year 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

CONGRESSONAL BUDGET OFFICE COST ESTIMATE

1. Bill numbered: Not yet assigned.

2. Bill title: A resolution to comply with reconciliation instructions to the House Merchant Marine and Fisheries Committee under the First Concurrent Budget Resolution for fiscal year 1986.

3. Bill status: Committee print as adopted by the House Committee on Merchant Marine and Fisheries, September 26, 1985.

4. Bill purpose: This bill would amend federal programs under the purview of the Committee to meet reconciliation goals under the First Concurrent Resolution.

5. Estimated cost to the Federal Government: Two federal cost tables are displayed below. The first table shows the costs or savings estimated relative to current law. This is consistent with the standard cost estimate format used by the Congressional Budget Office. Because this bill is intended as a reconciliation act, we have also included a second table displaying estimates relative to the budget resolution baseline. The baseline differs from current law primarily in that it assumes the reauthorization of certain programs.

The budget impact of this bill falls within functions 300, 370, 400, 900, and 950.

TABLE I: FEDERAL COSTS RELATIVE TO CURRENT LAW

[By fiscal years, in million of dollars]

	1986	1987	1988	1989	1990
Boating Safety Fund:					

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Estimated budget authority	-15				
Estimated outlays	-6	-4	-3	-2	
NOAA Charts					
Estimated budget authority	-14	-19	-23	-23	-23
Estimated outlays	-14	-19	-23	-23	-23
Amendments to Fishery Conservation & Management Act of 1976:					
Estimated budget authority	-6	-20	-16	-12	-8
Estimated outlays	-6	-20	-16	-12	-8
Amendments to the Outer Continental Shelf Land Act:					
Estimated budget authority	-4,501	1,685	1,413	-27	-27
Estimated outlays	-4,501	1,685	1,413	-27	-27
Ocean & Coastal Resources Management & Development Block Grant Act:					
Estimated authorization level			150	293	258
Estimated outlays			135	279	262
Amendments to the Coastal Zone Management Act:					
Authorization level		45	47	49	52
Estimated outlays		41	47	49	51
Total:					
Budget authorization level					
Budget authority	-4,536	1,691	1,571	280	252
Estimated outlays	-4,527	1,683	1,553	264	255

TABLE II: FEDERAL COSTS RELATIVE TO BUDGET RESOLUTION BASELINE

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

[By fiscal years, in million of dollars]

	1986	1987	1988
Boating Safety Fund:			
Estimated budget authority	-15		
Estimated outlays	-6	-5	-3
NOAA Charts			
Estimated budget authority	-14	-19	-23
Estimated outlays	-14	-19	-23
Amendments to Fishery Conservation & Management Act of of 1976:			
Estimated budget authority	-6	-20	-16
Estimated outlays	-6	-20	-16
Amendments to the Outer Continental Shelf Lands Act:			
Estimated budget authority	-4,501	1,685	1,413
Estimated outlays	-4,501	1,685	1,413
Ocean & Coastal Resources Management & Development Block Grant Act:			
Estimated budget authority			150
Estimated outlays			135

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Amendments to the Coastal Zone Management Act:			
Budget authority		-5	-5
Estimated outlays		-2	-3
Total:			
Budget authority	-4,536	1,641	1,519
Estimated outlays	-4,527	1,639	1,503

****1120** *Basis of estimate*

Boating Safety Fund.—Title I would reduce from two-thirds to one-third the amount transferred in fiscal year 1985 to the boat safety account for state recreational boating safety programs. The remaining one-third would be transferred to the general fund of ****1121 *628** the Treasury. The estimate assumes that $15 million of the fiscal year 1985 unobligated balance in the account would be transferred to the general fund in fiscal year 1986, thus reducing spending authority by $15 million. Outlay savings reflect historical spending patterns.

NOAA Charts.—Title II would require that charts and related materials sold by the National Oceanic and Atmospheric Administration (NOAA) be priced to recover costs of production. Specifically, the agency would be required to phase in, over three years, prices designed to recover costs of data management, compilation, printing, and distribution. Based on information obtained from NOAA, we estimate that the phased-in implementation of Title II would increase federal proprietary receipts by $14 million in fiscal year 1986, rising to $23 million annually by 1988.

Amendments to Fishery Conservation and Management Act of 1976.—Title III would change the formula for charging fees paid by owners or operators of foreign fishing vessels operating in the Fishery Conversation Zone (FCZ). The fees paid under current law are deposited in the Fisheries Loan Fund, Department of Commerce, and used to make loans to vessel operators for purchasing or maintaining commercial vessels. The proposed legislation would increase the fees paid by foreigners through foreign fishing fees, and would require that the increase in collections resulting from this change in formula be deposited in the general fund of the Treasury.

In order to estimate the increase in fees, a number of assumptions about the total amount and location of both the U.S. and foreign fishing harvest over the next several years must be made. For purposes of this estimate, it is assumed that there will be no significant net change in the domestic territorial catch, that the total catch in the FCZ will remain constant, and that the recent two percent annual decline in foreign fishing harvest will continue. Based on information from Commerce, it is also expected that program costs will not increase significantly between 1986 and 1988. Given these assumptions, it is expected that additional receipts of approximately $6 million in 1986, $20 million in 1987, and $16 million in 1988 would be generated by the proposed change.

Fiscal year 1986 receipts, on an annual basis, would be about $24 million. According to the Department of Commerce, however, receipts would probably not begin to accrue until May or June of 1986, assuming an October 1985 enactment. To allow for rulemaking, appeals and billing procedures, the CBO estimate assumes that only one-quarter of a year’s collections will be received in 1986. The estimate also does not assume any decline (beyond the two percent annually) in foreign fishing despite the increase in fees of about 50 percent, because of the historical experience regarding previous fee increases in this program.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Amendments to the Outer Continental Shelf Lands Act.—The bill provides a formula for dividing the existing 8(g) Outer Continental Shelf escrow account among the federal government and seven states. It also specifies the revenues that should be divided in the future and establishes procedures for distributing these revenues.

Section 402 of the bill requires that bonus, rent, royalty, and other revenues derived after October 1, 1985, from the leasing of ****1122 *629** federal tracts wholly or partially within three nautical miles of the state seaward boundaries, be deposited in an interest-earning account in the United States Treasury. Federal income and windfall profit taxes are excluded from the account. The states are to receive 27 percent of the funds in this account, with the remainder assigned to the miscellaneous receipts account of the U.S. Treasury. Section 402 provides for the same 73 percent/27 percent split of funds for new 8(g) zones that are created after the resolution of section 7 boundary disputes.

Section 403 of the bill divides funds in the section 8(g) escrow account as of September 30, 1985, among the states and the federal government. The states would receive $1.578 billion in bonuses, rents, and accrued interest as well as 27 percent of existing royalties with accrued interest. All other revenues would go to the federal government. Revenues placed in escrow after September 30, but before the release date are divided according to the formula in section 402. All funds in the existing 8(g) escrow account must be distributed prior to January 1, 1986.

Section 405 compensates states out of future revenues for the difference between the existing escrow account and the level of escrow account payments that would have occurred if the new definitions contained in section 402 had been applied prior to October 1, 1985. These recoupment payments are equal to 10 percent of new revenues each year, until the time when states are fully compensated. This payment is in addition to the 27 percent of new revenues that states would receive under section 402. Recoupment payments would begin on October 1, 1986.

Funds in the existing escrow acount are assumes to be released on December 31, 1985, with 73 percent going to the federal government and 27 percent going to the states, based on the amounts specified in the bill. Deposits in the New Treasury account for section 8(g) are assumed to be released 45 days after deposit. In fiscal year 1986 the federal and state shares of new revenues would remain 73 percent and 27 percent respectively.

Based on information from the Department of the Interior, it is estimated that under the new definitions included in section 402, the current section 8(g) escrow account would have been $7.9 billion instead of $6.1 billion. The level of the current escrow account is based on actual deposits through March 31, 1985, with additional principal deposits assumed to be $50 million each quarter. Interest on the escrow account was estimated using budget resolution interest rate assumptions.

In the absence of legislation, CBO assumed new section 8(g) deposits of $50 million per quarter through 1990. Because this bill broadens the definition of section 8(g) tracts over that applied by the Department of the Interior in the past, it is likely that new royalties from previously leased tracts would increase if this legislation is enacted. This increase in royalties, however, is likely to be offset by a reduction in bonuses and royalties from new tracts. The Department of the Interior is expected to split future tracts along the three-mile boundary to avoid the need to put additional revenue in the Treasury account.

It is estimated that the recoupment provision of this bill entitles states to an additional payment of $0.5 billion. If new revenues ****1123 *630** from section 8(g) tracts were to remain constant at $200 million each year, the recoupment provision would give states $20 million each year for 25 years. It will take less time to complete recoupment if new revenues are greater than $200 million each year. The recoupment provision causes the state share of future revenues to increase from 27 percent in fiscal year 1986 to 37 percent in fiscal year 1987.

The estimated budget impact of this bill included $123 million in receipts in 1986 that result from giving the federal government 73 percent of revenues from the new 8(g) zone created once the Beaufort Sea boundary dispute is settled. It was assumed that in the absence of legislation the federal share would be 50 percent. The actual amount of federal revenues from Beaufort Sea tracts will depend on the eventual location of the boundary as determined by the courts.

Ocean and Coastal Resources Management and Development Block Grant Act.—Title V would establish the Ocean and Coastal Resources Management and Development Fund within the U.S. Treasury. Beginning in fiscal year 1988, the fund would be credited with an amount equal to four percent of annual OCS receipts, based on a three-year average. The bill

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

would cap annual deposits to the fund at $150 million in 1988 and $300 million in 1989. After that, each year's maximum deposit would increase by five percent of the preceeding year's deposit. Subject to appropriation acts, these funds would be used to provide coastal states and territories with block grants. The grants, awarded according to a formula specified in the bill, would be used for the enhancement and management of ocean and coastal resources.

The estimated authorization levels and outlays in the above tables were calculated by using CBO estimates of OCS receipts, as revised to take into account the provisions of Title IV, Amendments to the Outer Continental Shelf Lands Acts. If receipts had been estimated on the basis of CBO baseline OCS receipts, the resulting estimates of authorization levels and outlays would have been lower in fiscal year 1989 and higher in 1990.

Amendments to the Coastal Zone Management Act.—Title VI would reauthorize funding for programs established by the Coastal Zone Management Act of 1972. The Act's grant provisions would be amended to require states to increase their share of program administration and resource management improvement costs. The bill would authorize appropriations of $45.2 million in 1987, rising to $51.6 million by 1990. No funds would be authorized for coastal zone management programs in fiscal year 1986.

Merchant Marine Act Amendments.—Title VII would amend the Merchant Marine Act of 1936 by broadening the definition of an eligible vessel that can deposit money into a capital construction fund (CCF). Deposits would be allowed from proceeds derived from a vessel either documented under the laws of the United States or owned by a United States controlled foreign corporation. This would replace the present domestic construction eligibility requirement to establish a CCF. The bill would also amend the definition of a qualified vessel to allow withdrawls from the fund to build vessels for the support of exploration, exploitation, or production of offshore mineral or energy resources. CBO estimates that these ****1124 *631** amendments would tend to reduce federal revenues, though their revenue effect probably would be negligible.

In addition, Title VII would also require that a fund holder submit to the Secretary of Transportation a schedule of projected deposits and withdrawals in a capital construction fund for a period of not less than 10 years.

Use of American-Built Rigs for OCS Drilling.—Title VIII would require that all vessels and structures used for oil and gas exploration or production be built in the United States from products that are at least 50 percent American-made. This provision is not expected to have any significant impact on the federal budget.

6. Estimated cost to State and local governments: Section 101 of the bill would reduce by $15 million the amount available in the Aquatic Resources Trust Fund. This money would have been used to provide grants to the states for eligible programs.

Section 503 would provide new grants to coastal states and territories for ocean and coastal resource management and development programs, subject to restrictions and requirements specified in the bill. A maximum of $150 million would be made available for this purpose in fiscal year 1988, rising to an estimated $258 million by 1990.

Title VI would increase the state share of costs for coastal zone management grant programs from the current 20 percent to 30 percent in fiscal year 1987, 40 percent in 1988, and 50 percent in 1989 and thereafter. If all grant funds authorized are appropriated, and if states seek the full amounts, the state matching share would rise in fiscal year 1987 from $9.2 million under the present 20 percent requirement to about $15.7 million. The state share would rise to approximately $40.6 million by 1990. State participation in these programs is not mandatory, however. Also, some states are already spending more than their current grant allocations would require, and thus may not need to increase spending to meet the new matching requirements.

Under Title IV, the seven coastal states would receive $2.0 billion over five years from the section 8(g) escrow account, with most of the payment in 1986. Under CBO's baseline estimate, assuming an even split of the escrow account between the states and the federal government, states would receive $3.9 billion over five years, with most of these payments in 1987 and 1988. In addition, section 406 requires each state receiving payments under sections 402, 403, and 405 of this bill to provide at least 33 percent of the payments to local coastal governments. Under this section, local governments would receive about $0.7 billion over five years. Section 401 requires the payments received by both state and local governments under Title IV of the bill to be used for the mitigation of adverse economic and environmental effects related to the development of mineral resources of the OCS.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO has prepared estimates for a number of related legislative proposals. On September 27, 1985, CBO transmitted cost estimates for Titles IV and V of the Omnibus Reconciliation Act of 1985, to the Senate Committees on Energy and Natural Resources and Commerce, Science, and Transportation. On May 15, we prepared a cost estimate for H.R. 2121, the ****1125 *632** Coastal Zone Management Act of 1985, as ordered reported by the House Committee on Merchant Marine and Fisheries, May 1, 1985. Letters were also submitted to the Merchant Marine and Fisheries Committee on August 15, and September 20, 1985, containing estimates for Boating Safety Fund and NOAA charting fee proposals. On September 30, 1985, CBO prepared a cost estimate for the House Committee on Interior and Insular Affairs recommendation for the Budget Reconciliation Act.

9. Estimate prepared by: Deb Reis, Heidi Zukoski, Mary Maginniss, Jim Hearn, and Neil Fisher.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

TITLE VII—COMMITTEE ON POST OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC, September 30, 1985.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Transmitted herewith are the recommendations of the Committee on Post Office and Civil Service submitted in accordance with the reconciliation instructions contained in S. Con. Res. 32 (First Concurrent Resolution on the Budget—Fiscal Year 1986). These recommendations were approved by the Committee on September 18, 1985, by a record vote of 17–0.

Also transmitted herewith for inclusion in the Budget Committee's report are an accompanying statement, section analysis, cost savings estimates of the Congressional Budget Office, and a Ramseyer.

With kind regards,

Sincerely,

WILLIAM D. FORD, *Chairman*.

Enclosures.

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

It appears the annual Federal employee pay adjustment will be determined as a result of concerns over the budget deficit rather than sound personnel management practices. Section 2 of S. Con. Res. 32, the First Concurrent Resolution on the Budget—Fiscal Year 1986, instructs various Senate and House committees to achieve budgetary savings. The Committee on Post Office and Civil Service is instructed to save $3.219 billion in fiscal year 1986, and $12.636 billion over fiscal years 1986, 1987, and 1988. The bulk of this committee's savings, $10.554 billion, stems from the assumption that Federal pay adjustments over the next three fiscal years will be frozen, delayed, and capped.

The budget resolution also assumes savings from requiring health insurance carriers participating in the Federal Employees Health Benefits Program to refund to the Government a portion of ****1126 *633** the reserves they now hold. Over the last few years, these reserves have grown to levels in excess of those necessary to ensure stability in the program. Further, the resolution assumes a reduction in the authorization for appropriations to reduce the cost of certain 'preferred' mail. Examples of preferred rate mail categories are: free for the blind and handicapped; the library rate; the 'in-county' periodical rate; the classroom publication rate; and the second class and third class nonprofit organization rates. Finally, the resolution assumes continued use of a formula for converting annual salary rates to hourly rates which was first required by the Omnibus Budget

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Reconciliation Act of 1982. The effect of the use of this conversion factor is to reduce Federal employee hourly pay rates.

The savings assumed for the Committee on Post Office and Civil Service are summarized below:

[In fiscal years and millions of dollars]

	1986	**1986–88**
Federal employee pay freeze in FY 1986 (full funding of 3.8% increase in January 1987 and 4.7% increase in January 1988)	2,136	10,554
Refund of excess reserves under Federal Employees Health Benefits Program	800	1,100
Make permanent 2,087-hour pay computation factor	160	490
Reduce revenue forgone and transitional appropriations to the Postal Service	123	482
Total $	3,219	12,626

COMMITTEE ACTION

The Committee on Post Office and Civil Service met on September 11 and 18, 1985, to consider recommended changes in laws within its jurisdiction as required by S. Con. Res. 32. On September 18, seventeen members of the committee were recorded in favor of the recommendations summarized below. No member of the committee was recorded in opposition to the recommendations.

SUMMARY OF COMMITTEE RECOMMENDATIONS

Federal Pay.—The recommendations would freeze Federal civilian pay for fiscal year 1986 and provide a five percent increase effective January 1, 1987, and a five percent increase effective January 1, 1988. Although the proposed 1987 and 1988 increases exceed the percentage increases assumed in the budget resolution, the required savings will be achieved because the recommendations also require agencies to absorb 33 percent of those increases. The budget resolution assumed no absorption. The recommendations also would extend for three more years the ‘2,087 hour’ pay computation factor.

FEHBP Reserves.—The recommendations would require the Office of Personnel Management to determine the minimum level of necessary reserves which should be held by FEHBP insurance carriers and would require each carrier to refund to the FEHBP Fund any excess reserves. The recommendations further provide that the aggregate amount of required refunds may not be less than $800 million in fiscal year 1986 and $300 million in fiscal year ****1127 *634** 1987, thus ensuring the savings assumed in the budget resolution are achieved.

FEHBP Premium Cap.—Under existing law, the Government’s health insurance premium contribution for a Federal employee is fixed at 60 percent of the average premium for the ‘Big Six’ plans in the program. In no event, however, may the Government’s premium contribution exceed 75 percent of the total premium of the plan in which the employee is participating. The recommendations would suspend application of the 75 percent limitation for the 1986 and 1987 contract

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

years.

Postal Appropriations.—The recommendations would authorize only $749 million for the fiscal year 1986 'revenue forgone' appropriation. This amount is $83 million below the Congressional Budget Office baseline. Further, the recommendations would defer authorization for the fiscal year 1986 'transitional' appropriation until fiscal year 1989. The CBO baseline for the 'transitional' appropriation is $39 million in fiscal year 1986.

COMMITTEE'S RECONCILIATION SAVINGS

The savings attributable to the recommendations approved by the committee are summarized below. They amount to 97 percent of the savings assumed for the committee in the budget resolution.

OUTLAY SAVINGS ACHIEVED UNDER COMMITTEE RECOMMENDATIONS

[In fiscal years and millions of dollars]

	1986	1987	1988	3-year total
Federal employee pay freeze in FY 1986–5% increase in FY 1987 and FY 1988	2,136	3,986	4,451	10,573
Refund of excess reserves under Federal Employees Health Benefits Program and elimination of premium cap	957	150	(+40)	1,067
Three-year extension of 2,087-hour pay computation factor	160	160	170	490
Reduce revenue forgone and transitional appropriations to the Postal Service	122			122
Total	3,375	4,296	4,581	12,252

SECTION ANALYSIS

Section 7101—Pay adjustments for employees under statutory pay systems

Paragraph (1) of section 7101(a) provides for specific adjustments under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule and the rates of pay under the other statutory pay systems in the case of fiscal years 1986, 1987, and 1988. This section provides that notwithstanding any other provision of law, no adjustment in the rates of pay shall be made with respect to fiscal year 1986 and, with respect to each of the fiscal years 1987 and 1988, the overall percentage of the adjustment under section 5305 of title 5 shall be an increase of 5 percent. The intent and effect of this provision is to mandate the specific pay adjustments which shall occur in fiscal years 1986, 1987, and 1988 and to preclude the President from transmitting, pursuant to ****1128 *635** section 5305(c) of title 5, alternative pay plans which would provide for different pay adjustments with respect to those fiscal years.

Paragraph (2) of section 7101(a) provides that each increase in a pay rate or schedule in the case of the 1987 and 1988 fiscal year adjustments shall, to the maximum extent practicable, be of the same percentage and shall take effect at the beginning of the first applicable pay period commencing on or after January 1 of the fiscal year involved. The committee recognizes that all adjustments may not be exactly the same percentage due to the need to maintain proper intervals between salary steps and

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

rounding to whole dollars. It should be noted that the January 1 effective date of the 1987 and 1988 pay adjustments represents a three-month delay of the normal effective date of Federal employee pay adjustments under existing law (see 5 U.S.C. 5305(a)(2)).

Paragraph (1) of section 7101(b) provides for specific adjustments of wage schedules or rates applicable to prevailing rate employees described in section 5342(a)(2) of title 5, United States Code, or officers and members of crews of vessels covered by section 5348 of title 5. In the case of fiscal year 1986, there shall be no adjustment, except that any adjustment resulting from the 90-day delay of the fiscal year 1985 pay adjustment under section 616(a)(2) of H.R. 5798, incorporated by reference in section 101(j) of Public Law 98–475, may take effect during fiscal year 1986. With respect to fiscal years 1987 and 1988, the total adjustment during each year shall not exceed an increase of 5 percent. An adjustment of less than 5 percent could take effect with respect to either fiscal year if the regular wage survey or other pay-setting procedure results in a lower percentage adjustment.

Paragraph (2) of section 7101(b) provides that any increase permitted under paragraph (1) which is scheduled to take effect during fiscal year 1987 or 1988 shall take effect 90 days after the scheduled effective date. This 90-day delay of the effective date corresponds to the delayed effective date of the General Schedule pay increase in fiscal years 1987 and 1988.

Paragraph (3) of section 7101(b) provides that the provisions of paragraph (1) of this section shall apply in such manner as the Office of Personnel Management shall prescribe to certain prevailing rate employees whose pay rates and practices are determined by negotiation. However, such provisions shall not apply to any increase in a wage schedule or rate which is required by the terms of a contract entered into before October 1, 1985.

Paragraph (4) of section 7101(b) provides that nothing in subsection (b) or in any appropriation act governing the use of funds for the payment of employees covered by subsection (b) shall be construed to permit or require the payment to any such employee at a rate which exceeds the rate that would be payable were subsection (b) not in effect. The purpose of this paragraph is to permit a decrease in a wage rate or schedule during fiscal year 1986, 1987, or 1988 if such decrease is warranted as the result of a regular wage survey or other customary pay-setting procedure.

Paragraph (5) of section 7101(b) authorizes the Office of Personnel Management to make exceptions from the pay adjustment limitations imposed by paragraph (1) if such exceptions are necessary to ensure the recruitment and retention of well-qualified employees. ****1129 *636** It is the intent of the committee that such authority be used sparingly.

Subsection (c) of section 7101 provides that determinations relating to amounts to be appropriated by the Congress to fund the pay adjustments authorized under subsections (a)(1) and (b)(1) of section 7101 shall be based on the assumption that the various departments and agencies will, in the aggregate, absorb 33 percent of the increase in total pay for the fiscal year involved. Since Federal agencies have been required to absorb, in the aggregate, an average of 30 percent of the additional costs resulting from employee pay adjustments since 1980, the committee believes the requirement imposed by this subsection should not prove to be unduly burdensome.

Subsection (d) of section 7101 defines various terms for the purposes of section 7101.

Section 7102—Amendments relating to Federal Employees Health Benefits Program

Paragraph (1) of section 7102(a) requires the Office of Personnel Management to determine the minimum level of financial reserves necessary to be held by insurance carriers who participate in the Federal Employees Health Benefits Program (FEHBP). Any reserves in excess of the minimum level must be refunded to the Employees Health Benefits Fund at such times during fiscal years 1986 and 1987 as OPM determines appropriate. Paragraph (1) further provides that any refund made by a carrier shall be credited to the contingency reserve of such carrier's health benefits plan.

Paragraph (2) of section 7102(a) requires OPM to ensure that the aggregate amount to be refunded to the Employees Health Benefits Fund under this section shall not be less than $800 million during fiscal year 1986 and $300 million during fiscal year 1987.

Paragraph (3) of section 7102(a) provides that no amount in any of the contingency reserves of the FEHB plans may be

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

transferred to the general fund of the U.S. Treasury, to the U.S. Postal Service, or to the D.C. Government as a result of a refund of excess reserves made under this section. This provision ensures that the refunded reserves will be used only for the benefit of the Federal Employees Health Benefits Program.

Subsection (b) of section 7102 eliminates, for contract years 1986 and 1987, the existing limitation on the Government's contribution for an employee or annuitant enrolled in a plan under the FEHBP. Section 8906(b)(2) of title 5, United States Code, provides that the Government's contribution for any enrollee shall not exceed 75 percent of the total premium for the particular plan. Subsection (b) suspends the application of this limitation for the 1986 and 1987 contract years and, thus, permits the Government to contribute up to 100 percent of the applicable premium. The 100 percent limitation is intended to be applicable to monthly as well as biweekly Government contributions as is the 75 percent limitation under existing law.

****1130 *637** *Section 7103—Conversion of annual to hourly rates of pay based on 2,087 hours per year*

The first three paragraphs of section 7103(a) amend the provisions of section 5504(b) of title 5, United States Code, relating to the conversion of annual rates of pay to hourly rates. Under the existing provisions of section 5504(b), the annual rate of pay is divided by 2,080 hours in order to derive an hourly rate. Under this amendment, the annual rate is to be divided by 2,087 hours in order to derive an hourly rate. The 2,087-hour divisor more accurately reflects the average number of regularly scheduled work hours in a calendar year.

Paragraph (4) of section 7103(a) amends section 5504(b) of title 5 to clarify that members of the Senior Executive Service are subject to the provisions of section 5504(b).

Subsection (b) of section 7103 provides that the amendments made by subsection (a) shall take effect as of the beginning of the first applicable pay period commencing on or after October 1, 1985.

Subsection (c) of section 7103 provides that the amendments made by the first three paragraphs of subsection (a) (relating to the conversion of annual rates to hourly rates) shall cease to have effect after fiscal year 1988.

Section 7104—Savings under postal programs

Section 7104(a) limits to $749 million the FY 1986 authorization for the 'revenue forgone' appropriation to the Postal Service, notwithstanding the authorization contained in section 2401(c) of title 39, United States Code. This appropriation annually reimburses the Postal Service for carrying certain types of 'preferred' rate mail free or at reduced rates. Examples of preferred rate mail categories are: free for the blind and handicapped; the library rate; the 'incounty' periodical rate; the classroom publication rate; and the second class and third class nonprofit organization rate. In accordance with section 3627 of title 39, U.S.C., whenever Congress fails to appropriate the amount authorized by 39 U.S.C. 2401(c), the Postal Service is authorized to raise the preferred rates to a level necessary to compensate for the failure of appropriations.

The CBO baseline for the FY 1986 revenue forgone appropriation is $832 million. Reconciliation instructions to the Committee assume that the FY 1986 authorization will be reduced to $749 million. The Committee is complying with this instruction.

Section 7104(b) eliminates the FY 1986 authorization for the transitional appropriation to the Postal Service. As authorized by section 2004 of title 39, U.S.C., this appropriation is used by the Postal Service to reimburse the Department of Labor for payment of workers compensation claims arising from injuries to postal employees which occurred prior to the effective date of the Postal Reorganization Act (July 1, 1971).

For FY 1986, the CBO baseline for this appropriation is $39 million. Reconciliation instructions assume no appropriation. The Committee is complying with this instruction by eliminating the FY 1986 authorization and directing the Postal Service to make the necessary payment to the Department of Labor from general postal revenues. The amount which would have been authorized to be appropriated ****1131 *638** in FY 1986 will be authorized to be appropriated in FY 1989.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SECTION 5504 OF TITLE 5, UNITED STATES CODE

§ 5504. Biweekly pay periods; computation of pay

(a) * * *

* * * * *

(b) [For pay computation purposes affecting an employee, the annual rate of basic pay established by or under statute is deemed payment for employment during 52 basic administrative workweeks of 40 hours. When] *When, in the case of an employee*, it is necessary for computation of pay under this subsection to convert an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate, the following rules govern:

(1) To derive an hourly rate, divide the annual rate by [2,080] *2,087*.

(2) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required.

(3) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

Rates are computed to the nearest cent, counting one-half and over as a whole cent. For the purpose of this subsection, 'employee' means—

(A) an employee in or under an Executive agency;

(B) an employee in or under the judicial branch;

(C) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

(D) an individual employed by the government of the District of Columbia:

but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this [title.] *title other than an employee or individual excluded by section 5541(2)(xvi) of this title*.

****1132 *639** CBO COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, dc, September 26, 1985.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service U.S. House of Representatives, Washington, DC.
DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation proposals ordered reported by the House Committee on Post Office and Civil Service on September 18, 1985. The Estimates represent the budgetary effects of the Committee's legislative proposals relative to the baseline used by the House in considering the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32).

The Committee staff has also inquired about spending changes in the Federal Employees Health Benefits Program that will arise as a result of the recently announced 1986 premium rates. Premiums had been expected to increase 9 percent in the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

baseline from 1985 to 1986, when in fact premiums decreased 6 percent on average. Each federal agency pays its share of premiums for active employees out of its appropriation for salaries and expenses; the federal share of premiums for annuitants is financed by an appropriation to the Office of Personnel Management. If these appropriations were fully adjusted to reflect the lower premium rates, federal spending could be reduced by an estimated $515 million in 1986, $483 million in 1987, and $390 million in 1988.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Not yet assigned.

3. Bill status: As ordered reported by the House Committee on Post Office and Civil Service on September 18, 1985.

4. Bill purpose: The Committee's reconciliation proposals would achieve the following: Section I would provide no pay comparability adjustment for federal civilian employees in fiscal year 1986. It would also provide in both fiscal years 1987 and 1988 a pay comparability adjustment of 5 percent with a three-month delay in the effective date, assuming that agencies will pay for 33 percent of the first-year cost of each year's adjustment from current funds.

Section 2 would require the Office of Personnel Management (OPM) in fiscal years 1986 and 1987 to determine the minimum level of financial reserves to be held by insurance carriers under the Federal Employees Health Benefits (FEHB) program. Carriers would be required to refund to the FEHB fund any excess reserves, but not less than $800 million in 1986 nor less than $300 million in 1987. Section 2 would also remove in 1986 and 1987 the existing 75 ****1133 *640** percent limit in the government's share of FEHB insurance premiums.

Section 3 would extend through fiscal year 1988 the existing methods of computing pay for certain federal civilian workers using 2,087 hours per workyear. Before fiscal year 1984, pay was calculated using 2,080 hours per workyear. The Omnibus Reconciliation Act of 1983, however, required the use of 2,087 hours during fiscal years 1984 and 1985. Under current law, the 2,080 hours method would be used again beginning October 1, 1985.

Section 4 would limit to $749 million the fiscal year 1986 authorization for the 'revenue forgone' appropriation to the U.S. Postal Service, whose operations are currently reflected off-budget. That appropriation annually reimburses the Postal Service for carrying at reduced rates or free of charge certain types of preferred mail. This section would also eliminate the fiscal year 1986 authorization for the transitional appropriation to the Postal Service, by which the Postal Service reimburses the Department of Labor for payment of worker compensation claims arising from injuries to postal employees that occurred prior to July 1, 1971. The amount that would have been authorized in 1986 would be authorized to be appropriated in 1989.

5. Estimated cost to the Federal Government: Table 1 shows that the Committee's reconciliation proposals would reduce net federal outlays relative to the S. Con. Res. 32 baseline by $11.3 billion in 1986–1988 and by $17.2 billion in 1986–1990.

TABLE 1.—TOTAL NET BUDGETARY EFFECT OF COMMITTEE'S RECONCILIATION PROPOSALS RELATIVE TO THE BUDGET RESOLUTION BASELINE

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Total Net Budgetary Effect					
Estimated authorization level	-3,095	-3,834	-4,042	-2,763	-2,895
Estimated outlays	-3,125	-3,952	-4,194	-2,900	-3,025

Note.—Figures include both on- and off-budget effects.

Basis of estimate

Section I. As shown in Table 2, this section would result in total net outlay savings of $9.7 billion in 1986–1988 and $15.6 billion in 1986–1990 by:

Providing no pay comparability adjustment in fiscal year 1986 for all federal civilian employees;

Authorizing pay adjustments of 5 percent for all civilian employees in each of fiscal years 1987 and 1988, and requiring federal agencies in the aggregate to pay for out of current funds 33 percent of the first-year cost of the adjustment both years; and by

Requiring a three-month delay in the effective date of the pay adjustments in fiscal years 1987 and 1988.

TABLE 2.—BUDGETARY EFFECTS OF COMMITTEE'S PROPOSALS RELATING TO PAY COMPARABI LITY ADJUSTMENTS IN FISCAL YEARS 1986–88

[By fiscal years, in millions of dollars]

Program (Budget Function)	**1986**	**1987**	**1988**	**1989**	**1990**
Savings:					
Civilian Agency Employees (920):					
Estimated authorization level	-1,187	-2,091	-2,327	-1,641	-1,723
Estimated outlays	-1,232	-2,223	-2,471	-1,768	-1,855
Dept. of Defense Employees (050):					
Estimated authorization level	-919	-1,778	-1,983	-1,415	-1,476
Estimated outlays	-904	-1,763	-1,980	-1,425	-1,475
Subtotal, Savings:					
Estimated authorization level	-2,106	-3,869	-4,310	-3,056	-3,199
Estimated outlays	-2,136	-3,986	-4,451	-3,193	-3,330

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Offsetting Receipts (950):					
Estimated authorization level	195	330	371	293	305
Estimated outlays	195	330	371	293	305
Net Budgetary Effect:					
Estimated authorization level	-1,910	-3,539	-3,928	-2,763	-2,895
Estimated outlays	-1,940	-3,657	-4,080	-2,900	-3,025

****1134 *641** The resolution baseline, against which the estimates are measured, assumes that all federal employees will receive a pay adjustment (without a catchup raise to account for past pay caps) of 4.0 percent in 1986, 5.2 percent in 1987, 5.4 percent in 1988, 5.3 percent in 1989, and 5.0 percent in 1990. The Committee makes no explicit change in the level of pay in 1989 and 1990, nor does it assume 33 percent absorption or extend the three-month delay in the effective date beyond 1988. Therefore, the CBO estimates assume that the rates of pay adjustments in 1989–1990 are those in the resolution baseline, effective both years on the dates now provided by law and assuming no absorption.

Section 2. As shown in Table 3, this section would result in total net outlay savings of $1.1 billion in 1986–1988 with no additional savings in 1989–1990.

TABLE 3.—BUDGETARY EFFECTS OF COMMITTEE'S PROPOSALS RELATING TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

[By fiscal year, in millions of dollars]

Program (budget function)	**1986**	**1987**	**1988**	**1989**	**1990**
Savings:					
Refund excess reserves (550):					
Estimated authorization level	-1,067	-300			
Estimated outlays	-1,067	-300			
Costs:					
Remove limit on Government's share of insurance premiums (550):					
Estimated authorization level	110	150	40		
Estimated outlays	110	150	40		
Net budgetary effect:					

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Estimated authorization level	-957	-150	40
Estimated outlays	-957	-150	40

****1135 *642** *Refund excess reserves*.—This proposal would require OPM to ensure that refunds from carriers' special reserves be not less than $800 million in fiscal year 1986 nor less than $300 million in fiscal year 1987. OPM, however, now officially estimates that refunds will amount to $1,067 million in fiscal year 1986, and $300 million in fiscal year 1987. Excess reserves can be used to defray increases in future rates, to increase plan benefits, or to allow for rebates to eligible enrollees. If rebates are made to employees, savings would be lower than those shown above.

Remove Limit on Government's Share of Insurance Premiums. This provision would increase the maximum allowable government contribution for federal employee health insurance premiums from the 75 percent current law limit to 100 percent of 60 percent of the average cost of the six largest plans in the FEHB program for contract years 1986 and 1987. This would increase outlays relative to the resolution baseline by $110 million in fiscal year 1986, $150 million in 1987, and $40 million in 1988. No additional costs would occur in 1989–1990 because the Committee makes no specifications for those years.

Section 3. As shown in Table 4, this section would produce net outlay savings of $445 million from 1986–1988 as a result of extending through September 30, 1988 the method of calculating certain civilian pay rates using 2,087 hours per workyear. These estimates represent an aggregate payroll savings of about one-third of one percent (the quotient of 2,087 divided by 2,080). Before fiscal year 1984, pay was calculated using 2,080 hours. But the Omnibus Reconciliation Act of 1983 required the use of 2,087 hours for fiscal years 1984 and 1985, a requirement that is scheduled to expire on October 1, 1985. Because the proposed extension would expire at the end of 1988, no savings would be achieved in 1989–1990.

TABLE 4.—BUDGETARY EFFECTS OF EXTENDING THROUGH 1988 METHOD OF CALCULATING CIVILIAN PAY USING 2,087 HOURS PER WORKYEAR

[By fiscal year, in millions of dollars]

Program (budget function)	**1986**	**1987**	**1988**	**1989**	**1990**
Savings					
Civilian agency employees (920):					
Estimated authorization level	-101	-101	-107		
Estimated outlays	-101	-101	-107		
Department of Defense employees (050):					
Estimated authorization level	-59	-59	-63		
Estimated outlays	-59	-59	-63		
Subtotal, savings:					
Estimated authorization level	-160	-160	-170		

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Estimated outlays	-160	-160	-170		
Offsetting receipts (950):					
Estimated authorization level	15	15	16		
Estimated outlays	15	15	16		
Net budgetary effect:					
Estimated authorization level	-145	-145	-154		
Estimated outlays	-145	-145	-154		

****1136 *643** *Section 4*. As shown in Table 5, this section would achieve total on- and off-budget outlay savings of $83 million in 1986–1988, with no additional net savings in 1989–1990.

Section 4 of the bill would cap at $749 million the 1986 authorization of appropriations for the revenue forgone payment to the Postal Service. The 1986 baseline for the Postal Service in S. Con. Res. 32 includes $832 million for this purpose. Fiscal year 1986 savings resulting from the reduction in the revenue forgone payment would be $83 million.

TABLE 5.—BUDGETARY EFFECTS OF COMMITTEE'S PROPOSALS RELATING TO THE POSTAL SERVICE

[By fiscal year, in millions of dollars]

Program (budget function)	**1986**	**1987**	**1988**	**1989**	**1990**
On-budget:					
Limit authorization of appropriations for revenue forgone (370):					
Authorization level	-83				
Estimated outlays	-83				
Postpone authorization of 1986 Transitional Appropriations (370):					
Estated authorization level	-39			39	
Estimated outlays	-39			39	
Total on-budget effect:					
Estimated authorization level	-122			39	
Estimated outlays	-122			39	

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Off-budget		
Postpone authorization of 1986 transitional appropriations (370):		
Estimated authorization level	39	-39
Estimated outlays	39	-39
Total on- and off-budget effects		
Estimated authorization level	-83	
Estimated outlays	-83	

This section would also postpone the 1986 authorization of appropriations to reimburse the Postal Service for worker's compensation claims paid by the Department of Labor (DOL). The 1986 estimate of this unfunded liability—$39 million—would be paid to the Postal Service in 1989. The legislation would require the currently off-budget Postal Service to pay DOL in 1986 from Postal Service revenues. The net effect of this proposal would be to reduce on-budget appropriations in 1986 by $39 million, but to increase off-budget Postal Service outlays by the same amount. In 1989, the on-budget reimbursement of $39 million from appropriations would reduce Postal Service costs by $39 million.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: David Bashore, Eugene Bryton, Mary Maginniss, and Anne Manley.

10. Estimate approved by: C. G. Nuckols, for James L. Blum, Assistant Director, for Budget Analysis.

****1137 *644** TITLE VIII—COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, October 2, 1985.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed is the reconciliation submission of the Committee on Public Works and Transportation, pursuant to section 2 of the First Concurrent Resolution on the Budget for Fiscal Year 1986, along with other matters as required by the House Rules and in accordance with your letter of September 25, 1985.

Every best wish.

Sincerely,

JAMES J. HOWARD, *Chairman*.

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

RECONCILIATION RECOMMENDATION

(Submitted pursuant to section 2 of the First Concurrent Resolution on the Budget for Fiscal Year 1986)

OCTOBER 2, 1985

TITLE VIII

Subtitle A—Highway Programs

REDUCTION IN AUTHORIZATIONS

The purpose of this provision is to reduce fiscal year 1986 authorizations for the Federal-Aid Highway Program by $800 million, an adjustment made necessary by recent indications of a revenue shortfall below official projections on which those authorizations were based. It thus is intended to maintain fiscal responsibility and to preserve the integrity of the program by keeping ultimate outlays in line with projected revenues. Of equal importance is the fact that this approach has the virtue of not relying on obligation limitations to achieve the intended reductions, with all the distortions and inequities which such an approach would entail.

The origin of the problem, the details and implications of the Committee's response, and the rationale for that response are as follows. The authorizations being reduced here were contained in the Surface Transportation Assistance Act of 1982, a multi-titled highway, highway safety, public transportation and revenue measure. It increased the fuels tax and extended the authorizations for the programs for four fiscal years, the last being fiscal year 1986. Authorizations for that year were $15.5 billion and, like the remainder of authorizations in the Act, were premised on certain revenue assumptions prevailing at the time the Act originated in the Committee.

****1138 *645** One key assumption was that increases on the revenue side would coincide with increases in authorizations. As the bill ultimately was enacted, however, revenue increases were gradually phased in. The resulting shortfall was compounded by an accompanying shortfall in interest earned on the balance in the Highway Trust Fund. For these and other reasons, it became evident in January, 1985, that a slight adjustment of the fiscal year 1986 authorization would be necessary—to $15.25 billion—and that the Trust Fund could sustain a four-year extension of the program through fiscal year 1990 at that modestly reduced level. However, the Congressional Budget Office on which the Committee has relied for revenue projections, and the Treasury now are predicting a further shortfall below the level which would support a program in the $15 billion-plus range. CBO now recommends a program level of $14.6 billion for fiscal years 1986–1990 as the most responsible course.

CBO Director Rudolph G. Penner, in a letter to the Committee dated September 27, 1985, said, 'This level does not represent the absolute maximum that the trust fund could support. Nonetheless, if future revenue estimates were to decrease, this level of spending would offer only a limited safety margin.' Mindful of its stewardship over the program, the Committee is constrained to concur. It therefore has chosen to reduce the authorizations in existing law for the program by $800 million for fiscal year 1986. Reductions are to be made by freezing, at the fiscal year 1985 levels, those programs which were slated for increases in fiscal year 1986. Thus, the adjustments made by this provision represent the elimination of planned increases rather than actual cuts. The programs affected are the Primary System, down $150 million from $2.45 billion to $2.3 billion; Bridge Replacement and Rehabilitation, down $350 million from $2.05 billion to $1.75 billion, and Interstate 4R, down $350 million from $3.150 billion to $2.8 billion.

Recognizing that this Act cannot take effect until after apportionments of funds for fiscal year 1986 have been made, this bill provides for an adjustment of unobligated apportionments in keeping with the level of authorizations as modified by this Act, and for future-year adjustments as necessary.

The Committee believes that these adjustments must be made to affect fiscal year 1986 authorizations. This would permit a

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

stable program through fiscal year 1990. If adjustments are delayed until fiscal year 1987, the program level will be forced down from $15.5 billion in fiscal year 1986 to less than $14.4 billion for each of the fiscal years 1987, 1988, 1989 and 1990.

A change as drastic as an annual cut of $1.1 billion beginning in fiscal year 1987, a cut below the level of actual funding experienced the previous year—unlike the approach proposed here of eliminating a planned increase and beginning the adjustments a year earlier—raises the risk of pressure for wholesale changes in the structure of the Federal-aid highway program in the current reauthorization bill. Instead, the Committee strongly believes it would be in the public interest to defer such an effort, which is best undertaken in connection with the termination of the Interstate construction program in the early 1990s. The Committee's approach, that of forestalling planned funding increases in fiscal year 1986, would ****1139 *646** allow a major reevaluation of program structure to be deferred until 1990.

The Committee also wishes to acknowledge, as does the CBO, that the Treasury estimates of revenue are below those of CBO, largely in the area of gasoline revenues; Treasury estimates would appear to support a program level of only $14 billion. The Committee has not chosen to effect a reduction of that magnitude, relying on the following observation of CBO:

> The size of the Treasury's adjustment to gasoline revenues depends on comparision with Internal Revenue Service data for 1983. Comparisions with other data series imply a much smaller error if any. Rather than make a large adjustment now on the basis of limited data, waiting for additional information is prudent.

This provision affects only fiscal year 1986.

OTHER OPTIONS REJECTED

Further refinements in revenue estimates are in progress and will be available to the Congress considerably in advance of final action on legislation extending the program. In choosing this course, the Committee emphatically rejects two possible alternatives: (1) doing nothing and allowing the anti-deficit provision of the Highway Revenue Act to be triggered, and (2) attempting to deal with the shortfall by further reductions in obligation limitations.

With respect to the first option, the Committee could conceivably elect to rely on the Byrd amendment, which would prevent or limit the annual apportionment of authorized funds in the event revenue projections indicated that insufficient funds would be available to liquidate the obligations incurred when the bills came due on a project. This would be unacceptable. This Committee has no intention of perpetrating a fraud on the Congress and the public, purporting to authorize funds which cannot be apportioned, obligated or expended at the full authorized level because of a known shortfall in revenue.

Furthermore, the Committee on Ways and Means is emphatically on record as having no desire to be placed under pressure to increase revenues to make up for a shortfall or to be perceived as being responsible for a reduction in program level. The Committee on Public Works and Transportation recognizes this as a legitimate concern and accepts responsibility for program adjustments as its own.

In theory, tighter restraints on obligations might appear an attractive alternative. In reality, however, the history of obligation limitations has been one of distortions and inequity such as to render them unacceptable as a device on which to rely exclusively in this instance. Unrealistically rigid obligation ceilings can distort Congressional priorities; they can achieve no real savings in deficit-proof programs like that financed by the Highway Trust Fund; they can perpetutate a backlog of unobligated apportionments and distort State spending priorities; imposed annually, they can thwart the long-range predictability, and the continuity and stability which the Congress has sought to provide through multi-year ****1140 *647** authorizations, trust fund financing and contract authority. Such contract authority constitutes budget authority, permitting obligations of funds in the absence of prior appropriations.

The principal problem with such limitations in this instance, aside from being unnecessary, is that they tend to create a backlog of unobligated apportionments which cannot invariably be obligated in an expeditious manner. A backlog can arise in a State owing to any number of reasons: inability to agree on a capital budget, a court suit tying up a costly project otherwise ready to proceed, a need on the part of a State to save several years worth of apportionments in a particular category for a large and expensive project, and difficulty in coming up with the non-Federal matching share, to name a few possible reasons. Federal-aid highway funds are apportioned to each individual State by individual category. Funds are

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

available for obligation for one, two or four years before becoming subject to lapse. Obligation limitations are allocated among the States by means of the distribution of obligation authority. The ceiling established for any given State for any given year is applicable to all of that State's unobligated apportionments, not just the funds newly apportioned for that year. States with a backlog of unobligated apportionments, accumulated for whatever reason, have only a limited opportunity to work through that backlog through a device known as redistribution of unused obligation authority at the end of each fiscal year.

Obligation limitations were first imposed on the Federal highway program by legislation, as distinguished from executive impoundment—in the Transportation Act for 1976. This was to be a temporary measure intended, according to its authors, to smooth out the obligation of a surge of apportionments when previously impounded highway funds were released.

This Committee, recognizing the will of the House in imposing such constraints in the years since, as the original rationale has faded from memory, has undertaken to include such ceilings in its own legislation to assure that at least the aggregate of each year's limitation plus the authorizations outside the ceiling for a given year at least accommodate the new authorizations for that year. In that spirit, the Committee provides obligation ceilings as called for in the First Concurrent Resolution on the Budget, S. Con. Res. 32.

The pertinent section provides a limitation of $13.25 billion for fiscal year 1986, $13.8 billion for fiscal year 1987, and $14.4 billion for fiscal year 1988 on obligations for Federal-aid highway and highway safety construction programs. In a manner consistent with exemptions contained in existing law, the provision excludes the following programs from the ceiling: emergency relief projects; minimum allocations; bridge projects on Federal dams; the U.S. Grant Bridge and the East Huntington Bridge in Ohio and West Virginia; the Woodrow Wilson Bridge located in the District of Columbia, Maryland, and Virginia; a demonstration project on Route 220 in Altoona, Pennsylvania; a demonstration project in Illinois demonstrating the benefits of constructing usable segments of high-volume facilities; Union Station; and the completion of the Milwaukee Bridge in Michigan.

The Committee language also is intended to provide a small measure of relief to the states which have accumulated a significant ****1141 *648** backlog of unobligated apportionments or allocations for a variety of reasons, and are unable to eliminate that backlog by virtue of the fact that obligation authority is distributed to a state each year on the basis of funds apportioned and allocated to that state in that year; in essence, with obligation authority being distributed only on the basis of new funding, the backlog is perpetuated. The provision is intended to benefit a state that has an excessive backlog relative to its program size. The obligation authority is distributed among the states on the following basis: (1) ninety-five percent is distributed among the states on the relative basis of each state's share of apportioned and allocated Federal-aid highway and highway safety construction programs for the fiscal year; and (2) five percent distributed among the states based on the relative balance of unobligated apportionments or allocations which remain available to each state at the end of the preceding fiscal year and which will not lapse.

Total first quarter obligations are limited to twenty-five percent and limits each state's first quarter obligations to thirty-five percent of its share of the annual obligation limitation for fiscal years 1986 through 1988. Priorities in existing law are continued for the August 1 redistribution of unused obligation authority for fiscal years 1986 through 1988, and there is a conforming amendment to assure that funds allocated under the minimum allocation program do not affect the distribution of annual obligation authority.

In reporting this package dealing with obligation limitations, the Committee declined to consider a lower series of limitations in the range of $12.75 billion for fiscal year 1986, $13.25 billion for fiscal year 1987 and $13.8 billion for fiscal year 1988, as approved by this Committee's counterpart committee in the other body.

BRIDGE FUND REPROGRAMMING

This amendment reprograms a portion of existing budget authority under section 147 of Public Law 95–599, as amended, to allow construction of three bridges across the Ohio River. The budget authority being reprogrammed is over and above what is necessary to carry out the Acceleration of Bridge Projects Program authorized by section 147. Thus, the amendment will not result in any new budget authority and will not diminish in any way the implementation of the Acceleration of Bridge Projects Program.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 147 of the Federal-Aid Highway Act of 1978 (Public Law 95–599), as amended, authorized and directed the Secretary of Transportation to construct two bridges across the Ohio River in order to demonstrate the feasibility of reducing the time required to replace unsafe bridges. The necessary funding for the bridges was provided in the form of contract authority from the Highway Trust Fund. As it developed, the amount of funding provided under section 147 was more than was needed to complete the two bridges authorized by that section. It appears that the excess funds will be in the range of $65 to $75 million. These excess funds can be attributed to the fact that the Portsmouth Bridge, which is being built by the States of Kentucky and Ohio, will cost much less than had been anticipated.

****1142 *649** The purpose of this amendment is to make available this excess budget authority for construction of three bridges across the Ohio River.

One bridge would carry U.S. Route 27 across the Ohio River between Newport, Kentucky, and Cincinnati, Ohio. This bridge would replace the Central Bridge, which was built in 1890 and which has a sufficiency ratio of 5.0. The estimated cost of the project is $30 million.

The second involves construction of a bridge across the Ohio River on Kentucky State Route 17 between Covington, Kentucky, and Cincinnati, Ohio. This bridge would replace a suspension bridge which was built in 1867 and which has a sufficiency rating of 54.9. The estimated replacement cost is about $31 million.

The total cost of these two bridges is about $61 million. While this represents a substantial portion of the funds transferred from the Acceleration of Bridge Projects Program, it does not represent all the funds. There would be about 5 to 15 million dollars remaining.

Any excess funds—that is, funds over and above the funds needed to build these two bridges—would be used to partially fund a bridge on U.S. Route 68 across the Ohio River between Maysville, Kentucky, and Aberdeen, Ohio. This bridge would replace a bridge which was built in 1931 and which has a sufficiency rating of 45.6. The estimated cost of the project is $30 million. The Committee fully recognizes that the funding made available under this section will not be sufficient to completely construct the replacement bridge. It is anticipated that the State will use State funds and/or other Federal-aid highway funds to complete the project.

The Committee's intent is that sufficient funds be allocated to the first two projects to assure their completion. Any remaining funds would be used to carry out the third. However, it also should be clear that the three projects can proceed simultaneously. The Secretary can set aside the estimated amounts necessary to complete the first two projects and then use any remaining amounts on the third.

The amendment further provides that funds are to be available for obligation in the same manner and to the same extent as if appropriated under chapter 1 of title 23, United States Code, except that such funds shall remain available until expended, and the Federal share will be 90 percent of project cost. Thus, all of the excess contract authority available under section 147 of Public Law 99–599 is to be preserved and transferred to these projects which accordingly are to be funded by contract authority from the Highway Trust Fund. These funds would not be subject to any obligation limitation under the Federal-aid Highway Program.

The Committee wishes to emphasize five points.

First, this section does not authorize or provide any new budget authority. It simply reprograms existing budget authority made available in previous Federal-aid highway legislation.

Second, in carrying out this section, it is not necessary to eliminate the existing bridges being replaced. The existing bridges can remain in service if the State so chooses.

Third, consistent with the designs selected by the States, it is intended that the latest high-type geometric design features (including ****1143 *650** safety hardware) and new advances in highway bridge construction be used on these projects. In doing so, these projects should use state-of-the-art technology, and all design elements, including the decking, should be

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

designed to provide the best life-cycle costs, thereby minimizing future maintenance and rehabilitation costs. The Secretary of Transportation should provide necessary technical assistance in the design and construction of the project. Not later than one year, six years, eleven years, and twenty-one years after the completion of the state-of-the-art technology projects, a report is to be submitted to the Congress, including but not limited to the results of such projects, the effects of using the best available technology on safety and other considerations, recommendations for applying the results to other bridge projects, and any changes in law that may be necessary to permit further use of such features.

Fourth, the Secretary should use expedited procedures on these projects in order to demonstrate the feasibility of reducing the time required to replace unsafe bridges.

And fifth, these demonstration projects, by helping to develop new advances in bridge construction and new techniques for reducing the time to construct bridges, have the potential of leading to long-term improvements which can ultimately save hundreds of millions of dollars in the costs of bridge construction nationwide.

Subtitle B—Highway and Airport Trust Funds

The purpose of this provision is to take the Federal-aid highway program, the public transportation discretionary grant program and the Airport and Airway Trust Fund out of the unified budget and thereby to protect them from manipulation either for the purpose of understating the size of the budget deficit (on paper) or for the purpose of increasing spending for programs funded from general revenues. The change is long overdue in light of the following: (1) These programs, and the trust fund which finances them, are subject to an impressive array of controls which render any restraint imposed by the budget process totally unnecessary. (2) In concept and in substance, these programs have no place in a unified or consolidated budget. (3) Inclusion of the highway trust fund and Airport and Airway Trust Fund in the unified budget has led to the imposition of obligation controls on the Federal-aid highway and Airport improvement programs for a decade and (more recently) the mass transit discretionary capital program. This has been despite Budget Act language clearly recognizing the unique character of the highway trust fund. (4) Such limitations have had the effect of (a) holding down expenditures under the affected programs below the level which can be sustained by revenues, and (b) constraining the program to an extent unnecessary to any rational program management objectives. (5) Renewed recognition on the part of the Congress that self-financed trust funds are indeed different from general revenues and deserving of treatment accordingly.

Nothing in the amendment would detract in any manner from the legitimate exercise of authority of the Committee on Ways and Means. Its chief substantive effect would be to help protect the programs ****1144 *651** from inappropriate meddling. Moreover, it would have no effect on the real deficit.

The following sections discuss the highway trust fund and Airport and Airway Trust Fund in greater detail.

HIGHWAY TRUST FUND

1. Unified Budget Controls Unnecessary.—The highway trust fund (including the mass transit account established by the Surface Transportation Assistance Act of 1982) is subject to ample controls. These are not necessarily the same controls as apply in the case of other programs, but controls they are nonetheless, and they are appropriate to the character of the programs being controlled. First, the programs must be authorized just like any other. True, the authorizations in this case carry contract authority—budget authority—permitting the obligation of funds without intervening appropriations. But the authorizations are typically contained in multi-year legislation also containing a revenue title originating with the Committee on Ways and Means. These authorizations are scrutinized independently by our Committee and that Committee for consistency with levels of revenue provided by existing law or by a given extension and/or expansion measure under consideration by that Committee; they then must be voted in each House (under an open rule) and signed into law like any other piece of legislation. Another control, unique to the program, consists of an anti-deficit mechanism known as the Byrd amendment (for the late Senator from Virginia). This established a mechanism, in the Highway Revenue Act since 1956, whereby the Secretary of the Treasury and the Secretary of Transportation jointly make periodic reviews of estimates of revenues flowing into the trust fund. If anticipated revenues are insufficient to meet anticipated demand, the Secretary of Transportation must withhold or reduce the amounts made available through the key procedure known as apportionment. This consists of the Secretary's formally notifying each State as to the amount which that State is legally to have obligated

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

for Federal-aid eligible projects in the State. Under the Byrd amendment, as modified by the 1982 STAA, the Secretary may apportion in anticipation of two years' revenue beyond the current year. This is why there is a two-year 'overhang,' whereby the trust fund is typically extended two years beyond the expiration of companion authorizing legislation. Under the traditional 'overhang' approach, current law provides for expiration of the authorizations at the end of fiscal year 1986, and the revenue statute two years later. A comparable provision is applicable to the mass transit account, except that the 'overhang' is one rather than two years.

Thus, the trust fund is subject to more control than non-trust fund general revenue programs. While one mechanism applicable to most programs (appropriations) does not apply to these trust fund programs, they are unique in being subject to a combination of two others; the authorization-revenue review, and the Byrd amendment limitations on apportionments.

2. Unsuitability for Unified Budget.—These trust fund-backed, contract authority programs have no place in the unified budget. This stems from the adequacy of controls, as indicated above, and ****1145 *652** from the nature of the funds involved. The revenues are derived from users of the highway system rather than the general public and dedicated for highway and transit use. Several consequences flow from this fact. The programs thus financed are not in competition with general revenues; the amounts expended are ultimately determined by the revenue-raising Committee and the authorizing committee. The funds cannot be used for any purpose other than the highway and transit purposes for which levied, with the result that any savings achieved by imposition of artificial constraints cannot be diverted to any other use or benefit any program. To the extent that trust funds are used to understate the size of general revenue deficits, this dilutes the discipline which the budget process should exert on spending. To the extent that this trust fund has any bearing on general-fund programs, it lies in the fact that the balance in the fund is available for borrowing by the government for other purposes. The Committee questions whether serving as a source of funds for intra-government borrowing is regard as legitimate grounds for restraining its funding in the view of the highway user or Members who have consistently supported the program.

3. Unified Budget As Basis For Limitation.—The then-new budget process and the concerns of the Budget Committee were cited as grounds for imposing obligation limitations on the highway program when such controls were first applied by legislation in the DOT Appropriations Act for 1976, and reconfirmed in similar legislation the following year. On the Floor on November 11, 1975, the then-Chairman of the Transportation Appropriations Subcommittee stated in response to arguments put forth by the Committee on Public Works and Transportation,

> As I understand the argument of the gentleman, the gentleman wants the highway program to be the only program in the Federal Government for which there is no limitation on the spending that might occur.

The following year, the same floor manager of the Appropriations Act stated similarly,

> We have endeavored to do everything that the Committee on Public Works has recommended to us except not put in a ceiling. We cannot go that far, because if we do not put in a ceiling, then this program will be exempt from the Budget Act and the budget process which that act establishes.
>
> It would go on unrestricted. In order to cooperate with the Budget Committee and the Budget Act, we have to have a ceiling. I think gentleman would agree that we cannot exempt highways and allow the rest of the spending programs of the Federal Government to have ceilings.

Rhetoric of this nature was aired, despite clear-cut language to the contrary in the Budget Act. We refer to section 401(a), which prohibits consideration of any bill providing new spending authority except to the extent that such spending authority has ben provided for in appropriations acts. An exception is provided in section ****1146 *653** 401(d), which made such a requirement inapplicable to funds from the Social Security trust funds or

> . . . any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.

It has been recognized beyond dispute, both at the time of the debate and since, that the language quoted above is to be interpreted as referring to the highway trust fund. Indeed, a memorandum from the then-Chairman of the Budget Committee

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

specified that the appropriations exemption referred to any trust fund 'which is at least 90 percent self-financed (such as the highway trust fund);'.

The Committee wishes to emphasize that the use of limitations on trust fund-financed programs to benefit other programs is hardly a matter of classic budgetary tradition. Limitations initiated in 1975 were for the stated purpose of controlling an otherwise explosive surge of spending resulting from the release of previously impounded highway funds. (This, incidentally, failed to materialize.) The constraints were described as possibly temporary, and the hope was held forth that if obligations approached the ceiling, reasonable adjustments would be made.

The initial rational was control of the pace at which the backlog would be released. There was never a forthright declaration of intent that, once a precedent was set and constraints were in place, they would be used to ratchet down the obligation of funds for a given year below the level of authorizations for that year. It is this distortion of the process, not the process itself, which must be remedied. And the history of the pat decade has demonstrated that the remedy is placement of these programs off budget.

4. Limitations Distort Programs.—The manner in which imposition of obligation limitations have been managed has been a big contributor to the perpetuation of a backlog of unobligated apportionments. (For an indication of the way in which such limitations distort programs within a state, see the discussion of obligations in the context of highway authorization reductions for fiscal year 1986.)

Many of the problems of distortion caused by backlog first came to the attention of the Committee some time ago; the Committee attempted to ease the problem at least minimally by language in H.R. 5504 in the last Congress. The problem is addressed partially in another way elsewhere in this Act.

As noted above, the problems of obligation limitations have plagued the affected programs at least since the mid-1970's (in the case of the highway program). Yet they remain quite current. As recently as the issuance of Conference Report on the First Concurrent Resolution on the Budget, the Congress was informed by the budget conferees as follows in the Report discussion of Function 400: Transportation Trust Funds:

> ****1147 *654** As in the past, the conferees have followed the general policy of assigning reconciliation instructions to authorizing committees of jurisdiction. No instructions have been given to the Appropriations Committees. *However, the conferees recognize that in the instances of certain transportation trust funds, jurisdiction over imposition of obligation limitations has been a desirable budget control device, permitting all accounts to be considered in setting spending priorities within certain budget functions. In making reconciliation instructions, therefore, the conferees do not intend to alter existing jurisdictional relationships, and except that such relationships will continue as in the past*. (Emphasis added.)

And as recently as September 11, 1985, the Appropriations Committee obtained agreement to a Floor amendment to the Transportation Appropriations Act for 1986 reducing obligation authority by roughly $1 billion. This included an unexpected reduction of $90 million in the mass transit discretionary grant obligation, from $1.1 billion to $1.01 billion. This was despite the fact that the budget resolution calls for a limitation of $1.1 billion and the fact that the program, according to the Congressional Budget Office, could sustain obligation levels of $1.5 billion for each of the fiscal years 1987 and 1988, and $1.8 billion in each of the fiscal years 1989 and 1990. The rationale for the cuts, as explained by the sponsor, was as follows:

> Mr. Chairman, the overall effect of the amendments we are now considering en bloc is to reduce the spending authority provided in this bill by $1 billion. None of these reductions is desirable, but I think that they are all necessary given the large budget deficits this country faces and the expressed desire of this body for greater efforts to get our budget under control.

The rationale for treating self-financed trust funds as general revenues for budget-balancing or debt-reduction purposes has become no more persuasive in the past decade of the application of obligation limitations to the programs in question. Instead, the rhetoric has simply become more explicit, more institutional. The Committee believes that the time has come to eliminate needless constraints and has resolved to raise the issue squarely, as a problem rooted in the unified budget itself. The Committee would expect to continue the use of obligation limitations in its own legislation to avoid any disruptive surges in obligations which might result if the backlog were suddenly released or otherwise not managed in an orderly

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

manner. But such would be done in light of program realities, rather than under budget pressure from an Administration threatening a veto or a committee of the Congress more concerned with making numbers match neatly if irrelevantly.

5. Rethinking Trust Fund Controls.—The Committee believes that on the basis of recent experience, the Congress is becoming more aware of the realities of self-financing trust funds and the programs which they support. This awareness was reflected, for example, in 1982 when the fuels tax was raised by five cents per ****1148 *655** gallon and one cent of that amount was earmarked for the mass transit account in the highway trust fund to finance discretionary capital grants for new rail starts and extensions, rail modernization, and major bus purchases and bus-related investment. An attempt was made to strike langauge giving transit discretionary capital funding the same contract authority afforded the highway trust fund-financed highway programs. This was resoundingly defeated.

The following year, and since, there has been an even more striking development in the matter of the Social Security trust funds.

Treatment of the Social Security trust funds under the unified budget concept has prompted supporters of that program to move them off budget. Amendments enacted in 1983 call for removal of social security from the unified budget in 1992. Moreover, efforts are currently in progress in both the House and Senate to move the effective date up to fiscal year 1986 or 1987. Following are highlights of the evolution of these developments, in which the Committee sees direct parallels with the programs proposed to be placed off budget in this bill.

The National Commission on Social Security Reform, in its report issued in January of 1983 stated, in pertinent part, the following:

> Before fiscal year 1969, the operations of the Social Security trust funds were not included in the unified budget of the Federal Government, although they were made available publicly and were combined, for purposes of economic analysis, with the administrative budget in special summary tables included in the annual budget document. Beginning then, the operations of the Social Security trust funds were included in the unified budget. In 1974, Congress implicitly approved the use of a unified budget by including Social Security trust fund operations in the annual budget process. Thus, in years when trust-fund income exceeded outgo, the results was a decrease in any general budget deficit that otherwise would have been shown—and vice versa.
>
> The National Commission believes that changes in the Social Security program should be made only for programmatic reasons, and not for purposes of balancing the budget. Those who support the removal of the operations of the trust funds from the budget believe that this policy of making changes only for programmatic reasons would be more likely to be carries out if the Social Security program were not in the unified budget. Some members also believe that such a procedure will make clear the effect and presence of any payments from the General Fund of the Treasury to the Social Security program. (Under present procedures, such payments are a 'wash' and do not affect the overall budget deficit or surplus).

Later in the year, Social Security amendments (PL 98–21) were enacted which included the following provision:

> ****1149 *656** SEC. 710. (a) The receipts and disbursements of the Federal Old-Age and Survivor's Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund and the taxes imposed under section 1401, 3101, and 3111 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 improved by statute on expenditures and net lending (budget outlays) of the United States Government.

In report language (Rept. 98.25, Part 1) on the bill, the Committee on Ways and Means offered the following rationale:

> Your Committee believes that it would be desirable to provide assurance that changes in the social security will not be made on the basis of budgetary considerations. Thus, your Committee's bill provides that beginning in fiscal year 1988 [this was later changed], the operations of the OASI [Old-Age and Survivor's Insurance], DI [Disability Insurance], and HI [Hospital Insurance] Trust Funds are to be removed from the unified budget. During the interim years, the social security trust funds would be displayed as a separate function within the budget.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

This provision drew little notice or criticism when called up by the House for initial consideration, and passed on March 9, 1983.

Last month, the Social Security Subcommittee of the Committee on Ways Means reported out the bill H.R. 825, section 301 of which provides that effective October 1, 1986, the receipts and disbursements of the Federal Old-Age and Survivor's Insurance Trust Fund and the Federal Disability Insurance Trust Fund (and various related taxes):

> . . . 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 and general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

The other body, meanwhile, voted 77–22 on September 19 in support of a sense-of-the-Senate resolution that the Social Security trust funds be separated from the unified budget. A motion committed the measure sequentially to the Senate Committee on the Budget and the Committee on Financial with instruction to report back on October 16, 1985, and November 3, 1985, respectively, legislation for the purposes of assuring in the best and most reliable manner, that effective October 1, 1986:

> Alterations will not be made in Social Security benefits for the purpose of reducing the federal deficit; and
>
> (b) The placement and means of considering the Social Security program in relation to the Congressional budget will be such that it will be ineffective to seek to achieve ****1150 *657** reduction of the overall federal deficit by means of proposing reductions in Social Security benefits;

The Committee contends that the parallel here is overwhelmingly persuasive. To be sure, the transportation trust fund programs are not identical to the Social Security trust funds. However, the differences are such that, if there is merit in removing social security from the unified budget, there is an even more compelling case to be made for providing these key transportation programs with equal protection.

1. Unlike social security, the transportation programs are not entitlement programs over which the Congress has no direct control. Every dollar in outlays from the transportation funds has been authorized in legislation specifically approved by Congress.

2. The transportation trust funds are totally self-financed, while the social security program continually receives general revenue contributions.

3. The highway and transit programs have anti-deficiency protection built into their revenue statute. The social security program has not.

4. The social security program has been beset with financial difficulties from time to time, and today, for the third time in less than a decade, is the object of major amendment. By contrast, aside from a necessary adjustment to accommodate a start-up cash-flow problem in early years, the highway trust fund has performed flawlessly.

AIRPORT AND AIRWAY TRUST FUND

The Airport and Airway Trust Fund is fully supported by taxes paid by users of the airport and airway system, including a passenger ticket tax imposed on commercial airlines and a fuel tax imposed on general aviation. These tax revenues are used to support capital development of the airport and airways systems, and as a subsidiary purpose, the operations and maintenance of the air traffic control system.

In 1981, the Trust Fund program was renewed and user taxes were increased. The users supported these increases because they recognized that higher taxes were needed to support a major program of modernizing the air traffic control system and expanding airport capacity so that the system could handle the increased demands which would be placed upon it during the 1980s. Unless these capital improvements were undertaken, airport and airway congestion would increase dramatically and

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

we would soon be faced with the undesirable alternatives of either incurring major delays or imposing restrictions on operations at congested airports, thereby reducing the benefits of competition. The only way to avoid these problems was to modernize and expand the system.

Regrettably, the programs established in 1981 have not been fully funded and the users have been paying considerably more into the Trust Fund than has been going out for capital development. In every year since Fiscal 1982, obligation ceilings have been imposed on the Airport Improvement Program and as a result of these ceilings, obligations under the AIP program through fiscal 1985 have been $360 million less than authorizations. In Fiscal ****1151 *658** 1986, the obligation ceiling imposed by the House Appropriations Committee will produce an additional shortfall of $92 million below authorized funding.

In the Facilities and Equipment program for modernization of the air traffic control and navigation systems, there has been an even greater shortfall. Through Fiscal 1985, appropriations for this program were $766 million below the authorized level. The House Appropriations bill for Fiscal 1986 produces an additional $318 million deficiency below the authorization.

These shortfalls are inexcusable when user taxes are producing far more revenues than are needed to support the Airport and Airway Trust Fund programs. As a result of the shortfall, the uncommitted surplus in the Trust Fund has grown from $2.1 billion at the end of Fiscal 1982 to an estimated $3.3 billion at the end of Fiscal 1985. By the end of Fiscal 1986, the uncommitted surplus is estimated to reach $4.6 billion under the appropriations bill passed by the House.

With the Trust Fund included in the general Presidential and Congressional budgets, the increase in the Trust Fund's uncommitted surplus has served to reduce the general budget deficit. In other words, since Fiscal 1982 aviation users have contributed $1.3 billion to reduce the general budget deficit and under the House bill for Fiscal 1986 the aviation users will contribute an additional $1.2 billion to reducing the general budget deficit. This is totally inconsistent with the conceptual basis of user funds. The mistreatment of users in this Aviation Trust Fund threatens our ability to extend the user fund concept to other areas.

The shortfall in spending out of the Trust Fund is largely attributable to the inclusion of the Trust Fund in the Presidential and Congressional budgets. When these programs are included in overall budgets the Administration and the Appropriations Committee tend to lose sight of the fact that the Trust Fund programs themselves produce surpluses rather than deficits, and that the justification for imposing specific taxes on aviation users is that the tax revenues will be spent on the aviation system. In the pressure for reductions of general budget deficits, the temptation to cut Trust Fund programs, while gaining the benefit of their revenues, becomes irresistible. Unless this process is stopped, Congress and the users will be unwilling to have the Trust Fund programs continued and the aviation system will suffer the consequences.

Removal of the Airport and Airways Trust Fund from the budget process will not mean that the Trust Fund will be uncontrollable or that the Trust Fund will operate at a deficit. Most of the Trust Fund programs require annual appropriations and removing them from the budget will not change this requirement. As a practical matter, the Trust Fund has operated to produce large surpluses rather than deficits.

To ensure that there will not be deficits in the future, the reported bill adds to the Airport and Airway Trust Fund Program an antideficit provision similar to the Byrd amendment in the Highway Trust Fund which is discussed above. Under this provision, the Secretary of Transportation, in consultation with the Secretary of the Treasury, shall determine on March 31 of each year whether at the end of the next fiscal year, there will be an 'unfunded aviation ****1152 *659** authorization' in the Trust Fund. An unfunded aviation authorization exists if the amounts which have been authorized to be appropriated, but have not been appropriated, exceed the uncommitted balance in the fund. (As a practical matter, the Airport and Airway Trust Fund will not have an 'unfunded authorization' in the foreseeable future since the uncommitted surplus is considerably greater than unfunded authorizations.)

If there is an unfunded aviation authorization, the Secretary of Transportation next determines whether the Trust Fund receipts (taxes and interest) for the two years following the close of the next fiscal year will be greater than the unfunded authorizations. If the unfunded authorizations are greater than the net receipts, the Secretary determines the percentage which the excess is of the authorized amounts. Each authorization (Airport Improvement Program, Facilities and Equipment, etc.) is then reduced by this same percentage.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The reported bill also permits the restoration of any reductions if the Trust Fund deficit is subsequently reduced or eliminated. If the Secretary determines in a subsequent estimate that the excess of unfunded authorizations over net receipts has been reduced, the authorizations are restored. Each authorization is restored by an equal percentage, up to a point where the unfunded authorizations will equal estimated net receipts to the Trust Fund.

In sum, inclusion of the Airport and Airway Trust Funds in the general budget process has prevented the Trust Fund from functioning as intended and has led to the users contributing far more in taxes than has been spent for development of the airport and airway systems. If we are to continue to realize the benefits of the Trust Fund, this situation must be changed. Under the reported bill the Trust Fund will be removed from the budget process, but will be subject to the appropriations process and an anti-deficit provision. With these controls the Trust Fund will not operate at a deficit.

Subtitle C—Pipeline Safety

H.R. 2092 is a bill to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1986 and 1987 and for other purposes.

H.R. 2092 was referred to three Committees; namely, the Committee on Public Works and Transportation, the Committee on Energy and Commerce, and the Committee on the Judiciary. All three Committees reported H.R. 2092; however, no further action has been taken. Sections 8301 through 8305 of this bill incorporate most of the provisions of H.R. 2092 as adopted by the Committee on Public Works and Transportation. The differences between H.R. 2092 and this bill are twofold. First, section 8304 of the bill adopts the provisions of section 4 of H.R. 2092 as reported by the Committee on the Judiciary, except that this bill adds a provision which requires the Federal Energy Regulatory Commission to file a report on what effect the provision has on rates for consumers. Secondly, this bill adds provisions in section 8305 that prohibit the assessment and collection of user fees by the Department of Transportation ****1153 *660** and annual charges by the Federal Energy Regulatory Commission.

The pipeline transportation of gas and hazardous liquids is regulated with regard to safety. The Natural Gas Pipeline Safety act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 are the primary authorities for regulating pipeline safety.

The Pipeline Safety Act of 1979 amended the Natural Gas Pipeline Safety act of 1968 so as to, among other things, strengthen the Federal enforcement capability by directing the Secretary of Transportation to establish and enforce certain specific safety standards for liquefied natural gas facilities.

In addition, it established a new regulatory scheme for the pipeline transportation of hazardous liquids. This new regulatory scheme, the Hazardous Liquid Pipeline Safety Act, closely parallels the regulatory scheme for the pipeline transportation of gas.

These Acts provide an overall scheme for the regulation of the pipeline transportation of gas and hazardous liquids. The Acts require establishment of minimum Federal safety standards. These standards are exclusive for interstate pipelines. However, States may impose additional or more stringent standards for intrastate pipelines and facilities as long as they are compatible with the minimum Federal standards.

The Federal responsibility for carrying out these Acts invested in the Department of Transportation's Materials Transportation Bureau. That Bureau, in conjunction with the States, oversees the safety regulation of gas pipelines and hazardous liquid pipelines. The combined pipeline system consists of about 1.7 million miles. There are about 1.5 million miles of gas pipelines and 225,000 miles of hazardous liquid pipelines.

Since the passage of the Natural Gas Pipeline Safety Act of 1968, the Department of Transportation has overseen a pipeline safety program designed to assist States, pursuant to section 5 of that Act, in protecting their citizens against the perils of unsafe natural gas pipeline systems. States which participate in the pipeline safety programs conduct inspections of pipelines and related facilities subject to the Act and, in appropriate situations, see that adequate corrective measures are taken. All States, except Alaska, Idaho, and South Dakota, participate in the program.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Since its enactment in 1968, the Natural Gas Pipeline Safety Grants-In-Aid Program (49 U.S.C. 1671) has proved to be a model of Federal-State cooperation in its implementation of gas pipeline safety standards.

A similar mechanism was established for instituting a state program for the pipeline transportation of hazardous liquids in section 205 of the Hazardous Liquid Pipeline Safety Act of 1979. However, the program has not yet commenced, principally because the States having intrastate hazardous liquid pipeline systems needed time to formulate and establish their State programs.

Now, the Committee has been advised that as of April 1985, seventeen states have legislation to regulate intrastate hazardous liquid transportation, and thus have proper jurisdiction for program eligibility. The States are Arizona, Arkansas, California, Hawaii, Iowa, Kansas, Montana, Nevada, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Texas, West Virginia, ****1154 *661** and Wyoming. Six other states are seeking the necessary legislation. They are Alabama, Louisiana, Mississippi, Oklahoma, Washington, and Wisconsin. The Committee notes that the above-mentioned States have over 80 percent of the intrastate hazardous liquid pipelines that would be regulated by the Hazardous Liquid Pipeline Safety Act.

It should be noted that the Department of Transportation issued the final rules for the regulation of these pipelines on April 23, 1985, with an effective date of October 21, 1985, Hence, the Department will be able to commence the State grant program is fiscal year 1986, by this Committee on H.R. 2092.

At the hearings held on April 30, 1985, M. Cynthia Douglass, Administrator of the Research and Special Programs Administration, testifying on behalf of the Department of Transportation, requested that the Congress merge the grants-in-aid programs to the States for natural gas pipeline safety and hazardous liquids pipeline safety to provide for a unified authorization. Ms. Douglass stated that:

> This year we are requesting that Congress merge the two grant programs and authorize $4.5 million for the merged program. While this amount does not reflect additional dollars for the hazardous liquid program, it does have two distinct advantages. First, it gives flexibility to the States to direct their safety dollars to those pipelines which have the biggest safety problem, whether natural gas or hazardous liquid. Second, it encourages those States with hazardous liquid pipelines to adopt the Federal intrastate standards. We believe a merger of the programs makes safety sense. It will also best serve out administrative needs by providing an efficient unified approach to the operation of substantially identical programs.

In testimony on behalf of the National Association of Regulatory Utility Commissioners, Dale Johnson stated that:

> The hazardous liquid pipeline safety program is another Federal-State partnership whereby Federal grants-in-aid are authorized to be provided to participating States for enforcing intrastate liquid pipeline safety. However, the program is in its fifth year and funds have never been appropriated. The success of the natural gas pipeline safety program is a strong indicator that the hazardous liquid pipeline safety program could be equally as beneficial if given the opportunity. The States need the reauthorization of this program so that they may continue their efforts to secure Federal funding. The states are ready and willing to make this program work once they have the proper authorization and appropriations.
>
> Presently, 17 States have jurisdiction for program eligibility through legislation and 6 States are seeking legislation to provide them with jurisdiction. If this safety program is to become a reality, funds must be appropriated; however, once again the budget request for FY 1986 does not include funding for the hazardous liquid pipeline safety program. Like the Natural Gas Pipeline Safety Program, ****1155 *662** the hazardous liquid program would assist the Federal government in fulfilling its safety responsibilities and at the same time it would reduce the Federal funding level that would otherwise be required.
>
> The NARUC has continued to seek funding for this program. In 1983 and 1984, the NARUC requested that $1 million in startup funds be provided for the implementation of the hazardous liquid pipeline safety program; however, no funds were appropriated. Without funding the States are unlikely to pick up the program.

The Committee amended the law so as to provide for the unified authorization of the two State grants-in-aid programs. However, the amounts provided for in the bill restore amounts deducted by the Department of Transportation for the proposed salary reduction for employees ($125,000). The committee also adds $500,000 to the amount available for the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

combined grants-in-aid programs. The hazardous liquid pipeline safety program grants-in-aid program funding is earmarked at not less than five percent of that total authorization of $5,000,000 for fiscal year 1986 and $5,230,000 for fiscal year 1987.

Section 8304 of this legislation adds a new section 20 to the Natural Gas Pipeline Safety Act. New Subsection 20(b) finds that certain acts unreasonably burden and discriminate against interstate commerce and provides that states, subdivision thereof, or an authority acting for a state or subdivision of a state may not do them.

Paragraph (1) provides that a state cannot assess natural gas transmission property at a value that has a higher ratio to the true market value of the natural gas transmission property than the ratio that the assessed value of other commercial and industrial property in the same jurisdiction has to the true market value of the other commercial and industrial property. Paragraph (2) forbids a state to levy or collect a tax on an assessment which does not comply with the requirement in paragraph (1).

In addition, paragraph (3) provides that a state may not collect an ad valorem property tax on natural gas transmission property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

Relief for violations of any of these provisions may be sought in district courts of the United States.

Finally, the amendment contains a provision that provides that any savings accruing to any person, including natural gas companies, due to the enactment and implementation of this new tax discrimination provision should be passed through to the ultimate consumer. The Committee noted that taxes paid by a natural gas company are a cost item reflected in rates paid by purchasers of the gas and its transmission. If there is any reduction in the cost because of tax reductions, the Committee anticipates that the cost reduction will be reflected in the rates charged to customers. As already mentioned, section 8305 of the bill, prohibits the assessment and collection of certain fees and charges.

****1156 *663** SECTION-BY-SECTION

Section 8301 of the legislation provides funds for carrying out the Natural Gas Pipeline Safety Act of 1968 for fiscal years 1986 and 1987. The amounts are $3,450,000.00 for fiscal year 1986 and $3,600,000.00 for fiscal year 1987.

Section 8302 of the legislation adds a new subsection (c) and (d) to Section 17 of the Natural Gas Pipeline Safety Act. New subsections 17(c) and 17(d) provide funds for carrying out the state grant programs established by section 5 of the Natural Gas Pipeline Safety Act of 1968 and section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979. This subsection provides a joint authorization for both programs with a stipulation that not less than 5 percent of the total shall be for carrying out the state grant program for the hazardous liquid pipeline safety. Amounts authorized to be appropriated are $5,000,000.00 for fiscal year 1986 and $5,230,000.00 for fiscal year 1987.

Section 8302(b) of the legislation provides for conforming amendments to both Acts.

Section 8303 of the legislation provides funds for carrying out the Hazardous Liquid Pipeline Safety Act of 1979 for fiscal years 1986 and 1987. The amounts are $875,000.00 for fiscal year 1986 and $912,000.00 for fiscal year 1987.

Section 8304 adds a new section 20 to the Natural Gas Pipeline Safety Act.

New subsection 20(a) defines ‘assessment,’ ‘assessment jurisdictions,’ ‘natural gas transmission property,’ ‘commercial and industrial property,’ and ‘natural gas company.’

The newly adopted definition of ‘natural gas company’ in subsection (a)(5) makes it clear that ‘Hinshaw pipelines’ are excluded from the federal limit on state taxation. Hinshaw pipelines are pipelines that receive gas that has been in interstate commerce at the border or within a state for delivery in that same state and are regulated by that state. In 1954, pursuant to section 1(c) of the Natural Gas Act, 17 U.S.C. 717(c) (‘the Hinshaw Amendment’) Hinshaw pipelines were statutorily excluded from the jurisdiction of the Federal Energy Regulatory Commission. Thus, the natural gas transmission companies protected by the new section 20 will be only companies that are regulated by the FERC.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

New subsection 20(b) declares that certain acts unreasonably burden and discriminate against interstate commerce. States, subdivisions of a state or subdivision thereof may not:

(1) assess natural gas transmission property at a value that has a higher ratio to the true market value of the natural gas transmission property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;

(2) levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection; and

(3) levy or collect an ad valorem property tax on natural gas transmission property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

****1157 *664** Subsection 20(c) sets forth a procedural remedy for a violation of subsection (b). Notwithstanding 28 U.S.C. 1341, this subsection permits U.S. district courts to grant an injunction against any state tax in violation of subsection (b). The Committee amended the language in this subsection to make it clear that district courts may grant only injunctive relief against a state, not damages or any other type of relief.

Consistent with the language of prior legislation dealing with railroads and motor carriers, 49 U.S.C. § 11503 and 49 U.S.C. § 11503a, this subsection provides that district court jurisdiction is 'concurrent with other jurisdiction of the courts of the United States and the States. . . .' This subsection does not, however, enlarge the jurisdiction of any court of the United States other than that of the district court. It is intended to provide only that the district court now has jurisdiction to enjoin violations, along with any other state or U.S. court that may already have such jurisdiction.

This subsection provides U.S. district courts with jurisdiction to enjoin violations involving both tax rates and assessment valuation. In assessment cases, however, U.S. district court jurisdiction is limited to cases in which the ratio of assessed value to true market value of interstate natural gas transmission property exceeds the same ratio for other commercial and industrial property by at least 5 percent. The provision does not limit a U.S. district court's jurisdiction to enjoin state violations involving tax rates.

Additionally, it provides that the burden of proof in determining such assessed value shall be governed by the State law. The subsection provides an alternate means to the sales assessment ratio study for determining the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property.

New subsection 20(d) provides that it is the sense of the Congress that any savings accruing to any person (including any natural gas company) by reason of enactment and implementation of this section should be passed on to the ultimate consumers of natural gas.

New subsection 20(e) provides that the Federal Energy Regulatory Commission shall file an interim report two and one-half years after the effective date of this legislation and a final report five years after the effective date of this legislation. The report shall contain an analysis of the accrued savings to consumers in terms of reduced rates occuring as a result of this legislation.

Subsection 8304(b) provides that the amendments made by subsection (a) shall take effect two years after enactment.

Subsection 8305(b) of the legislation prohibits the Secretary of Transportation from assessing or collecting user fees on any natural gas or hazardous liquid pipelines except those fees assessed or collected pursuant to a law approved prior to the date of enactment of this Act.

Subsection 8305(b) of the legislation prohbits the Federal Energy Regulatory Commission from assessing or collecting any charges from interstate natural gas or interstate oil pipeline carriers except those charges assessed or collected pursuant to a law approved prior to the date of enactment of this Act.

****1158 *665** *Subtitle D—Tennessee Valley Authority*

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Subsection (a) directs the Secretary of Energy to attempt to all to electric utilities any electric energy that the Secretary has the right to buy under any Federal law or contract for use in the provision of uranium enrichment activities under section 161(v) of the Atomic Energy Act of 1954, if the Secretary determines that the electric energy is surplus. The Secretary is specifically prohibited, however, from selling electric power and energy which the Secretary has the right to buy from any Federally chartered or Federal regional power marketing authority. This precludes the Secretary from selling electric power and energy which the Secretary has the right to buy from the Tennessee Valley Authority.

Subsection (b) prohibits any executive agency, other than a Federally chartered or Federal regional power marketing authority, from withholding its consent to the sale, notwithstanding Federal law or contract. This preserves the right of the Tennessee Valley Authority to withhold its consent to the sale.

Subsection (c) requires Executive agencies, other than federally chartered or Federal regional power marketing authorities, selling electric energy to make the energy available to the location requested by the Secretary. Since the Tennessee Valley Authority falls within the 'federally chartered or Federal regional power marketing authority', it would not be required to make the energy available to the location requested by the Secretary. The Secretary of Energy, acting through the Southeastern Power Administration and Southwestern Power Administration, is required to assist in the transmission of energy sold under subsection (a). It is the intent of the Committee that any additional costs associated with this subsection's requirements be borne by the Secretary.

Subsection (d) requires that the revenue be deposited into the general fund in partial repayment of amounts appropriated previously for uranium enrichment service activities.

Subsection (e) defines 'energy charge' and 'Executive agency' for purposes of the section.

Subsection (f) provides that the provisions of sections (a) through (e) expire on December 31, 1992.

Subsection (g) specifically addresses the Tennessee Valley Authority. This provision affirmatively states that, notwithstanding this section or any other provision of this Reconciliation Act, the Tennessee Valley Authority must comply with its existing service boundaries and existing laws and contracts. More specifically, notwithstanding this section or any other provision of the Reconciliation Act, TVA is directed to comply with section 15d of the Tennessee Valley Authority Act of 1933. That section provides in part that:

> Unless otherwise specifically authorized by Act of Congress the Corporation shall make no contracts for the sale or delivery of power which would have the effect of making the Corporation or its distributors, directly or indirectly, a source of power supply outside the area for which the Corporation or its distributors were the primary source of power on July 1, 1957.

Congress, despite several requests, has never modified the area limitation. Even the authority of the Federal Energy Regulatory ****1159 *666** Commission under the Public Utility Regulatory Policy Act is made subject to the service boundary established by the 1959 Act. The limitation was designed to protect surrounding utilities from competition with TVA. No valid reason exists to alter the provision at this time.

The Tennessee Valley Authority must also, under any contract existing September 30, 1985, make available and deliver to the Department of Energy only such electric power and energy as the Tennessee Valley Authority may lawfully make available and deliver, and under such terms and conditions as are provided in such contract, the Tennessee Valley Authority Act of 1933, and other laws in effect on September 30, 1985.

The Department of Energy is directed to comply with all payment and contract terms under any Department of Energy contract with the Tennessee Valley Authority providing for the sale of electric energy. Subsection (g) preserves the service area restriction contained in section 15d of the Tennessee Valley Authority Act of 1933.

COMPLIANCE WITH CLAUSE 2(1) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, no separate hearings were

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

held on the subject matter of this recommendation by the Subcommittee on Investigations and Oversight.

(2) With reference to clause (2)(1)(3)(B) of rule XI of the Rules of the House of Representatives, the recommendation, as approved, does not provide new budget authority or increased tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause (2)(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received a report prepard by the Congressional Budget Office under section 403 of the Congressional Budget Act. The report is as follows:

COST OF THE LEGISLATION

(1) Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out the recommendation as approved, in Fiscal Year 1986 and each of the following five years. However, under paragraph (d) of clause 7, its provisions do not apply when the Committee has received a timely report from the Congressional Budget Office.

(2) With reference to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to matters included in the recommendation.

(3) With reference to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the following information is provided: The inflationary impact of carrying out the recommendation, as approved, should be minimal with respect to prices and costs in the operation of the national economy.

****1160 *667** VOTE

In compliance with clause 2(1)(2)(A) of rule XI of the Rules of the House of Representatives, the Committee, by a voice vote, favorably approved the recommendation.

* * * * *

***676** CBO COST ESTIMATES

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1985.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, U.S. House of Representatives, 2165 Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for Title VIII of the Omnibus Reconciliation Act of 1985—House Committee on Public Works and Transportation.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

2. Bill title: Title VIII of Omnibus Reconciliation Act of 1985—House Committee on Public Works and Transportation.

3. Bill status: Committee print as adopted by the House Committee on Public Works and Transportation, October 2, 1985.

4. Bill purpose: This bill would reduce federal-aid highway authorization and obligation ceilings, would authorize appropriations for pipeline activities, and make a number of other changes in transportation and energy programs. The bill would also change the budgetary treatment of highway and airport trust fund operations, so that receipts and disbursements from those trust funds will no longer be included in the President's budget submission or in the Congressional budget.

5. Estimated cost to the Federal Government: The following two tables show the budget impact of this bill estimated relative to current ***677** law, and relative to the budget resolution baseline, respectively.

****1161** BUDGET IMPACT RELATIVE TO CURRENT LAW

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Federal-aid highways:					
Budget authority	6,850				
Less: Existing budget authority	7,650				
Net change in budget authority	-800				
Estimated outlays	-186	-559	-188	-46	-47
Natural gas pipeline safety authorizations:					
Authorization level	9	10			
Estimated outlays	6	10	3		

BUDGET IMPACT RELATIVE TO THE BUDGET RESOLUTION BASELINE:

[By fiscal years, in millions of dollars]

	1986	1987	1988
Federal-aid highways			
Budget authority	-800		

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Lestimated outlays.....	-200	-850	-1,050

The differences between the natural gas pipeline safety authorizations and the resolution baseline are less than $0.5 million.

The effects of removing the receipts and disbursements of the Highway and Airport Trust Funds from the budget totals would vary, depending on the spending and tax policies assumed. Such a change would have no direct effect on the actual outlays, revenues, or deficits of the federal government. However, relative to the policies assumed in the budget resolution, this provision would increase the reported budget deficit in each of the fiscal years 1987–1988, because the trust funds, in aggregate, are projected to operate at a surplus in those years. The reported budget deficit would increase by $580 million in 1987 and $50 million in 1988, and would decrease by $80 million in 1989 and by $230 million in 1990, relative to the budget resolution assumptions.

The budget impact of this bill falls within functions 400 and 270.

Basis of Estimate: Federal-aid Highways. Subtitle A of this bill reduces by $800 million the total direct spending authority for fiscal year 1986 for federal-aid highways. (The Surface Transportation Assistance Act of 1982 authorized, for fiscal year 1986, a total of $15.3 billion.) Specifically, the bill reduces the 1986 authorizations for the bridge replacement and rehabilitation, primary, and Interstate 4R programs. The bill also establishes obligation ceilings for the highway program for fiscal years 1986 through 1988 at the same levels assumed in the budget resolution: $13.25 billion in 1986, $13.80 billion in 1987, and $14.40 billion in 1988. (The 1982 act established an obligation ceiling of $14.45 billion for 1986, and there are no obligation ceilings in law beyond 1986. The baseline projects obligation ceilings of $15.1 billion in 1987 and $15.7 billion in 1988.) The savings relative to current law include the effect of ****1162 *678** changing the 1986 obligation ceiling, but do not include any impact of the new 1987 and 1988 ceilings. The savings relative to the baseline reflect changes in all three years. The outlay effects reflect historical spending rates.

The bill also contains a provision to reprogram excess funds set aside under Section 147 of the Federal-Aid Highway Act of 1978. Based on information from the Department of Transportation, we estimate that under current law approximately $80 million of funds previously set aside to cover the cost of constructing two bridges would not be needed for that purpose, and would be redistributed to other states. Under Section 147 of the 1978 Act, these funds were exempt from the general obligation limitation for the federal-aid highway program. However, if they are not used for that purpose, but are redistributed to other states, we assume that the funds would be included in the limitation. This bill reprograms the excess funds for three specific projects and makes them exempt from the obligation limitation, resulting in additional outlays relative to current law.

Pipeline Safety. Subtitle C authorizes appropriations of $3.5 million for fiscal year 1986 and $3.6 million for fiscal year 1987 for activities conducted under the Natural Gas Pipeline Safety Act of 1968. The bill authorizes $875,000 for fiscal year 1986 and $912,000 for fiscal year 1987 for administration of the Hazardous Liquid Pipeline Safety Act of 1979. For federal grants-in-aid to states to carry out activities under both acts, the bill authorizes $5 million for fiscal year 1986 and $5.2 million for fiscal year 1987.

Subtitle C prohibits states and subdivisions of a state from assessing interstate natural gas transmission property at a value that has a higher ratio to the true market value of the property than the corresponding ratio for other commercial and industrial property in the same assessment jurisdiction. It also prohibits levying or collecting a tax on such an assessed valuation and levying or collecting an ad valorem property tax on interstate natural gas property that exceeds the tax rate applicable to commercial and industrial property. It permits natural gas pipeline companies to seek only injunctive relief in U.S. courts. Subtitle C states that these tax-related provisions are to be effective two years after enactment and that it is the sense of the Congress that the savings to the pipeline companies as a result of its enactment should be passed on to consumers of natural gas.

Subtitle C also prohibits the Secretary of Transportation from assessing or collecting any fees based on the usage of any

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

natural gas pipeline or hazardous liquid pipeline, except these fees assessed or collected pursuant to a law approved before the date of the enactment of this act.

For the purpose of this estimate, CBO assumed that the full amounts authorized will be appropriated prior to the beginning of the fiscal year. The authorization levels are those specified in the bill. Estimated outlays are based on recent historical spending patterns of the Materials Transportation Bureau of the Department of Transportation, which administers these programs. The tax-related provisions would not directly affect the federal government.

Tennessee Valley Authority. Subtitle D directs the Department of Energy (DOE) to attempt to sell any electricity being purchased ****1163 *679** from certain utilities that exceeds the amounts needed for the uranium enrichment program. This provision would have no budget impact for two reasons. First, DOE's nonfederal power suppliers have already relieved DOE of the contractual obligation to pay for power that the agency no longer needs. Second, the bill precludes DOE from marketing the unneeded electricity being purchased from the Tennessee Valley Authority (TVA). Under its existing contract, DOE expects to pay TVA $416 million in 1986 for the more than 4,000 megawatts of electric power that will not be used to operate its facilities.

6. Estimated cost to state and local governments: The tax-related provisions in Subtitle C would result in a loss of revenues to state and local governments, although not all such governments would be affected. CBO has not yet been able to determine the potential impact of this bill on all states, but we have identified several states that would incur revenue losses, because they currently assess gas pipeline property at different rates than other commercial property. Assuming that such states would have to adjust downward the level of assessment for interstate pipeline property to equal the assessment level for other commercial and industrial property, the total property tax losses for these states would be at least $50 million annually. This would result in smaller federal tax deductions for state and local property taxes, and therefore could result in higher federal taxes. It would probably be several years before state and local governments would incur the full annual revenue loss, because the effective date is two years after enactment, and based on the experience of railroad companies with similar legislation (Public Law 94–210), litigation by the pipeline companies would likely occur before assessment levels would be adjusted. Any gain in federal revenues would be correspondingly delayed, perhaps until after 1990.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 27, 1985, CBO prepared a cost estimate for a Senate Committee on Environment and Public Works print entitled 'Reduce Federal-aid Highway Obligation.' That bill lowered obligation ceilings in fiscal year 1986 through 1988 to levels below those established in this bill.

On September 24, 1985, CBO prepared an estimate for a Committee print adopted by the House Committee on Energy and Commerce, which established fees for natural gas and hazardous liquid pipeline safety programs and for regulatory programs conducted by the Federal Energy Regulatory Commission (FERC). CBO estimated that fees from the two programs would result in annual receipts of approximately $35–40 million. CBO also prepared estimates for two bills authorizing appropriations for activities conducted under the Natural Gas Pipeline Safety Act of 1968, one for the House Committee on Public Works and Transportation on May 15, 1985, and another for the Senate Committee on Commerce, Science, and Transportation on April 2, 1985. The estimated costs reflect differences in these bills.

On September 24, 1985, CBO transmitted a cost estimate for the Committee print entitled 'Uranium Enrichment and Power Sales' as adopted by the House Committee on Energy and Commerce, September 18, 1985. That bill authorizes DOE to market the surplus ****1164 *680** electricity being purchased from TVA, which could reduce federal outlays by an estimated $25 million to $30 million a year, starting in 1987.

9. Estimate prepared by: Kathleen Kelly, Heidi Zukoski, and Kathy Gramp.

10. Estimate approved by: Robert P. Sunshine for James L. Blum, Assistant Director for Budget Analysis.

TITLE IX—COMMITTEE ON SMALL BUSINESS

CONGRESS OF THE UNITED STATES,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, September 25, 1985.

The Honorable WILLIAM H. GRAY III,
Chairman, Committee on the Budget, A–214 House Office Building Annex 1, U.S. House of Representatives, Washington, DC 20515.

DEAR MR. CHAIRMAN: Section 2(x) of the First Concurrent Resolution on the Budget (S. Con. Res. 32) requires the House Small Business Committee not later than September 27, 1985 to submit recommendations to the House Budget Committee sufficient to reduce budget authority by $2.072 billion and outlays by $2.479 billion during Fiscal Years 1986 through 1988.

On July 23, 1985 this Committee reported H.R. 2540. The Congressional Budget Office has reviewed the provisions of this legislation and has 'scored' it as reducing budget authority by $1.825 billion and outlays by $2.221 billion. Thus the bill, as reported, almost met the savings mark.

The Small Business Committee has determined to utilize this bill, with a further reduction in debentures sold to the Federal Financing Bank, in order to meet these reconciliation requirements. These reductions have been informally scored by CBO as achieving additional savings of $258 million in budget authority and $258 million in outlays.

Accordingly, enclosed is H.R. 2540, as reported, with a new section 8 and correction of a typographical error. We understand that this submission satisfies the requirements of the budget resolution. Also enclosed is a revised report and Ramsayer statement.

Best wishes,

PARREN J. MITCHELL, *Chairman*.
JOSEPH M. McDADE,
Ranking Minority Member.

REPORT TO ACCOMPANY RECOMMENDATIONS FROM THE COMMITTEE ON SMALL BUSINESS

The purpose of the bill

The Committee's bill, H.R. 2540, is the necessary legislative rewrite of the Small Business Administration's Fiscal Year 1986 through 1988 authorizations with program modifications in support of this initiative. It is the Committee's response to mounting concern over the budget deficit, and foremost it is a rejection of the administration's budget and legislative initiatives to terminate the Small Business Administration which, without the strong objections ****1165 *681** of your Committee and, indeed, the entire Congress, would have been forced upon the small and minority business communities. The bill is premised on the Committee's belief that small business deserves an independent voice within the Federal Government and assurance of a fair share in this Nation's economy, which is so largely dominated by big government and big business. Why preserve this fair share position of small business in the economy? Because small business is clearly our best single source of job creation, innovation and productivity. By far, most new jobs are provided by small businesses employing fewer than five hundred employees.

There are about 14 million businesses in the United States, of which 98 percent are small by SBA size standards. The number of small businesses has increased steadily during the past 30 years. In 1984, new business incorporations (one measure of new businesses) totaled about 650,000, a new record. The previous record of 600,000 new business incorporations was set in 1983. New business startups (another measure of small business growth) increased seven percent in 1984.

Small businesses employ 48 percent of the private work force, contribute 42 percent of all sales in the country and are responsible for 38 percent of the gross national product. Unfortunately, one out of every two new small businesses will fail within the first four years of operation. Overall, a firm's chances of survival increase with size; firms with 20 or more workers have a 20 percent greater chance of survival than firms with fewer than 20 workers.

During 1981–82, small business employment proved a moderating force in the recession. During those years, small

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

businesses produced a total of 2.65 million jobs, while large businesses were cutting their employment by 1.7 million. Therefore, all of the 984,000 new jobs generated in 1981–82 came from samll firms. Small firms continue to lead the way in employment gains. From October 1982 through 1984, employment in industries dominated by small businesses (industries in which firms with fewer than 500 employees account for 60 percent or more of sales or employment) rose 1.4 percent; employment in industries dominated by large businesses rose 5.3 percent. Jobs generate by small firms are more likely to be filled by younger workers, older workers and women. Many of these workers prefer or are only able to work on a part-time basis, and thus can be more easily accommodated by small employers. Small businesses provide about 67 percent of initial job opportunities and are responsible for the major cost in initial on-the-job training in basic skills.

Studies show that the incidence of innovation among small business workers is significantly high than among workers in large businesses. Small firms produce 2 ½ times as many innovations as large firms relative to the number of persons employed. Innovation coming from small hi-tech firms is expected to increase in the coming years as a result of the Small Business Innovation Research Development Act. Under the Act, federal agencies with large research and development budgets must direct an increased amount of R&D contracts to small firms—the source of most innovations are new technologies. Small businesses have been responsible ****1166 *682** for more than half of the new product and service innovations developed since World War II.

The Committee continues to be concerned about the precarious position of small and minority businesses in the economy. During the month ending April 19, 1985, there were more business failures than during any single one-month period over the last 53 years. Such a large volume of business failures represents a serious and continuing underlying problem in the economy. The high real interest rates and the economic shock from the 'overvalued' U.S. dollar are the major causes of the recent failures. Small businesses are still paying real interest rates that are two to three times the historical average. From 1950 to 1980, small business paid real interest rates of 2 to 5 percentage points compared to the current 8 to 12 percentage points. The Nation is facing a 10-month stagnation in industrial production, the loss of 134,000 manufacturing jobs since January, the recession in agriculture, and the huge trade deficits all of which are the consequences of poor economic policies.

At a time when our Nation must move back toward economic health, job creation and the small business contribution to an economic recovery must be recognized and supported. Small business and those participating in the SBA programs requiring government/private sector cooperation deserve reassurance and the certainty that SBA programs will be adequate over the next three years.

H.R. 2540, a three year authorization bill, as introduced, was designed to save approximately $1.5 billion more than a freeze at Fiscal Year 1985 program levels alone would save. To accomplish these initiatives, H.R. 2540 would have restructured certain existing financial programs such as Direct Business Lending, and make funding level changes for Pollution Control Financing, Surety Bond Guarantees, and the Development Company Program. To make the limited amount of direct loans go further, these loans would have been reduced in amount and term and subjected to certain participation requirements. SBA's direct loan program would have been modified to meet criticism of the program's default rate by providing a measurement of the cost-effectiveness of direct lending.

The Committee has reported a three-year authorization for SBA programs and activities which will maintain SBA as a viable and independent agency and achieve substantial savings over the next three years. The bill is a radical departure from previous SBA authorization bills, in that H.R. 2540, as reported, eliminates SBA's general direct loan program. The proposed programlevels for direct loans retained, i.e., the handicapped, economic opportunity and veterans loan programs would amount to $80 million for each of the next three fiscal years (a reduction of 60 percent). Rather than being frozen at current levels, annual guaranteed loan levels would be reduced by ten percent below the appropriation for 1985 of $3.18, i.e., at a level of $2.862 billion for each of the next three Fiscal Years.

The Small Business Administration's 7(a) direct and immediate participation loan program is the very basis of the agency having been in existence some 50 years: SBA's beginning was as successor to the Reconstruction Finance Corporation, inheriting responsibility for that agency's direct loan program. Full Committee Markup ****1167 *683** abolished funding for SBA's only direct loan program available to all small concerns and providing $108 million to those unable to receive any other financing. Also eliminated were 7(a) direct funds for solar and other energy conservation loans currently funded at $3 million. No changes were made in direct loan term and amount as were proposed in the bill as introduced.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The bill, as reported, raises the cost to the borrower for SBA's 7(a) guaranteed loans with over one year terms from a fee of 1% of the loan amount guaranteed to 3% of the loan amount guaranteed. This would increase revenues to SBA in line with the Committee's position on increased imposition of user fees for all agency publications and services and make SBA bank guaranteed loans more expensive than comparable financings especially when taking in account the action to charge application fees.

Funding levels for Small Business Investment Companies (SBICs) would be frozen at $250 million and at $41 million for Minority Enterprise Small Business Investment Companies (MESBICs). Guarantee program levels were reduced as in H.R. 2540 as reported, e.g., for surety bond guarantees at $900 million and pollution control bond guarantees at $50 million.

The measure does, however, for the next three years, freeze SBA salaries and operating expenses at fiscal 1985 levels. It eliminates agricultural enterprises from SBA disaster assistance and terminates SBA's non-physical disaster assistance programs.

The Committee acted to prohibit the Federal Financing Bank from acquiring debentures issued by small business investment companies with an SBA guarantee. Existing law authorizes the Federal Financing Bank to purchase these debentures, which it does with money derived from the Treasury. H.R. 2540 would prohibit this and require that SBA sell the debentures to investors. This eliminates Federal outlays since the SBA guarantee is only a contingent liability. In the approximately 25-year existence of this program, SBA has guaranteed $2 billion in debentures and has lost only $36 million. The sale of SBIC debentures was facilitated through establishment of a marketing program for debentures or fractional interests in debentures. The same program for private sale of debentures was established for fiscal years 1986 and 1987 on a pilot basis in hopes that the 503 Certified Development Company Program would receive the same benefits.

In addition to setting program levels which dictate agency spending priorities, the Committee established further policy governing SBA lending. The Committee evidenced concern over SBA's future role in calling for a report on privatizing the agency's 7(a) guarantee loan program and also requiring a report on imposition of increased user fees for assistance to small concerns. The Committee acted to assure that SBA financial assistance would not be subject to certain abuse: no loans are to be available for purposes of abortion clinics or for purposes of promoting abortion.

The Small Business Committee is responsible for assuring participation of small business enterprises in procurement and government contracts and provisions of H.R. 2540 carry out this mandate. One of the initiatives is to assist small concern's efforts to secure their fair share of government procurement, by providing more uniformity in application of labor surplus area procurements; and ****1168 *684** another is providing better remedies for contract fraud perpetrated in small business set aside and subcontracting programs under the Small Business Act.

A small business authorization bill such as H.R. 2540 provides certain assistance to a part of the small business community. In many cases this assistance is for those who were victims of forces beyond their control. This includes special assistance for minorities, the handicapped and Vietnam veterans, as well as to as community in dealing with pollution requirements, physical disasters such as floods, tornadoes and earthquakes.

In recent deliberations on small business, Congress has found it difficult to decide just what can be done to help foster this most important segment of our economy. This authorization bill will not affect each small business. Except in times of disaster, the overwhelming majority of small businesses in this country do not look to the Federal Government for advice, go to the Government for a loan, or seek to do business with the Federal Government. But small businesses do recognize an advocate in the Small Business Administration and the part the Small Business Committees of the Congress play in assuring policy direction and funding for government-wide assistance to small concerns.

To lessen or terminate Executive Branch responsibility in this effort would be an insult to this group and its contribution. Moreover, it clearly would be counterproductive. The OMB and the White House are trying to put SBA in the closet—they should put it in the Cabinet.

Background

Legislation reported by the Committee which does not become law frequently serves as the basis for the beginning legislative

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

agenda in the succeeding Congress. This situation has been the result of frequent disagreements between Congress and the White House over the need for, and approach to, Federal Government assistance to small and disadvantaged business.

Were it not for the unexpected and unprecedented proposal in the administration's fiscal year 1986 budget, followed by a legislative proposal to terminate the Small Business Administration, this would again have been the case. The Committee would have gone forward with H.R. 3020, last Congress' omnibus small business legislation which did not survive the Conference Committee. (See House Report 98–182, and House action on passage March 15, 1984). Now, the actions of the OMB Director and the constraints of the Budget Act made necessary a swift and positive Congressional reaffirmation of an independent and viable Small Business Administration.

As first made public, the position of the White House and the Office of Management and Budget shocked the Congress and the small business community.

SUMMARY OF ADMINISTRATION'S PROPOSAL TO ABOLISH SBA

The SBA portion of the President's budget indicates that all financial programs would be eliminated at the start of Fiscal Year 1986; that SBA's direct loan portfolio would be liquidated and/or ****1169 *685** sold by the Treasury Department; and that the agency would be eliminated, with certain functions being transferred to the Commerce Department.

1. Commerce transfer

Approximately seven hundred employees would be transferred to the Commerce Department with a 1986 budget request of $52.9 million. A new division would be created: 'Administration for Enterprise Development and Opportunity'. This new division would include the Commerce Department's Minority Business Development Agency and the transfer of the following SBA programs: SBIR program; all procurement assistance; innovation and research; minority small business/capital ownership development; advocacy; SCORE and ACE; size standards; and National Advisory Council.

2. Sale of assets

Commencing in Fiscal Year 1986, the Treasury Department would begin selling SBA-direct loans to the public. Pending sale, loans in the portfolio would be handled by some one thousand six hundred fifty employees transferred from SBA with a 1986 budget request of $74 million. The total portfolio estimated as of October 1, 1985 is $9.8 billion and the projected sales proceeds between then and the end of Fiscal Year 1990 and $1.83 billion or approximately $19 on the dollar.

3. Business loans

No new direct or guaranteed loans would be made from the business loan and investment fund and the existing portfolio would be transferred to Treasury for servicing and liquidation.

4. Disaster loans

No new disaster loans would be made and the existing portfolio would be transferred to the Treasury for servicing and liquidation.

5. Real estate lease guarantees

This program would be transferred to Treasury which would keep paying claims.

6. Surety bond guarantees

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

No new guarantees would be made and the existing portfolio would be transferred to Treasury for servicing and liquidation.

7. Pollution control guarantees

No new commitments would be made and the existing portfolio would be transferred to Treasury for servicing and liquidation.

8. Special programs

The office of women's business ownership, veterans affairs, private sector inititives and international trade would be eliminated.

9. Management assistance

Counseling and training programs, including Small Business institutes (SBI) and the newly expanded Small Business Development Centers (SBDC), would be eliminated.

****1170 *686** *10.White House conference*

The conference would be organized by the Commerce Department at a cost of $3 million ($2 million already appropriated plus an additional $1 million requested).

Implementation of most of the above as proposed in the Administration's budget would require authorizing legislation. It was introduced in the House by Representative Dreier as H.R. 1461 on March 7, 1985.

THE ASSOCIATIONS' REACTIONS

Congressional reaction to the administration proposal was immediate and overwhelmingly negative. The reaction of the small business trade associations to the proposal to terminate the Small Business Administration was also immediate and united. The Committee appreciated the support received from the associations in its efforts to counter this proposal. Representatives of over 100 business organizations gathered in Washington in late January and came out strongly against OMB Director David Stockman's proposal to eliminate the agency and its financial and management assistance programs. The organizations representing more than five million businesses were deeply concerned that the single agency which supports small business—the sector that creates the greatest majority of new jobs and provides increased competition—was once again under attack by OMB. The coalition expressed outrage that OMB would proposes closing the agency, especially since the President had signed legislation calling for a White House Conference on Small Business in 1986 and since the entrepreneurial community already supported a 28 percent budget cut at SBA in 1981. The small business groups listed hereafter worked together to address the distortions involved in the Stockman proposal and publicized the facts about SBA and small business during the fiscal year 1986 budget debate:

Menswear Retailers of America, National Association for the Self-Employed, National Association of Architectural Metal Manufacturers, National Association of Brick Distributors, National Association of Catalog Showroom Merchandisers, National Association of Chemical Distributors, National Association of Cold Storage Insulation Contractors, National Association of Home Builders, National Association of Manufacturing Opticians, National Association of Minority Contractors, National Association of Plastics Distributors, National Association of Plumbing-Heating-Cooling Contractors, National Association of Realtors, National Association of Retail Druggists, National Association of Small Business Investment Companies, National Association of Solvent Recyclers, National Association of the Remodeling Industry, National Association of Trade & Technical Schools, National Association of Women Business Owners, National Automobile Dealers Association, National Candy Wholesalers Association, National Council for Industrial Innovation, National Electrical Contractors Association, National Family Business Council, National Fastener Distributors Association, National Grocers Association, National Independent Dairy-Foods Association, National Moving and Storage Association,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

National Office Products Association, ****1171 *687** National Oil Jobbers Council, National Parking Association, National Precast Concrete Association, National Shoe Retailers Association, National Small Business Association, National Small Business Government Contractors Association, National Society of Public Accountants, National Spa & Pool Institute, National Tire Dealers & Retreaders Association, National Tooling and Machining Association, National Tour Brokers Association, National Wine Distributors Association, Opticians Association of America, Power and Communications Contractors Association, Retail Bakers of America, Retail Foorcovering Institute, Retail Tobacco Dealers of America, Smaller Manufacturers Council, Specialty Advertising Association International, United Bus Owners of America, United Federation of Small Business, Urethane Foam Contractors Association, Web Sling Association, American Association of MESBICs, American Association of Nurserymen, American Bus Association, American Optometric Association, American Textile Machinery Association, Amusement and Music Operators Association, Architectural Precast Association, Associated Equipment Distributors, Association of Independent Corrugated Converters, Association of Physical Fitness Centers, Association of Small Research, Engineering & Tech. Service Companies, Automotive Service Councils, Inc., Automotive Warehouse Distributors Association, Building Service Contractors Association International, Business Advertising Council, Chicago Gift Show, Inc., Christian Booksellers Association, Direct Selling Association, Electronic Representatives Association, Florists' Transworld Delivery Association, Furniture Rental Association of America; Greater Wash. Ibero—American CoC, Helicopter Association International, Independent Bankers Association of America, Independent Media Producers Association, Independent Sewing Machine Dealers Association, Institute of Certified Business Counselors, International Franchise Association, International Reciprocal Trade Association, Latin American Manufacturers Association, Machinery Dealers National Association, Manufacturers Agents National Association, Marking Device Association, National Association of Business Development Corporations, Southeastern Lumber Manufacturers Association, National Association of Women Business Owners, Small Business United, Association of Small Business Development Centers, Latin American Manufacturers Association, Smaller Business Association of New England, Smaller Manufacturer's Council, Independent Business Association of Wisconsin, Council of Smaller Enterprises, Small Business Association of Michigan, The Texas Association of Small Business Councils, Denver Chamber of Commerce Small Business council, New York State Independent Business Association, Independent Business Association of Illinois, Independent Business Association of Minnesota, Ohio Small Business Coalition, Small Business High Technology Council.

HEARINGS TO DETERMINE PUBLIC REACTION

The Small Business Committee is responsible for considering the proplsal to abolish SBA and submitting its recommendation for consideration and a vote by the entire House of Representatives. ****1172 *688** As part of this responsibility, hearings were held by the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the House Committee on Small Business on H.R. 1281, legislation to reauthorize the U.S. Small Business Administration for fiscal years 1986 through 1988.

1985 Field Hearings: Fresno, California—March 22; Los Angeles, California—March 23; Portland, Oregon—March 30; Houston, Texas—April 10; New Orleans, Louisiana—April 11; Chicago, Illinois—April 19; Philadelphia, Pennsylvania—April 22.

At these hearings the Subcommittee solicited the views of small business participating in SBA's programs to the administration's proposal to terminate SBA. The views and recommendations from those who actually received help from the agency are very important and supply firsthand knowledge of the effectiveness of the programs and their worth as an expenditure of tax revenues.

Across America, witnesses expressed disbelief that the administration would shut down SBA and its financial assistance and management assistance programs and transfer to the Department of Commerce, the agency charged to assist 'large businesses', SBA programs such as procurement assistance, innovation and research, minority small business assistance, advocacy and the Service Corps of Retired Executives.

The Committee was able to translate this proposal in terms small business cold understand. No longer would there be a direct loan program which has provided $6 billion in loans to almost 170,000 borrowers. No longer would there be a guaranteed loan program which has provided almost $30 billion in loans to 330,000 borrowers. No longer would there be a disaster loan program which has provided $12 billion in loans to 925,000 victims of hurricanes, floods, tornadoes and other calamities. No

longer would there be a surety bond guarantees program which has provided over $11 billion in guarantees to 164,000 small contractors. No longer would there be a pollution control bond guarantee program which has provided $700 million in assistance. No longer would there be an SBIC or MESBIC program which have provided some $2 billion in equity to small businesses, in addition to the $3 billion added from private capital supplied by program participants. No longer would there be a partnership between the government and the private sector, primarily through schools and universities, under the SBI and SBDC programs which in the last two years counseled 100,000 small businesses and provided training for 232,000 more.

At these field hearings, the Committee brought out the short-sightedness of a relatively unknown part of the President's proposal to eliminate SBA. Due to its loan making activities, the agency has a portfolio of direct loans of almost $10 billion. The President has proposed to sell these loans to improve cash flow. This is nothing more than a conversion of assets and is being done at an exorbitant price. According to testimony from OMB Director Stockman, the Administration's budget proposal includes the sale of $9.8 billion in loan assets over four years, but the projected yield is only $1.83 billion. Thus, taxpayers would expect to receive less than $.19 on the dollar and this would create a windfall for investors under the guise of budget austerity. This was universally condemned as totally unnecessary. In past House SBA authorization legislation, ****1173 *689** OMB opposed a similar proposal to sell parts of the SBA portfolio, notwithstanding Committee projections of obtaining triple or higher yields on sales than those projected by Director Stockman in his proposal. SBA estimates that if it continues to service this loan portfolio, it would collect 88% of the outstanding monies due or $8.8 billion versus $1.8 billion if it were sold.

Testimony was received on all of SBA's assistance: on the direct and guaranteed business loan programs; the 502 and 503 development company programs; the Small Business Investment Company (SBIC) and Minority Enterprise SBIC (MESBIC) programs; on the nonphysical disaster loan program which provides capital needed by small businesses which are required to meet pollution standards or comply with other Federal laws; the surety bond guarantee program; the pollution control bond guarantee program; the physical disaster loan program which helps victims of floods and other natural disasters; minority small business capital ownership development assistance, especially through the 8(a) program; procurement assistance; and management assistance, particularly through the Small Business Development Center (SBDC) program.

The Committee was gratified at the large and supportive groups of government officials and business people who turned out in support of SBA and its programs. For some of the small concerns it was a considerable sacrifice to be away from their businesses, which increased the effectiveness and value of their testimony about the programs. The SBA was shown to have made a substantial contribution in the localities in which the hearings were held. The number and/or dollar amount of assistance provided by each SBA program in the last two fiscal years follows:

SMALL BUSINESS ADMINISTRATION PROGRAM ACTIVITY AGENCYWIDE

Loan approvals	**FY 1983**		**1984**	
	Number	**Amount**	**Number**	**Amount**
General Business	16,769	$2,189,196,145	18,374	$2,552,771,603
Direct and IP	1,381	84,834,001	1,426	89,586,123
Guaranteed	15,388	2,104,362,144	16,948	2,463,185,480
Economic Opportunity	696	46,766,568	799	60,388,660
Direct and IP	326	16,449,090	335	18,614,363
Guaranteed	370	30,317,478	464	41,774,297

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Handicapped	169	16,770,810	185	16,777,126
Direct and IP	160	14,971,110	180	16,238,301
Guaranteed	9	1,799,700	5	538,825
Energy	24	3,567,535	12	1,815,186
Direct and IP	6	419,800	3	316,000
Guaranteed	18	3,147,735	9	1,499,186
Veterans	133	8,411,140	294	19,847,530
Direct and IP	133	8,411,140	294	19,847,530
Development Company	1,448	299,274,036	1,614	347,626,480
502 Guaranteed	92	25,733,961	93	30,208,200
503 Guaranteed	1,356	273,540,075	1,521	317,418,280
Investment Company	3,247	468,771,615	3,990	514,084,137
MESBIC	783	55,881,326	1,235	88,535,992
SBIC	2,464	412,890,289	2,755	425,548,145
Disaster Loans	12,237	203,403,670	14,128	313,406,810
Home	10,062	108,061,266	10,493	112,849,550
Business	2,172	94,663,404	2,682	146,182,360
Farm	3	679,000	953	54,374,900
Surety bonds	7,367	556,053,231	7,646	600,568,030
Pollution bonds	4	8,005,000	3	10,915,000
8(a) contracts	4,846	2,259,838,779	4,899	2,569,672,651
SBDC contracts		15,434,325		21,835,044
Total counseled	190,799		219,190	
SBDC counseled[1]	44,624		55,627	

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Total trained	393,448		404,314	
SBDC trained[1]	112,229		120,922	
Total employment	3,635		3,553	
Salaries and expenses (includes Dis. Assist.)		123,227,639		127,404,382

Note.—Investment company figures are on a calendar year basis. All outyear projects of the agency are prepared on a nationwide basis, and are not available by individual State.

FN1 SBDC numbers are also included in total numbers.

****1174** The Subcommittee's series of nationwide field hearings received testimony from over 200 individuals on the program and policies of SBA. Testimony at the field hearings established the extent to which financial and other assistance programs at SBA had played a role in creating and maintaining successful small business enterprises, particularly those owned by socially and/or economically disadvantaged individuals. Entrepreneurs having only minimal personal resources are thereby able to establish businesses and create jobs in economically depressed areas. The Subcommittee heard extensive testimony on SBA's financial assistance programs from profitable, taxpaying businesses that were thought to be 'nonbankable' because of insufficient assets, specialized inventory or machinery, or the lack of a credit history.

Summaries of the testimony presented by the small business community to the Subcommittee are illustrative of each locality's rejection of the administration's proposal and of support of the bill. Included as a preface to these summaries is a description of the current status and criteria governing the SBA financial and management assistance programs which the administration proposed to eliminate and about which the majority of the testimony was concerned. A dialogue on the role these programs play in assisting small and minority businesses and communities in which they are located developed at each field hearing. Witnesses testifying on SBA's procurement assistance programs, in particular the 8(a) Minority Small Business Capital Ownership Development program, foresaw the impossibility of the administration's plan to 'transfer' the SBA's small business procurement assistance and advocacy ****1175 *691** functions to the Department of Commerce, the 'big business' agency.

SBA Programs Slated for Termination

SBA BUSINESS LOANS IN GENERAL

A major function of SBA is to make capital available for those small businesses which cannot normally secure financing in the private sector. In addition to its general business loan program, SBA has specialized programs to help businesses owned by socially and economically disadvantaged individuals, businesses or employing primarily the handicapped, businesses owned by veterans, businesses in need of long-term fixed asset financing, and businesses in the area of marketing new energy and energy conservation technology.

SBA's specific lending objectives are to (1) stimulate small business in deprived areas, (2) promote small business' contribution to economic growth, and (3) promote minority enterprise opportunity. SBA business loans help small concerns get started or expand and grow.

Small contractors, manufacturers, wholesalers, retailers, service concerns, and other businesses, including agricultural enterprises, may use SBA assistance to construct, expand, or convert facilities, purchase buildings, equipment, materials or obtain working capital.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

SBA may not make a loan if a business can obtain funds on a reasonable basis from a bank or other private source. Applicants must seek private financing from a local bank or other lending institution before applying to SBA.

Most SBA financial assistance is provided in the form of guarantees of commercial loans. Such guarantees can be for as much as 90 percent of the loan up to a maximum about of $500,000. The interest rates on guaranteed loans are negotiated between the borrower and lender, subject in most areas to a maximum of 2 ¾ percent above the prime rate. In fiscal 1984, SBA approved 19,040 guaranteed loans, the guaranteed portions totalling $2.855 billion.

Applicants who cannot obtain commercial loans, even with a government guarantee, are eligible to apply for SBA direct loans. These loans are in most cases limited to $150,000, and their interest rate is determined by a formula relating to the government's cost of borrowing 12 ⅛ percent as of July 1, 1985. In fiscal 1984, SBA approved 2,238 direct and immediate participation (part SBA direct, part bank) loans for $144.6 million.

The appropriations process for fiscal year 1985 provided total business loan funds of $210 million in direct and immediate participation and $3.18 billion in guaranteed.

In addition to the SBA's general loan program there are direct loan programs designed for particular financing purposes.

DIRECT HANDICAPPED ASSISTANCE LOANS

The Handicapped Assistance Loan (HAL) program authorized by Section 7(a)(10) of the Small Business Act has been vital to Goodwill and other organizations employing or owned by disabled individuals. ****1176 *692** These loans are available up to a $350,000 limit under two classifications.

HAL–1 loans are available to nonprofit organizations employing handicapped individuals for not less than 75 percent of the manhours required for the production of commodities or in the provision of services. HAL–2 loans are only available to small businesses wholly owned by handicapped individuals. In addition to direct loans under the program, the SBA may guarantee loans made by a private lending institution to organizations employing or owned by disabled persons.

In many ways, Goodwills are small businesses and face all the problems that both small businesses and nonprofit organizations are experiencing. Yet, at the same time, Goodwills operate to fulfill the important social purpose of enabling disabled individuals to lead full and productive lives. Without the assistance of the HAL money, many Goodwills would not survive and the resulting loss of jobs for disabled people would result in costs to the taxpayers significantly higher than the Federal expenditures for the loans. Additionally, it should be noted that unemployment among disabled Americans is as high as 50 percent. The survival of Goodwills, capable of employing these individuals, is extremely important today.

The HAL program is an investment in the potential of disabled Americans who otherwise would not have found employment. This investment is returned many times over through the increase in earnings of disabled persons and the reduction in the cost to the Government of supplemental payments and benefits.

The appropriations process for fiscal year 1985 provided $24 million for these direct loans.

DIRECT ECONOMIC OPPORTUNITY LOANS

Pursuant to section 7(a)(11) of the Small Business Act, SBA is empowered to make or guarantee loans to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or which are owned by low-income individuals. These loans, commonly referred to as Economic Opportunity Loans (EOL's), have the same terms, maturities and restrictions on the use of proceeds as SBA's regular business loans.

In past years, the administration budget requested EOL guarantee levels greatly in excess of the then Congressional set levels of $60 million ($176 million in each of fiscal years 1982 and 1983). SBA's record cannot be recognized as any indication that EOL guaranteed loans could substitute for EOL direct loans; EOL guarantee loan activity for fiscal year 1983—$30.5 million, fiscal year 1984—$41.2 million; and through April of this year $27.8 million. The Fiscal Year 1985 appropriation

for EOL loans was $45 million for direct loans and $60 million in guarantees.

It is necessary to maintain a direct EOL loan program. The Committee remains convinced that there are deserving entrepreneurs frozen out of any opportunity at private financing. That low income or social or economic disadvantage denies the opportunity to acquire sufficient business financing through normal lending channels or on reasonable terms.

****1177 *693** DIRECT VETERANS LOANS

In recent years, there has been increasing interest in how SBA programs can serve the needs of veterans and, in particular, of Vietnam-era and disabled veterans. The Committee has strongly supported efforts to improve the delivery of SBA services to the veteran community. In fact, as long as January, 1974, legislation was approved which provided that veterans were to receive 'special consideration' in all SBA programs. Regrettably, this provision, included in Public Law 93–237, was all but ignored in some parts of the country until relatively recently, when additional legislation made it clear that the Congress was willing to reserve funds for the exclusive use of Vietnam-era and disabled veterans.

The new Veterans Administration business loan program was authorized by the Veterans Small Business Loan Act of 1981, Title III of Public Law 97–72, which was approved on November 3, 1981. However, the Reagan Administration has opposed implementation of this program, and as a result no funds have been available since its enactment. Instead, the Congress reserved direct loan funds in the existing SBA general business loan program for the exclusive use of Vietnam-era and disabled veterans. This was first done by Public Law 97–377, approved on December 21, 1982, which set aside $25 million during fiscal year 1983, an amount equivalent to that authorized for the unfunded VA business loan program.

The Reagan administration persisted in its efforts to block funding for this program and froze all SBA direct loan funds by requesting their deferral. This request was rejected by the House on March 10, 1983 with the approval of the impoundment resolution, H. Res. 73. As a result, direct loan funds finally became available. Unfortunately, by the time funds were allocated and instructions were issued to SBA field offices about the new SBA veterans loan program, more than half the fiscal year has been lost; and at the conclusion of fiscal 1983, only $8 million in loans had been approved, or less than one-third of the $25 million which was available.

During fiscal 1984, $25 million was again made available by SBA's regular appropriations act, Public Law 98–166, which was approved on November 28, 1983. Of this amount, $19.7 million in loans were approved. Also an additional $19.2 million in direct loans to Vietnam and disabled veterans were approved through the agency's other business loan programs. SBA's 1985 appropriations act, Public Law 98–411, approved on August 30, 1984, again reserves $25 million exclusively for direct veterans loans.

Although the appropriations process has continued to provide funds for this important program, the Committee believes that a regular multi-year authorization for veterans loans should be enacted to ensure that resources will continue to be reserved for the exclusive use of veterans. The Committee recommended and the House approved by a vote of 386–11 on March 15, 1984 the first separate line-term authorization for SBA veterans loans. This provision, included in H.R. 3020, would have authorized $30 million in direct veterans loans in fiscal 1985 and $31.2 million in fiscal 1986. A similar Senate bill, S. 1323, provided for $25 million in 1985. Unfortunately, a conference to resolve the differences in the two versions ****1178 *694** of the bill did not meet because of administration opposition, and no new regular authorizations for veterans loans were enacted in the 98th Congress.

POLLUTION CONTROL FINANCING GUARANTEES

Congress recognizes that small businesses, because of their generally nature of *required* the smaller size of their financing requirements, often are unable to obtain long-term, low-interest rate financing through revenue bonds. The high cost and *nonproductive* nature of *required* pollution control facilities are often more than small businesses can be expected to handle. Therefore, Congress authorized SBA, commercial banks and State authorities to make long-term low-interest financing available to well-established small businesses in much the same manner the corporate giants obtain financing for pollution control facilities: through sale of tax-exempt, pollution control revenue bonds issued by a State or municipal authority. This is made possible through SBA's guarantee of the small concern's obligation under a contract involving the facility.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Through this program, small business obtain long-term (up to 30 years) and low-interest rate financing for required pollution control facilities.

On December 31, 1981, SBA announced its decision no longer to approve guarantees for contracts which involve projects constructed with proceeds of tax-exempt Industrial Revenue Bonds. Despite Congressional statements that this was contrary to the intent of the statute, SBA has consistently refused to restore the availability of such guarantees for tax-exempts.

However, last year's Continuing Resolution, P.L. 98–473, corrected this situation and mandates SBA again to guarantee tax-exempt financing in this program. From inception through Fiscal Year 1984 the aggregate amount guaranteed in the Pollution Control Financing Program is over $679 million.

The SBA Pollution Control Guarantees Program has played a vital role in minimizing the discrimination small businesses have traditionally faced. Investors view these concerns as high risks and are therefore reluctant to provide them with capital to finance pollution control facilities. By making guarantees available to these firms, the SBA program has enhanced the financial attractiveness to lenders of providing financing to small businesses, thereby enabling them to comply with environmental requirements.

Since its inception, this SBA Guarantee Program has been a revenue raiser through the fee SBA levies on businesses using the guarantee; it is self-sustaining and fosters economic activity throughout the country.

DEVELOPMENT COMPANY GUARANTEED FINANCING

The Small Business Administration's 503 lending program, established in 1980 by section 503 of the Small Business Investment Act, provides long-term, fixed asset financing to qualified small businesses through local development companies certified by the SBA. The program is designed to work in conjunction with private sources of funding. It enables private lenders, such as banks, to ****1179 *695** provide adequate financing to small firms needing facilities in which to set up a new business or expand an existing one. The focus of the 503 program is job creation and economic revitalization through private/public partnerships.

Since its inception, the 503 program has issued $703 million in debentures, which in turn has leveraged more than $1 billion, in private capital to create nearly 100,000 job opportunities throughout the country, at an average federal investment of $7,398 per job.

SBA's investment—up to 40 percent of a project's total cost—makes a financing package affordable to small companies by lowering the combined interest rate (503 loans are made at Treasury bill rates plus ¾ of one percent for servicing), and by extending repayment terms (503 loans are made for up to 25 years; bank loans issued in conjunction with the 503 loan must be for at least 10 years.) Many banks have stated publicly that such long-term financing would not be possible without the 503 program and others like it.

The 503 program's impact is much greater than its size would initially suggest. In fact, the program and its predecessor—the 502 loan program—have been the cornerstone of many local and state economic development programs for the better part of a decade. Recognizing the inherent inability of a small business to tap into this nation's long-term capital markets, the 503 program permits a community to initiate its own economic development activities to overcome this structural disfunction in our economy. Also, recognizing the scarcity of public resources, the 503 program is designed to supplement, not supplant, private sector financing from conventional institutions.

In establishing the 503 program, Congress made CDCs a major partner sharing responsibility for loan origination, packaging, closing, monitoring and servicing. In order to become a CDC, an organization must demonstrate broad and active community support and professional staff resources. Many local and state public officials believe economic development in their areas would come to a virtual halt without the 503 program.

Economic revitalization of cities and rural areas alike is the direct result of projects financed in part by the 503 program. Close to 100,000 jobs have been created or preserved as a result of this program—jobs that add to the nation's employment,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

tax revenues, and economic well-being.

The fiscal year 1985 appropriated level for Development Company Financings was $5 million in direct loans and $450 million in guarantees.

SMALL BUSINESS INVESTMENT COMPANIES

Congress created the Small Business Investment Company (SBIC) program in 1958. SBICs are investment firms licensed and regulated by the Small Business Administration. They provide equity capital, long-term loans and management assistance to new and growing small business concerns. SBICs are privately-organized, privately-capitalized and privately-managed.

Over the past twenty-six years, SBICs have been authorized to obtain money for the Federal cost of borrowing funds. They then ****1180 *696** add five or six percentage points to the cost-of-money and make it available either in the form of long-term debt or long-term debt accompanied by warrants which entitles them to a share of the small business being financed, or possibly by simply acquiring up to one-half of the ownership of the business being helped.

At the present time SBICs are investing more of their private dollars than SBA has made available in leverage. In calendar 1984, SBA provided $175 million to SBICs while the industry invested a total of $425.5 million in almost 3,000 small concerns. Thus the Federal Government is able to increase financial assistance being provided to the small business community by channeling its funds through the SBIC industry rather than channeling it directly to small business. Small concerns need venture capital, and the Nation needs the SBICs' proven job creation potential of 65,000 new jobs each year.

The fiscal year 1985 appropriation levels for SBICs was $265 million in guarantees of debentures.

MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT COMPANIES

Minority Enterprise Small Business Investment Companies (MESBICs) are SBICs which specialize in providing equity funds, long-term loans, and management assistance to small business concerns owned by socially or economically disadvantaged persons. MESBICs are governed by the small regulation as SBICs, with some modifications.

The MESBIC agrees to make investments solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Under the Small Business Investment Act of 1958, MESBICs are eligible for up to four tiers of leveraging from the SBA on their invested private capital. This private/public sector partnership serves to maximize the pool of funds available for investment in the minority small business community.

Since 1976, the MESBIC industry invested almost $400 million in 4,772 minority businesses. The jobs created or maintained by those investments in the latter half of that period alone totalled over 75,000. Maintaining the authorization for MESBICs in fiscal years 1984 through 1988 is an important statement of support for the MESBIC industry and stresses the Committee's belief in the importance of policy continuity regarding the industry.

The fiscal year 1985 appropriation for the MESBIC program was $47 million in direct funds.

SURETY BOND GUARANTEES

Small business contractors and subcontractors who seek public (and some private) construction jobs are often required to furnish surety bonds. SBA can assist such contractors by extending a guarantee to a surety of up to 90 percent against loss in order to make bonding more easily obtainable. Bid bonds as well as payment and/or performance bonds may be guaranteed on contracts of up to $1,000,000. SBA may also pay a surety up to 10 percent of the ****1181 *697** value of the contract in

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

order to prevent a breach of that contract when such a breach is imminent.

The surety company pays SBA a guarantee fee of 20 percent of its bond premium. The small business contractor or subcontractor pays SBA a guarantee fee of 0.5 percent of the contract price upon obtaining it.

All general, special trade (such as electrical, plumbing, heating, etc.) and service contractors whose gross annual receipts do not exceed $3,500,000 are eligible.

Surety companies eligible to receive SBA's guarantee must be included on the U.S. Treasury Department's list of qualified sureties.

In fiscal year 1984, $571 million in surety bond guarantees were extended. The appropriations process for fiscal year 1985 set the SBG program level at up to $1.115 billion in guarantees.

MANAGEMENT ASSISTANCE

SBA's management assistance programs support SBA loan recipients and other small business owners/managers through individual counseling, management training and publication of guidance materials. These programs are keyed to furthering the establishment, growth and success of small businesses. It is estimated that managerial deficiencies cause nine out of ten business failures.

The SBA programs can identify management problems, develop solutions and help implement and expand business plans. In addition to its own professional management assistance officers, SBA relies heavily on national volunteer organizations such as SCORE (Service Corps of Retired Executives) and ACE (Active Corps of Executives) to expand its capability for individual counseling. More than 300 colleges and schools of business throughout the Nation also provide personalized counseling at no charge through SBA's Small Business Institute (SBI) Program.

An important addition to SBA's management assistance capabilities has been the Small Business Development Center (SBDC) Program. The SBDC program is a cooperative effort by universities, the Federal Government, State and local governments, and the private sector to provide specialized management and technical assistance to the small business community. Started on a pilot basis at one university in December 1976, the program expanded in 1984 to 36 statewide operating SBDCs in 35 States and the District of Columbia. Additional centers are located throughout the States at colleges, universities, and local government offices, as well as in selected locations, such as downtown storefronts, easily accessible to small business clients.

The Subcommittee was most impressed by the testimony which portrayed SBA as the only source of assistance to so many small concerns—truly fullfilling its role as 'lender of last resort'.

> I am certain that I would not have been able to start the business without the SBA.

So testified Mr. John Yeh, owner and president of Integrated Microcomputer Systems, Inc., a Rockville, Maryland high technology firm engaging in computer systems engineering, software development, office automation and telecommunications. Born deaf, Mr. ****1182 *698** Yeh immigrated to this county from Taiwan at age 15, knowing no English, and he started the company in 1979 with a $100,000 direct loan from SBA. Integrated Microcomputer Systems has had phenomenal growth, now employing 175, 50 percent of whom belong to minority groups and 20 percent of whom are deaf.

> . . . SBA is a net asset to our economy (when) jobs, tax revenues and other measures are hung in the balance.

Mr. Theodore Holmes, president of Chicken George Chicken in Baltimore, told us his firm currently operates 13 restaurants, and has begun to franchise with agreements signed for stores in 14 new areas. the minority-owned firm began with a $25,000 direct loan from SBA, and now has sales in excess of $9 million with more than 350 employees. Chicken George's growth has been steady in this highly competitive industry dominated by a handful of national chains with enormous marketing resources.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

> The Small Business Administration makes money, it creates jobs it builds businesses through opportunities, and does, in fact, perpetuate the American dream . . . The SBA must continue.

According to Mr. Fred Ruiz, president of Ruiz Food Products, a Tulare, California frozen Mexican food concern, the company in 1975 employed 15, had annual sales of $300,000 and a processing plant with 1,500 square feet. At that time USDA regulations nearly forced its closing, but a direct SBA loan enabled expansion into a new plant. Today, Ruiz employs 300, has annual sales of $18 million and a processing plant of 50,000 square feet. Its payroll is in excess of $3.5 million and its annual payroll taxes alone are far in excess of the original SBA loan.

> . . . I cannot emphasize enough that we would not be in business if it was not for the SBA . . .

So testified Mr. Steven Pfeiffer of Mountain Equipment, Inc., in Fresno, California, recipient of a SBA direct loan. This dynamic young company manufactures technical backpacks, travel packs, day packs and high quality soft cases for portable computers and printers. It markets throughout the U.S. as well as Canada, Europe and Australia. The firm now employs 40, is growing at a 25 percent annual rate and successfully competes against large businesses.

> If it had not been for the Small Business Administration, . . . Ellis Food Processing would have been history many years ago.

Mr. Charles Ellis of Ellis Food Processing, Inc., a successful minority-owned poultry processing business in Delano, California, told us its customers include 18 Department of Defense installations in the U.S. and Far East, the Department of Agriculture, school districts in California and Louisiana and commercial accounts throughout the nation. Ellis now employs 168 and processed more than 4,000 *tons* of turkey last year. According to Mr. Ellis, in 1956 there were 1,500 processing plants in California; today fewer than 1 percent remain. His firm was also on the verge of closing, but SBA direct loan assistance enabled him to survive and proper.

> ****1183 *699** . . . without SBA's help, we would never have been able to buy such an expensive piece of equipment.

Mr. Lloyd George of L.D.G. Timber Enterprises in Oakhurst, California explained that his company has developed innovative and environmentally sound techniques in harvesting timber as well as in conducting clean-up and reforestation operations. It has also pioneered the profitable processing of timber which previously went to waste, thereby conserving precious natural resources. In so doing, it has created and filled a niche in the timber industry and provided valuable services for the Forest Service while protecting public lands held in trust. L.D.G.'s operations were made possible with specialized machinery financed by a direct loan from SBA. Since this loan was approved, the company has grown and proved highly durable in a volatile industry dominated by a few large concerns.

> It's my opinion that without recourse such as the SBA, we would not have been able to survive as a business enterprise . . .

Mr. Frank Lucas, president of Leadtec California, Inc., testified that SBA's direct loan enabled his firm to keep over 200 people working. Located in San Fernando, California, the company processes raw piece goods into consumer products such as jeans and sweat shirts for nationally known, brand label apparel distributors. Beset by a flood of Asian import competition beginning in 1976, the company exhausted all its working capital in changing product lines and retraining its personnel. A SBA direct loan enabled the company to survive that difficult adjustment period. Today, Leadtec employs more than 200 in one of America's few remaining craft industries, and it successfully competes against foreign imports, keeping these jobs in America.

> I would not have had a chance to do this had it not been for the SBA.

Mr. Robert Ozuna, president of New Bedford Panoramex, an engineering and electronics company in Santa Fe Springs, California attributes his company's success to SBA. The firm designs and manufactures electronic controls and control systems for the oil, power and mining industries. It customers also include government agencies such as the Air Force and the FAA. The firm started with 1 employee and annual sales of $22,000. Subsequent to a direct loan from SBA, it has grown to employ 55 with sales of $6 million.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

> Without that money I doubt that we would be in business today.

According to Mr. Luther Clevinger of the White Buffalo Construction Company in Aumsville, Oregon, his business was unable to obtain bank financing in 1980 because it had only a 3-year track record. A direct loan from SBA provided much needed working capital and allowed for the purchase of new equipment. The company now employs 34, and its sales have more than doubled to $900,000 since its original SBA loan. Recently, White Buffalo was able to obtain a guaranteed bank loan for the purchase of additional equipment, having demonstrated its capabilities and moving a ****1184 *700** step closer to being able to obtain private sector financing on its own.

> The SBA provided us with a direct government loan to purchase a building and land giving us the working space we needed. This allowed us to seek larger and more profitable projects.

Mr. Manuel Salinas, owner of MASCO Mechanical Contractors, Inc. in Houston, told us the business tripled its employment from 12 to 36 after receiving a SBA direct loan for $80,000. This heating, ventilation and air conditioning firm had been unable to obtain financial assistance for expansion from commercial lenders, but now has sales in excess of $2 million with a payroll in excess of $500,000.

> . . . stories like ours would not be possible without a lending agency such as the SBA whose objectives and priorities differ considerably from those of most commercial lenders.

So testified Mr. Michael F. Squyres, president of Wayne True Value Home and Hardware, Pennsylvania. The company survived an unexpected change in its commercial bank's lending policy with SBA direct loan assistance. When the business was less than 2 years old, its bank 'called' the company's short term credit line even though it had never missed a payment and had met all projections in its business plan. Because of this action, Wayne True Value Hardware was unable to obtain alternative commercial financing. SBA was able to provide a $150,000 direct loan, and now this business which had been turned down by ten commercial lenders in its time of need has sales of $1.5 million, employs 22 and expects to open a second location soon.

> As a businessman, I think that it is truly in the best interest of this country, its citizens, and its economy that the SBA's direct loan program is not only maintained but expanded.

So testified Mr. Earl Edwards, president of Care & Emergency, Inc., an ambulance and paratransit company serving Philadelphia and surrounding areas. Started with SBA direct loans of $10,000 and $70,000, this firm now has 60 vehicles, employs 120 and is one of the largest ambulance services in Pennsylvania. In addition to providing vital services in the communities it serves, Care & Emergency also provides specialized training and education for many of its workers who become Certified Emergency Medical Technicians.

> SBA solved all these problems for us.

Mr. William Eells, president of the Act Service Corporation in Philadelphia, told us of the need for his company to grow in order to survive. The firm collects and disposes of solid wastes, both hazardous and non-hazardous. This Vietnam veteran owned business was able to purchase new trucks and computer equipment with SBA direct loan assistance. This expansion resulted in an increase of employees from 20 in 1980 to 35 currently. Financing was not available from commercial banks, even though the family-owned ****1185 *701** business had been in existence since 1946 and had a proven track record.

> I feel that the assistance that I have received from the Small Business Administration has helped by a great deal, and . . . (without it) I would not have the business I have today.

Mr. Rosendo Diaz, Jr., owner of Jensen Movers & Storage Company in Philadelphia, was expelled from Cuba in 1964 and arrived in the United States a penniless refugee. He began a part-time moving business while holding down other jobs, and in 1967 he was able to purchase Jensen Movers with the help of a direct loan from SBA. Since then, the firm has grown to an operation with more than 50 employees, 17 trucks and 2 warehouses.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

> I am absolutely convinced that my company would not be here today were it not for the presence of SBA.

So testified Mr. Robert Parmley, president of Tempo 21, Inc., a highly successful lawn care service in Wheeling, Illinois founded in 1972 by two Vietnam-era veterans. The firm grew from 516 accounts and $27,000 in sales its first year to 9,847 accounts and more than $1.1 million in sales in 1978. Despite this impressive growth and repayment of previous bank financing, the company could not obtain additional working capital for expansion because of a change in its bank's lending policy. After being turned down by other commercial lenders, Tempo 21 was able to secure a SBA direct loan for $133,000 in 1979. In the next year, its business grew 40 percent; in 1981, the company opened its third office; and in 1983, its fourth. Now, its SBA loan is paid in full, and Tempo has 51 employees, more than 17,000 accounts and $2.6 million in sales.

> The SBA is a vital part of this (small business) community. To close it is like an act of suicide. As a country, we are only hurting ourselves; especially when our foreign competitors are all being helped by their governments.

Mr. Wesley Wedge, president of the Wedge Company in Des Plaines, Illinois, explained that his firm is a small manufacturer of specialized construction equipment, including concrete cutting saws and grinders and safety drilling machines for the highway and bridge building and repair industry. Subsequent to the Surface Transportation Act, a huge market for bridge repair has opened, with an estimated 100,000 bridges in the U.S. needing serious work. The Wedge Company was in an excellent position to capitalize on this market with its expertise and experience, but despite its excellent track record and repayment of prior bank financing, the company was unable to obtain a commercial loan to enable the design and development of new equipment to effect efficiencies in bridge repair. SBA has approved a direct loan which will enable the company to pursue this development, which in addition to helping the firm itself could save substantial sums of taxpayer financed repair dollars.

Witness after witness told the Subcommittee of their experience with SBA's programs. There emerged much the same story as that above about the results of all of SBA's assistance program: small ****1186 *702** firms are given a chance they would not otherwise have had to grow and prosper. Brief synopses of fifty of these stories follow:

The Dalametrics Corporation in Chatsworth, California, manufactures high quality printer/plotters for the communications, command and control requirements of the Army, Navy, Air Force and more than 40 prime contractors. It also supplies printers to 22 commercial airlines and was recently awarded a contract by Japan Air Lines (JAL). In 1973, Datametrics had sales of $840,000 and employed 18 with a annual payroll of $300,000. The company has group steadily since and SBA guaranteed loan was approved, and in 1984 it had sales of $13.5 million and employed 240 with an annual payroll of $6 million. Datametrics also benefited from SBA's Certificate of Competency (COC) Program.

Brasher Brothers, Inc., in Burbank, California, is engaged in egg products processing and marketing. Unable to obtain commercial financing for extensive plant remodeling required by the Egg Products Inspection Act, The firm faced closure. However, SBA approved a direct regulatory compliance loan which enabled Brasher Brothers to meet government requirements, and the company survived and prospered. In 1984, Brasher Brothers had sales of $14 million and employed 70, providing a reliable outlet for egg producers and a quality source of supply for the food industry.

In 1977 the Burbank Plating Service Corporation in Burbank, California, was unable to meet requirements of the Clean Water Act in its old facilities and would have been forced to close without new and expensive production and pollution control equipment. An SBA loan for $400,000 enabled the company to purchase this equipment, comply with government regulations and stay in business. Since the loan was approved, Burbank Plating's sales have more thandoubled to $1.5 million and it now employs 29, 65 percent of whom belong to minority groups.

Pacific Rents is a family-owned company in Los Angeles which rents and sells durable medical equipment and oxygen to homebound patients. Since 1977, SBA-guaranteed loan assistance enabled the firm to expand to six locations with sales increasing from $1.3 million to $4 million and employment growing from 26 to 62. Pacific Rents is now a leader in its industry and continues to grow while providing important health care services.

Matthews Studio Equipment, Inc., in Burbank, California, is the leading manufacturer and marketer of 'grip' equipment which is used to mount cameras, diffusion elements, backdrops, lights, and other items necessary in film and television production. This innovative company has designed and developed new state-of-the-art equipment including a highly

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

sophisticated electro-mechanical remote control camera mount and a lightweight, portable crane which won the 1983 Technical Achievement Oscar. Beginning in a garage, with SBA-guaranteed loan assistance, Matthews Studio Equipment has grown from $200,000 in sales in 1977 to $5 million in 1984. The firm employs 50 and has more than 600 items in its catalogue which are now sold throughout the United States and in Canada, Mexico, Latin America, Europe and the Far East.

The Petko Paint Company, Inc., in Walnut, California, was started in 1975 by an immigrant from Yugoslavia after he had worked five years for other painting contractors. The young company was ****1187 *703** unable to obtain the bonding required in order to bid on and perform most government contracts. Through SBA's Surety Bond Guarantee Program, Petko was awarded its first bonded contract for only $11,000. With the continued help of this program, the company was able to obtain larger and larger contracts so that now, with sales of approximately $1 million, Petko no longer needs the SBA bond guarantee and has 'graduated', fully able to compete on its own in the marketplace. The company's payroll exceeded $500,000 in 1984.

Nu-Way, Inc., is a supplier of ornamental and other iron products to builders in the Houston area. Started in 1977, the firm enjoyed several prosperous years until it experienced a loss in 1981 due to the recession which hit the building industry particularly hard. After two more years of sluggish profits linked to the recession, Nu-Way was in need of working capital to take advantage of improved market conditions. The Company's commercial bank changed ownership, and its new lending policy would not accomodate, Nu-Way's needs. An SBA loan guarantee at a new bank enabled the company to recover from the effects of the recession, stage a comeback and provide employment for 50.

Software Galeria, Inc., in Houston is a computer retailer that provides microcomputer software, hardware, supplies and services. This minority-owned business began with an SBA guaranteed loan; and despite fierce competion and difficult business conditions in an economy closely linked to the sagging oil and gas industries, Software Galeria grossed more than $500,000 in its first year. Its customers include NASA, the State of Texas, the City of Houston, public utilities and variety of commercial accounts.

W de Y Associates, Inc., is a minority-owned management consulting firm in Houston. With more than 40 full-time employees, the business has received important contracts from NASA and has been concentrating in information systems design and development, aerospace research and development, and telecommunications consulting. With procurement assistance through SBA's Capital Ownership Development Program, W de Y Associates has shown that, given the opportunity, a small and disadvantaged business can get the job done.

The Merida restaurant in Houston began in 1976 with an SBA-guaranteed bank loan. The operation was successful, and the SBA loan was repaid in full; but despite a proven track record and repayment of prior loans, the business was unable to obtain additional commercial financing to expand. SBA again provided guarantees, and today Merida has three locations, all doing well.

The King Saver grocery store in Missouri City, Texas, is a family-owned operation which began in 1969. In 1984, the business lost its lease and faced closure. Its principal, then a 65 year old widow, and her family were unable to obtain commercial financing to relocate; but financing through SBA's Small Business Investment Company (SBIC) Program allowed the store to reopen and increase employment from 27 to 62, all of whom would have been unemployed without this assistance.

Schultz & Lembo, Inc., a general contractor in Houston, began in 1980. Although its principals had considerable experience in the construction business and an excellent track record, the new firm ****1188 *704** was unknown and it was impossible to obtain bid bonds which are required for most construction projects. SBA's Surety Bond Guarantee Program enabled the business to get started. Its initial SBA-guaranteed bonds were for less than $100,000, but within 18 months, Schultz & Lembo had 'graduated' into the standard bond market and no longer needed an SBA guarantee. Today, the firm has a standard bonding line in excess of $6 million, and steadily employs 50–70, an achievement which would not have been possible without SBA's surety bond program.

HyClone, Inc., in Conroe, Texas, specializes in the commercial application of plant tissue culture technology to the clonal propagation of plants. The firm currently propagates a line of more than 60 varieties of plants which are shipped throughout the United States and views its cloning technology as an important tool for the genetic improvements of agricultural crops.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Both start-up capital in 1981 and expansion financing since then were provided through the SBIC program. HyClone, Inc., currently employs 63 and will expand to 100 employees during 1985.

Skyhawk Construction Company in Houston had been a successful subcontractor when its principal attempted to obtain bonding in order to bid directly on prime contracts. The woman-owned firm was unable to find bonding in the standard market despite its experience; but through SBA's surety bond program, bonds were approved and business has doubled in each of the last three years. Skyhawk's employment has increased from 5 to 25, and it expects to soon be able to 'graduate' into the standard bond market.

Torino Belts, Inc., in New Orleans is a designer, manufacturer and distributor of a complete line of quality men's and women's leather belts, wallets and other fine small leather accessories. Forced to relocate by a bridge construction project, the firm used SBA's Certified Development Company Program to reestablish its operation while conserving vital working capital. In the last two years, Torino's business increased by 50 percent, and employment went from 27 to 35, 24 of whom belong to minority groups. The company's product is sold in all 50 states and in Europe and Japan.

The Whole Food Company operates two retail specialty food stores in New Orleans. Begun in 1974 with $3,000 and 2 employees, the company had sales of $180,000 in its first year. Business grew steadily, but when its 22 year old owner sought financing for a second location, commercial lenders were not interested. With the help of SBA's 502 program, Whole Food opened its second store, and today the operation has 97 employees and annual sales of $5.4 million. The company has played an integral part in developing its community, acting as a magnet for new residents and business development in older neighborhoods, and its owner plans to open additional locations soon.

Technical Compression Services, Inc., in Belle Chasse, Louisiana, serves the oil and gas industry in the design, manufacture, installation and service of pneumatic, electronic and hydraulic control systems. It also has full service capabilities for the repair and maintenance of natural gas engines and compressors. The company's predecessor was a division of a large firm which was to be closed in 1975. With the help of a $70,000 SBA-guaranteed loan, three entrepreneurs were able to purchase the business which in 1976, its first ****1189 *705** year of independent operation, had sales of $820,000. By 1984, sales had grown to $8,346,000 and Technical Services employed 95 with a payroll of $3.1 million.

Ran-Der Industries, Inc., in Morgan City, Louisiana, supplies drilling compounds and other services to the oil and gas industries. Begun in 1974, this minority-owned business experienced rapid growth but was unable to obtain from commercial banks the working capital it needed to sustain this growth; its very survival was threatened. In 1979, Ran-Der qualified for a $500,000 SBA-guaranteed loan. Since then, the firm has increased employment from 34 to 63 and paid more than $2.3 million in payroll and corporate income taxes, almost six times the original prinicpal of its SBA-backed loan in which no government outlays were required and which will be fully repaid in one more year.

A.M.E., Inc., in Norco, Louisiana, is a minority-owned business in the industrial cleaning and waste disposal business. Its clients range from large oil refineries and chemical plants to the New Orleans airport. Begun in 1978 with one employee and a $450 a month janitorial contract, the firm received SBA financial, bonding and management assistance. A.M.E. now has sales of $3 million and 300 employees nearly all of whom were hired from unemployment roles.

Minority Engineers of Louisiana (MEL), Inc., in Baton Rouge, Louisiana, is a consulting engineering firm with expertise in the civil, structural, mechanical and construction engineering disciplines. Although started in 1972, the firm had difficulty in its early years in obtaining financing and government contracts. After it was accepted for participation in SBA's Capital Ownership Development Program in 1980, MEL soon demonstrated its capabilities in the government market. Sales increased from $1.4 million in 1980 to $4.7 million in 1984; employment rose from 33 to 106 in the same period. The firm is now preparing for its 'graduation' from the 8(a) program in 1986, having established a sound track record from which it can continue to grow.

Computer Systems and Consultants, Inc., in Baton Rouge, Louisiana, provides basic computer services including the design and development of software, the acquisition and installation of hardware, training and maintenance. Begun two years ago, its principals targeted three major markets: the medical and health care industries, the legal profession and the municipal governments. The young firm turned to SBA's Small Business Development Center (SBDC) Program for professional management assistance counseling. The SBDC helped Computer Systems to develop a set of financial projections and to

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

complete a comprehensive business plan. As a result, the company secured the commercial financing necessary to turn its goals into reality.

Hydro-Air, Inc., in Arabi, Louisiana, is an industrial construction contractor specializing in water projects and sewage treatment plants. Begun in 1977, the firm found it virtually impossible to obtain government contracts without bid and performance bonds which were not available in the standard markets to contractors without a long track record and substantial resources. In 1979, Hydro-Air received its first surety bond guarantee through SBA and was able to bid on government work. In 1982, the company had ****1190 *706** grown to 43 employees, and having established a successful track record, 'graduated' from the SBA program, no longer needing a government guarantee to obtain bonds and providing tax-dollar saving competition to larger entrenched government contractors.

Cucos is a small but growing chain of Mexican restaurants headquartered in Metairie, Louisiana. Financial assistance through SBA's SBIC program enabled the firm which began in 1981 to transform a losing steak house operation to a productive, expanding business. Today Cucos has six company-owned and three franchised restaurants in three states, with 600 jobs created or retained. Cucos plans to open 13 new stores in the next year, employing 850.

Mid-America Environment Service, Inc., is a hazardous waste management firm in Riverdale, Illinois. In 1983, financial problems threatened its closure; but with the help of an SBA-guaranteed loan, the business was purchased by a new owner. With additional SBA financial and management assistance. Mid-America's sales have increased from $600,000 to $5 million in only two years, and employment has increased from 6 to 50. Mid-America is now opening a new location in Michigan which is expected to double its sales and employment next year.

James H. Lowry & Associates (JHLA) is a minority-owned management consulting firm headquartered in Chicago. Founded in 1975, it was accepted into SBA's 8(a) program in 1979. Its sales grew from $750,000 in that year to $3.4 million in 1983. Two new offices were opened and employment increased from 5 to 55. Although federal contracts were vital to the firm's development, JHLA has successfully penetrated other markets, with nearly half of its sales attributable to the private sector in 1983. In fact, despite its impressive growth, JHLA's percentage of sales to the federal government has actually decreased from 65% in 1979 to only 21% in 1983, while sales to the private sector increased from 5% to 46% in the same period.

The McCullough Cartwright Pharmaceutical Corporation in Barrington, Illinois, specializes in the research, development and marketing of products in the animal health and veterinary fields. Capitalized through the SBIC program in 1984 and 1985, the firm currently markets more than 65 products, and it employs 25, a number which is expected to double by 1987. Its seven manufacturing subcontractors employ 200–250 more. The SBIC program has also provided important management assistance to McCullough Pharmaceutical.

R&E Electronics, Inc., in Wilmington, North Carolina, is a communications systems integrator whose customers include both government agencies such as the Air Force and private concerns such as DuPont. R&E received financing through SBA's MESBIC program and is also a certified 8(a) contractor. The firm has also received SBA surety bond guarantees and management assistance. As a result, R&E has grown from a one-man operation with $36,000 in sales in 1974 to a firm with 6 offices, 75 employees and $10 million in sales. Its payroll has increased from $10,000 to $3 million.

The Dixie Yeast Corporation in Gastonia, North Carolina manufactures fermentation-based products, including compressed bakers yeast for the baking industry and health food products. Begun in ****1191 *707** 1978, the company had numerous start-up problems, but with the help of SBIC financial and management assistance, Dixie now employs 65 and has sales of $12 million, successfully competing against food industry giants.

K-Com Micrographics, Inc., in Vienna, Virginia, is a state-of-the-art micrographics company specializing in the production of computer output and source document microfilm and the provision of quality microfilm services. K-Com is a minority and woman-owned business founded less than two years ago with financial and management assistance provided through SBA's MESBIC program. It already has ten professional employees, and is making its mark in a fiercely competitive industry.

The Atlantic Research Corporation is a diversified high technology concern in Alexandria, Virginia, which in 1974 was a subsidiary of a large conglomerate type business. In that year, ten employees sought to purchase the division from its cash-starved parent, but were unable to reach an agreement until in 1976 a $1 million SBIC investment was added to $5

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

million in debt financing already offered. The newly independent firm grew from 500 employees and $23 million in sales in 1974 to more than 2,400 employees and $176 million in sales in 1984. Since the SBIC financing, Atlantic Research has paid almost $17 million in taxes.

Motion Designs, Inc., of Fresno, California, manufactures ultralightweight wheelchairs for normal and specialized uses. The company was started in 1980 by three young entrepreneurs after one suffered partial paralysis as a result of a hang-gliding accident. Working in a garage, the three developed an ultralightweight wheelchair unlike any in the market. Today, Motion Designs employs 75 people in a modern 50,00 square foot factory, due, in part, to a $300,000 SBA guaranteed loan. With $5 million in sales last year, Motion Designs is growing rapidly, competes successfully against entrenched larger firms and exports to Canada and Northern Europe.

Hye-Quality Bakery in Fresno, California, bakes the traditional Armenian cracker bread. Everything was done by hand in this family-owned operation until an SBA-guaranteed loan allowed Hye-Quality to expand from 1,800 to 10,000 square feet and to fully automate the specialized baking process. Hye-Quality now employs 15 people, sells nationwide, and has reinvested $75,000 of profits to further modernize their equipment. A former ‘Mom-and-Pop’ business is moving aggressively into the national marketplace.

Central Valley Trailer Repair in Fresno, California, provides repair services for commercial trucks and trailers, refrigerated vans and flatbed trailers. Unable to obtain start-up financing on its own, SBA approved a guaranteed loan and Central Valley exceeded its own projection in the first year. The firm now employs 15 people—all of whom were unemployed prior to working for Central Valley.

SensorMedics Corporation in Anaheim, California, specializes in the design, development, manufacturing and marketing of microelectronics based instrument systems for the non-invasive measurement and monitoring of heart, lung and other body functions. The firm designed and developed instrumentation used in every U.S. manned spaceflight. Key to SensorMedics success was investment ****1192 *708** by a SBA-licensed small business investment company (SBIC). This investment enabled SensorMedics to prosper and grow to its current size of 250 employees, expected sales of $23 million in 1985, including $2.5 million in exports to Japan and Europe. In addition, the tax paying public will get a return of over $1 million in the form of payroll and corporate income taxes in 1985.

Moore’s Quality Galvanizing, Inc. in Madera, California, is a manufacturing company started in 1984 which galvanizes—puts a thin coat of zinc or other metal—onto steel products such as tanks, ladders, hand railings, etc. The SBA’s 503 program made possible the construction of a specialized plant needed for this process. Today, Moore’s provides jobs for 25 people—24 of whom were hired through the local California unemployment office.

San Joaquin Helicopters, Inc., of Delano, California, provides full service corp dusting and spraying services in the rich San Joaquin Valley of California. Founded by a Vietnam veteran, the firm pioneered new and more efficient application techniques using equipment it designed. In order to keep up with customers’ demand, San Joaquin Helicopters needed financing to buy new equipment in 1978. An SBA guarantee made it possible for a bank to lend to them, and today San Joaquin employs 65 full-time and 35 part-time employees.

Delta Engineering & Manufacturing of Tualatin, Oregon, designs and manufactures sheet metal enclosures, chassis and components for the electricals, electronic and medical industries. Delta customers include Hewlett-Packard, Intel, Boeing and many others. The SBA’s 503-program enabled Delta to build a small, highly sophisticated, but flexible manufacturing plant with computerized job tracking production control and state-of-the-art equipment, requiring highly skilled technicians. Fifty-one skilled jobs were created.

Burke’s Paint Company, located in Washougal, Washington, manufactures, distributes, and markets paints and other specialized coatings. An SBA guaranteed loan allowed Burke’s Paint to recover from a disastrous fire, and additional assistance in 1983 enabled the company to open two new locations. Burke’s now employs 30 people and recently developed and patented a coating which can be used instead of stainless steel. The ‘stainless steel’ paint has generated considerable interest and has significant sales potential. Help from SBA at a crucial time made the difference for this innovative small business.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Nature's Food and Tool, Inc., specializes in fresh foods and foods without chemical additives. They have developed a growing market among young and health conscious consumers in Portland, Oregon. SBA's 503 loan program made it possible for Nature's Food to expand substantially, adding 27 new jobs. Nature's Food plans to continue its expansion in an industry dominated by giant food retail chains.

PED Manufacturing, Ltd., of Oregon City, Oregon, manufactures specialized steel castings in small numbers and on short notice for its customers. PED Manufacturing began in a back yard in 1969. Unable to obtain bank financing for expansion in 1972, the young firm went to the SBA for a $55,000 guaranteed loan, and in 1978, PED increased their guaranteed loan to $500,000 to expand further. As a result of this SBA assistance, annual sales have increased ****1193 *709** from $158,000 in 1972 to more than $4 million in 1984. The company employs 60 people with a gross payroll of $1.5 million per year, and it has invested an additional $1.4 million in new capital equipment and plant.

Coast Janitorial Services, Inc., in Portland, Oregon, began in 1957. After a number of unsuccessful attempts to obtain bank financing for expansion in 1971, the company turned to SBA and obtained a guaranteed bank loan. Coast Janitorial has also made use of the SBA's surety bond program. Today, Coast Janitorial employs 150 people (125 more than in 1971) and provides services in four states—Oregon, Idaho, California and Washington State.

Communications Test Design, Inc., (CTDI) of Exton, Pennsylvania, is an electronics engineering form that designs, manufactures and markets electronic testing equipment and repairs and refurbishes telecommunications equipment for various Bell Telephone Companies. This family-owned business begain in 1975 with 600 square feet in the family home. CDTI grew rapidly and by 1984, the firm had nine branch offices and was in need of new headquartrers facilities. SBA's 503 program enabled expansion into a 30,000 square foot building. The new facility houses CTDI's corporate and administrative offices, R&D departments and manufacturing and remanufacturing departments. Since the 503 financing, employment has increased by 186 jobs to 320, payroll taxes are up 142% and CTDI paid $456,000 in Federal and State corporate income taxes; the firm's annual taxes exceed the total SBA-backed loan. CTDI is now prepared for even more growth in an expanding industry.

Good Lad Company in Philadelphia manufactures children's clothing. The SBA's 503 program provided the long-term financing necessary for Good Lad's expansion. They now own and occupy 200,000 squre feet for manufacturing and office space. The expansion enabled Good Lad to add 150 employees and to compete aggressively in an extremely competitive international market. The long-term 503 financing is an essential part of Good Lad's competitive strength.

ADCO Products Corporation of Bristol, Pennsylvania, manufactures and markets patented, insulated doors for commercial use in factories, warehouses, etc. An SBA guaranteed loan helped ADCO to create 15 jobs in the Philadelphia area and to preserve 45 additional jobs in Detroit when it purchased a firm going out of business in this high unemployment area. Long-term credit through the SBA guarantee has provided the stable financial backing necessary for continued growth.

Salladalley is a small chain of soup and salad restaurants in the Philadelphia area. In 1978, the owners raised $40,000 from their families to start their first restaurant, but could not obtain a bank loan—they were 22 years old at the time. An SBA guaranteed loan of $40,000 provided them with the necessary capital to open their first location. Today, they have six Salladalley restaurants and provide over 250 full and part-time jobs. In 1984 Salladalley was named the fastest growing private company in America by Inc. Magazine.

Medley Tool & Model Company, Inc., is a minority owned manufacturing company in Philadelphia. Started in 1968, Medley Tool ****1194 *710** has utilized the SBA's loan and consultation services and participated in the 8(a) Capital Ownership Development Program. Today, Medley employes 177 people and provides an efficient contract manufacturing service to both the U.S. government and private sector businesses. Nearly all of their employees belong to minority groups and were formerly unemployed.

American Cable Company, Inc., in Philadelphia manufactures battery cables, battery terminals and booster cables for the commercial markets as well as wiring harnesses, cable assemblies and various electrical and electronics leads for the military. Started in a basement by a Cuban immigrant with $1,500, the company was able to benefit from SBA consulting, the SBA 502 loan program, and the 8(a) Capital Ownership Development Program. The SBA enabled American Cable to grow from a 'Mom and Pop' shop to one with 40 employees and 30,000 square feet and to become a manufacturer of products for John

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Deere Company, Ford Motor Company, and the U.S. government.

Falcon Associates, Inc., in Philadelphia is an asbestos removal contractor and a commercial and industrial insulation contractor. The SBA's surety bond program has enabled Falcon Associates to grow from a company with 2 employees in 1978 to one with 22 full-time and 26 part-time employees and sales of $2.7 million in 1984. The firm anticipates sales of $4 million in 1985.

Citi-Chemical, Inc., of Cherry Hills, New Jersey, is a minority owned business which manufactures and markets speciality polymers and inorganic compounds for water and wastewater treatment plants and industrial manufacturers. Begun in 1984 by two entrepreneurs, the Pennsylvania Small Business Development Center has played a key consultation role to the young company, providing advice on business plan development, financing, marketing and cash flow analysis.

The JPM Company of Lewisburg, Pennsylvania, manufactures wire and cable assemblies and electro-mechanical sub-assemblies for the computer and general electronics industry. The Small Business Development Center in Pennsylvania was able to provide the following services: 1) a Bucknell University graduate student designed inexpensive, moveable sound baffles which greatly reduced factory noise at a significant savings; 2) the Bucknell engineering department designed an electical testing device at a 70% savings; and 3) Bucknell helped design and produce a waste chemical recovery system that reduced chemical use by 90% and eliminated toxic wastes. The SBDC was essential to the economic health of the JPM Company while providing valuable learning experiences to Bucknell students.

The overall contribution of these small concerns in innovations jobs created, taxes paid, and money saved state and Federal governments is incalculable.

With the Subcommittee's series of hearings across the United States completed by April 22, 1985 the forum shifted to Washington to hear from past and present government officials and national associations.

Although initially the President had proposed the elimination of the Small Business Administration, at a subcommittee hearing on April 24, 1985, Administrator Sanders confirmed press reports that ****1195 *711** the President had agreed with a trade association to reverse his position and retain SBA as an independent agency; however the revived agency would have only those functions previously proposed for transfer to Commerce, e.g., programs such as procurement assistance, innovation and research, minority small business assistance advocacy and SCORE, the Service Corps of Retired Executives. SBA would still be gutted of all other functions i.e., all financial assistance programs and also management assistance would be thrown out. The Chairman expressed no agreement with this unilateral compromise and provided Members with facts about the SBA financial assistance programs which were proposed to be eliminated.

DEBUNKING SOME MYTHS ABOUT SBA

The *Wall Street Journal*, the Heritage Foundation, and other critics of SBA often cite a GAO report which mentions that the SBA in any given year lends money to less than 1 percent of the eleven to fourteen million small business concerns (SBCs) in the U.S. However, they conveniently ignore other facts mentioned in that same GAO study (United States General Accounting Office, *SBA's Loan Guarantee Program: An Assessment of Its Role in the Financial Market*, April 25, 1983, GAO/RCED–83–96) and elsewhere about the importance of SBA. Some of the more significant items are referenced for review:

1. Dun and Bradstreet 1979 records indicate while there are approximately eleven million small business concerns in the U.S. only 4.5 million of these SBCs ever applied for credit in their lifetimes. In other words, the 1 percent figure so often quoted does not relate SBA activity to the actual number of businesses who are borrowing in any given year. Thus, SBA probably provides credit to about 10 percent of the small business community which may be seeking funds each year.

2. Banks contacted by the GAO in the same survey reported that 13 percent of all outstanding bank loans made to the SBCs were guaranteed by SBA nationwide.

3. Since most of all bank financing to SBCs is primarily short-term loans, the GAO also found that SBA guarantees may be involved in approximately 30 percent to 40 percent of all *long-term loans* made to SBCs in recent years nationwide.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

4. SBA was recognized as one of the primary vehicles for long-term credit to small businesses. Everyone agrees that SBCs employ more people than big business, and an MIT study shows they create 80 percent of all new jobs.

5. The same GAO survey also found that:

	Regular SBC bank loans	SBA GTD[1] SBC bank loans.
Maturity	52 percent for less than 1 year	74 percent for 6 years or more.
Average maturity	Less than 3 years	6.3 years.
Average loan	$58,000	$118,000

FN1 Guaranteed.

As can be seen above, banks with SBA guarantees are able to lend more money, for longer terms, to many more businesses (30 ****1196 *712** percent to 40 percent nationwide) than they could without SBA support. The GAO found that 82 percent of all loans made under the SBA guarantee program would not have been made for the same terms and conditions or even at all without SBA support.

6. Another complaint often voiced is that SBA loans are made to businesses that are not credit worthy. The facts, however, indicate otherwise.

Since its inception in 1953, SBA has guaranteed and/or disbursed approximately $36 billion in total business loans to 500,000 small businesses. However, the cumulative loss actually charged off to date (1984 fiscal year end) was 11.05 percent for direct loans and 5.72 percent for guaranteed loans.

7. Critics have asserted that SBA *primarily* makes repetitive loans to a small elite group of businesses that are in the 'lower end' of 'weak growth' sectors of our economy such as restaurants and bars. This is simply not true. In 1982, although restaurants and bars were the largest category of SBA borrowers, they only received 7 percent of the loans. Conversely, this means that 93 percent went to other types of small businesses. SBA's portfolio contains numerous examples of success stories. Three current 'trendy' or 'headline companies' which grew with SBA assistance are: Nike Shoes, Federal Express and Apple Computers. While not all of SBA borrowers are as nationally known or necessarily high tech, a substantial percentage of SBA's portfolio is made up of manufacturers and wholesalers. Also, over the past five years, only 15 percent of SBA borrowers are 'repeat businesses'.

8. Is the SBA expensive to operate? While it is true that SBA's administrative costs for all of its programs are in excess of $250 million, SBA *administrative lending* costs (for Finance and Investment) total only $55–60 million annually. Further, last year SBA loans generated approximately $30 million in guarantee fees alone. In summary the lending activities of the SBA are very *economical* when measured against their impact on SBAs nationwide and on the economy.

Although there never has been a study performed to measure SBA's total impact on the economy, or its effect in creating jobs through its lending activities, a review was performed on *one* of SBA's loans programs, the Certified Development Company Loan Program. This study found that of 2,300 projects financed over four years a minimum of 58,600 new jobs had been created or preserved. These projects involved $438.3 million in SBA loans over a four-year period. It should be noted that SBA's total guarantee of loans is about $3 billion annually in recent years. Obviously, a study of the number of jobs preserved and/or created by these loans annually would be significant.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

9. SBA's impact on the credit markets and interest rates is negligible. Critics often assert that SBA loans require significant budgetary outlays and as a result impact severely on the $100 billion plus Federal deficit. This is simply not true. Fully 90 percent of all SBA regular program lending is really a guarantee or a contingent liability of the government (i.e., a pledge to purchase a loan from a bank should a business fail). While it is true that in 1983 and in 1984 the U.S. Treasury was requested to purchase a significant amount of loans from banks that exercised the guarantee, it must ****1197 *713** be recognized that this was after a period of liberal credit criteria initiated by various administrations during the '70s, and after the effects of a strong recession.

10. Would we save money by abolishing the SBA? OMB says that the government would make, in a series of one-time transactions over four years, $1.83 billion by selling SBA's portfolio. But if the loans are kept and interest collected, SBA estimates that the government would collect $8.8 billion from the portfolio over the next nine years.

11. While it is true that many headline stories have given wide exposure to selective failures and problem loans, the statistics above indicate a more balanced picture. The Agency accomplishes its mission with approximately 4,900 employee nationwide. Further, the Agency in 1981 under the direction of the President, and with the oversight of congressional committees, made substantial custs in personnel and spending, improved lending criteria and eliminated or revised various SBA programs which achieved a 27 percent overall reduction in the budget. Documentation and delivery systems have been streamlined resulting in materially improved turnaround times and more timely service to the public.

Notwithstanding the White House position reversal and agreement to retain SBA, further communications from the President appeared to retract this concession.

As the Chairman summarized the situation:

> To borrow a line from President Reagan, 'there you go again!'
>
> First came the reports of last December that all of the Small Business Administration (SBA) programs needed to be abolished in the name of budget savings.
>
> Second came the Administration's budget request saying that SBA had to go but that a few non-financial functions could be transferred to the Department of Commerce.
>
> Third came the director of OMB testifying before the Senate that he favored absolishing the SBA as a matter of policy even if there were no budget deficit.
>
> Fourth came the reported agreement between the Office of Management and Budget (OMB) and the National Federation of Independent Businesses (NFIB) under which the financial programs had to go but the non-financial ones would remain at SBA which would remain an independent agency.
>
> Fifth, only last week, came the agreement between OMB-Senators Dole & Weicker under which SBA would be trimmed down but would stay in business with its financial programs. This agreement was incorporated in the Senate passed Budget Resolution.
>
> Now comes a latter dated May 13th from President Reagan transmitting his 1985 report on *The State of Small Business* which indicates the White House has gone full circle and again wants the SBA abolished, particularly its lending programs, and a new organization established in the Department of Commerce to represent small business. Surely the President does not mean to repudiate his administration's agreement of last week to maintain an independent SBA.
>
> ****1198 *714** My colleagues, make no mistake about it, any administration which really cares for small business does not act in this fashion.
>
> Responsible public officials, including some 20 Governors, both Republican and Democratic, and all 9 of the living former administrators of SBA (4 Republican and 3 Democratic) know that a viable, independent SBA is needed.'

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

THE NATIONAL HEARINGS ON SBA WASHINGTON, D.C., APRIL 24 AND 30 AND MAY 7, 1985

The three days of Washington hearings conducted by the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems confirmed the results of the seven field hearings. Summaries of parts of the large volume of testimony in support of H.R. 1281 and continued independence for SBA are set out in this section.

The national associations which had been united and immediate in their rejection of the President's initial proposals in regard to SBA remained unanimous in their opposition not only to the first 'termination plan', but to all subsequent 'proposals' by the administration for SBA's future role.

The associations' continued support for the Committee's position was gratifying. But these hearings also featured unprecedented testimony. The agency received the unqualified support of *all* of the living Presidential appointees of either party who formerly had been responsible for SBA operations.

Nine outstanding Americans who served as Administrator of the U.S. Small Business Administration under seven U.S. Presidents all made their case for a strong and independent SBA at the Subcommittee's April 24, 1985 hearing in Washington, D.C. Their statement was presented by Milton D. Stewart, former Chief Counsel for Advocacy of SBA, and now a practicing business lawyer with Rose, Schmidt, Chapman, Duff and Hasely of Washington and Pittsburgh, and Ribbins and Green of Phoenix, Arizona, who also serves as President of the Small Business High Technology Institute in Phoenix, Arizona and Washington, D.C. Mr. Stewart is a former editor of *Inc.* Magazine, and a past President of the National Association for Small Business and the National Association of Small Business Investment Companies.

Mr. Stewart's Background to the Administrator's Statement and the statement speak for themselves.

Background to Statement of Former SBA Administrators

There has been an independent small business agency in the Executive branch of the Federal government ever since 1942—except for the years 1947–1951.

During World War II the agency was called the Smaller War Plants Corporation and had three general missions: helping small firms get a fair share of defense contracts; a fair share of scarce materials for production, and financing for their war work. A small management assistance program was also developed.

At the end of World War II, the agency was abolished, and it functions either ended or were transferred to the Department of Commerce, and the RFC . . .

****1199 *715** During the next four years, sentiment rose in both Congress and in the small business community for the re-establishment of an independent small business agency. In 1951 Congress mandated and President Truman set up the Small Defense Plants Administration. It performed, during the Korean War, the same general functions SWPC had performed during World War II.

In 1953, the Korean War having ended, President Eisenhower with bipartisan Congressional support established the Small Business Administration. Because this was the first such agency in peacetime, it was first authorized for only two years. After that experimental period, the agency was made permanent.

At first the agency's three main missions were primarily those its wartime predecessors had: a fair share of Federal procurement, some forms of financial assistance and management assistance. Over the years, the nature of these programs was changed from time and time, and several major new ones added—the SBIC program, the 503 local development company loan program, special assistance for minority and women entrepreneurs. All of these have had their critics and their supporters in and out of government.

Formal recognition of SBA's role as 'advocate for small business' within the Executive branch came with the establishment

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

of the post of a Presidentially named Chief Counsel for Advocacy.

During the period of SBA's existence, the Federal government itself has grown astronomically.

Since the beginning of the 1985 budget debate, the issue of SBA's value has narrowed to its loan and loan guaranty programs. A muddle of arguments flying in all directions has confused direct loans and guaranteed loans. A 'redefinition' has turned both spending and certain guarantees of credit into 'expenditures'—the amount to be 'saved' is thus built up to make it look significant for deficit reduction purposes. Firm evidence that some programs—like the SBIC program—produce net gains to the Treasury and new jobs are fully forgotten or ignored.

Also forgotten is the 'scissors' impact of Federal policy on small business in the money market. Growth in Federal expenditures leads to the growth of both the government and government-sized business. Those are the cumulative results of Federal tax, credit, capital, procurement and regulatory policies. Small business is then 'scissored' in the money market—by 'crowding out' pressures from both government and government-sized business. SBA's program are far too small to offset these Federally-created forces completely—but they do help do a little everywhere, and a great deal in some places.

Their continuation now—property reduced to reflect the needed government-wide cutbacks—is not more than a minimal but welcome effort by the Federal government at self-control. Small as it is in our vast economy, the effect of SBA's programs is all in the direction of improving opportunity and entrepreneurship. In peace, in hot war, in cold war—that is the least the American people can expect of their Federal government.

****1200 *716** THE ADMINISTRATIONS

President	Administrator[1]	Dates in office
Truman—April 1945 to January 1953.	Telford Taylor (New York)	Sept. 28, 1951 to Sept. 12, 1952.
Eisenhower—January 1953 to January 1961.	Wendell B. Barnes (Oklahoma; California)	Feb. 29, 1954 to Sept. 1, 1959.
Do	Philip McCallum (New York; Virginia)	Sept. 23, 1959 to Jan. 20, 1961.
Kennedy-Johnson—January 1961 to November 1963; November 1963 to January 1969.	Eugene Foley (Minnesota; Pennsylvania).	Aug. 8, 1963 to Sept. 9, 1965.
Johnson—November 1963 to January 1969.	Bernard L. Boutin (New Hampshire)	May 19, 1966 to July 31, 1967.
Do	Robert C. Moot (Virginia)	Aug. 1, 1967 to July 31, 1968.
Nixon—January 1969 to August 1974.	Thomas S. Kleppe (North Dakota; Maryland)	January 18, 1971 to Sept. 9, 1975.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Ford—August 1974 to January 1977.	Mitchell P. Kobelinski (Illinois)	Feb. 12, 1976 to Mar. 4, 1977.
Carter—January 1977 to January 1981.	A. Vernon Weaver (Arkansas; D.C.)	April 1977 to January 1981

FN1 The combined service of these men in this post (Mr. Taylor was called Small Defense Plants Administrator) exceeds 21 years, or more than two-thirds of the agency's life under these seven Presidents. Former Administrators Mitchell, Sandoval, Samuels, and Horne are deceased. It was deemed inappropriate to include President Reagan's appointees while he is in office. There were, in addition, periods during which the agency was headed by an Acting Administrator not confirmed by the Senate.

Their Joint Statement on SBA

We make this joint public statement to underscore our concern about, and our disagreement with, recent proposals that the Small Business Administration be abolished as a contribution to the reduction of the Federal deficit.

It is not just small business—it is the Nation as a whole that will continue in the years ahead to need an independent small business agency in the Executive branch of its Federal government. We will need it, above all, to cushion the private sector from some of the unintended effects of Federal policies. This is particularly the case with respect to the supply of capital and credit.

We base that judgment on our experience in the management of the SBA and its predecessor agency (the Small Defense Plants Administration) by appointment of seven Presidents of the United States. We base it also on our experience in the private sector in which we have spent the bulk of our lives as business people and independent professionals.

We here mean to pass no judgment on any particular SBA program or on any particular budget level. SBA should certainly bear its proper share of any government-wide expenditure reduction. A shift of functions and costs to the private sector has been under way for some time; obviously it should be continued as appropriate. Needed changes are one thing; junking or crippling a useful government agency is quite another.

It is perhaps fortunate that the Congress enacted, and the President approved a law last August mandating a second White House Conference on Small Business to be held no later than the fall of 1986. A group of broadly representative, responsible small business opinion leaders should be heard on this issue. The White House Conference offers an excellent prospect for that.

****1201 *717** The bipartisan bill sponsored by the Senate Small Business Committee is a sensible approach as an interim measure; there are surely others.

Each of us would probably put his reasons for our common conviction about SBA somewhat differently.

What we all agree on most strongly is that small business must have an independent and vigorous Federal agency, one which is not part of any other agency, one which has direct access to the President and the Congress.

Wendell B. Barnes, Bernard L. Boutin, Eugene Foley, Thomas S. Kleppe, Mitchell F. Kobelinski, Philip McCallum, Robert C. Moot, Telford Taylor, A Vernon Weaver.

The Honorable Abraham C. Gerges, a member of the New York City Council, who recently acted as Chairman for hearings by the Council's Committee on Economic Development to examine the impact the SBA has had upon the City and State of New York, testified that those hearings concluded that elimination of the SBA's worthwhile financial assistance, instructional and outreach programs would be counterproductive. Those hearings produced evidence that the stimulus which SBA aid gives to the economy as a whole generates more revenue than it expends in tax dollars. Moreover, SBA fosters the dream of individual enterpreneurship; this dream put our country's economy among the world's leaders. Based on those hearings, he

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

emphatically endorsed adoption of H.R. 1281.

Mr. Gerges in his testimony before the Committee, outlined the findings in the Council's March 29, 1985 Report entitled 'Operations of the U.S. Small Business Administration in the New York Area'.

> As a member of the New York City Council, I recently acted as Chairman for hearings by the Council's Committee on Economic Development to examine the impact the SBA has had upon the small business community in our nation, as well as the City and State of New York. Our hearings concluded that elimination of the SBA's worthwhile financial assistance, instructional and outreach programs would be counterproductive since the stimulus which this aid gives to the economy as a whole appears to generate more revenue than it expands in tax dollars. Furthemore, economics aside, it fosters the dream of individual enterpreneurship among our citizens and it is this dream which has helped put our country's economy among the world's leaders. Because of what I learned in these hearings, I emphatically endorse adoption of H.R. 1281 which would preserve to the fullest extent possible, many of the worthwhile features of the SBA.
>
> The SBA's loan programs, management assistance information, economic research and analysis, specialized offices, outreach programs and workshops all provide invaluable help to existing and potential small businessmen in our country. In addition, the SBA, through its Home Disaster Loan Program, provides needed assistance to victims of national ****1202 *718** disasters. In fiscal years 1983 and 1984, for example, this Program aided 368 victims in the New York City area alone with a total loan value of $2.4 million.
>
> SBA loans and guarantees, only made when not privately obtainable, provide the impetus for the creation of new and often innovative businesses which would not otherwise start or survive. In light of the growing concern over competition from foreign businesses, it seems every efficient avenue for expanding our economy should remain open.
>
> Our Committee's investigation revealed the scope of the SBA's efforts at aiding the New York region's small business community. Including special loans to women, veterans and minorities, the SBA has, over the past three and a half years, made or guaranteed 1,500 loans for a dollar volume of $178 million, with New York City businesses receiving 854 loans at $89 million. In a borough by borough breakdown, Manhattan had 315 loans for $30.8 million; Brooklyn had 257 loans for $27 million; Queens with 137 loans for $16.7 million; the Bronx had 94 loans for $10.4 million; and Staten Island had 51 loans for a total of $4.2 million.
>
> Due to specialized outreach programs, the SBA has provided great help to various segments of the small business community. Nationwide, businesses owned and controlled by women received loan guarantees totalling $143 million in FY 1983 alone. Veterans received $205 million in surety bond guarantees that same year. This program of guarantees has helped small contractors receive $12.9 billion in contracts since the program inception in 1971 and helps reduce bids on government contracts through increased competition. FY 1983 also saw the granting of 168 handicapped assistance loans for $16.5 million. As an example of other than financial assistance, the New York region's Office of the Service Corps of Retired Executives provides counseling and management assistance to approximately 200 visitors a week.
>
> It is impossible to calculate either the enormous benefits conferred upon small businesses by these loans and similar ones made nationwide, or the resultant stimulus to our county's economy. It is well known however, that small businesses such as minority contractors, who I might add, receive help in obtaining necessary surety bonds through SBA guarantees, often provide a major source of employment and related job training to the semi-skilled and unskilled workers of our economy, who make up too distressingly large a share of our unemployed. Since most financial assistance programs of the SBA are not simply handouts, but require full repayment, there is little if any cost to the government particularly when new taxes paid by new businesses and their employees are factored in.
>
> Therefore, I strongly urge adoption of H.R. 1281 which would maintain the SBA's present funding and level of operations. Since the small business community generates an estimated 38% of our gross national product, it is hard to ****1203 *719** imagine that expenditures aimed at insuring the vitality of this sector could be more wisely used.

Walter E. Galanty, Jr., Chairman of the Small Business Legislative Council (SBLC), representing over 4 million small business owners, manufacturers, retailers, service firms and agriculture, in 89 associations testified on the recently-held Issues Conference to develop the SBLC 1985 agenda. That conference adopted a strong policy position in support of SBA.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

He testified that the current proposal to reduce the responsibilities of the Small Business Administration is absolutely inconsistent with the fundamental economic goals of the Reagan Administration; SBA programs have played a pivotal role in leveraging new job opportunities which have generated billions of dollars in revenue for the Treasury.

Mr. Galanty emphasized that Director Stockman, in his testimony before the Senator Committee on Small Business, stated the issue was not the federal deficit, but admitted that even if there were a surplus, he would be advocating elimination of the agency's programs. Mr. Galanty while pleased by the Administration's recent decision to retain an independent agency, objected because this proposal still included termination of all financial/credit programs and the sale of the SBA loan portfolio was likely to yield, over a period of time, pennies on the dollar. He stated:

> While defaults of SBA loans have always been a controversial issue, the agency's track record in collecting has improved dramatically and allowing the process to run its course will certainly yield more revenue, even when discounted to current values, than OMB's projected return. We find it very difficult to understand why OMB would make such an effort to obtain a modest amount of revenue. We *cannot* support the wholesale dismantling of the Small Business Administration. In the case of the SBA, the whole is greater than the sum of the parts. A review of all the SBA programs is justified and we would gladly cooperate in any effort to do so. We do not believe, however, that the urgent need to control the deficit lends itself to that process.

Small Business Legislative Council policy position paper on the Small Business Administration

The Small Business Administration (SBA) was formed under a broad general mandate to protect and promote the interests of small business in the American economy. For more than 30 years, SBA has stood as the sole government advocate for the small business community.

RESOLUTION

SBLC strongly opposes the Administration's proposal to eliminate the Small Business Administration. SBLC believes it would be a tragic mistake to kill the single agency which represents the interests of small business in the Federal government. Because small business creates the vast majority of new jobs and product innovations ****1204 *720** in the U.S. economy, pays substantial taxes to the Treasury and produces almost one-half of the nation's gross national product, it is absolutely essential that the SBA continue to represent the small business community in the executive branch of government.

SBLC supports the basic mission and the continuation of the Small Business Administration. The SBA *must* maintain its status as an autonomous agency whose sole mission should be to advocate for and assist the small business community, with the private sector having a stronger partnership role.

To ensure that SBA's mission remains focused on areas of greatest need.

1. The independent role of the Office of Advocacy must be maintained and strengthened.

2. Congress should mandate a comprehensive review of all SBA programs to assess their efficiency and their appropriateness to the broad needs of the small business community. That review should be conducted under the direction of the private sector, with the leadership of the small business constituency.

3. In the delivery of lending and management assistance services, SBA should be directed to increase its reliance on the local resources in the private business sector which have expertise in its program areas. SBA lending programs remain a vital resource for small business, and they must be maintained.

4. To increase small business' role in policy-making, the SBA administrator should be a member of all Cabinet Councils affecting commerce, trade and the economy.

5. The SBA, whether through program divisions, local resources or the Office of Advocacy must expand its efforts to

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

disseminate vital information (particularly on government regulatory efforts) to small business and provide not only management, but also technical assistance necessary for understanding and complying with such requirements.

Herbert Liebenson, President of the National Small Business Association (NSB) a multi-industry trade association, representing approximately 50,000 small business firms nationwide, and Executive Director of the Small Business Legislative Council, testified as to his concern with what might happen to the economic future of our country and the future of small business if there were no Small Business Administration.

He explained that over the past 10–15 years, there has been a growing concentration of industrial capacity in fewer corporate hands. In 1984, mergers reached a total of 2,543—the highest annual count since 1974. Unless we have a small business data base that can give us information on business in the economy, measurements of competition and information in order to become involved with decision-making with other government agencies, small business will continue to fade in having influence on national policy—this can only be obtained through the SBA.

He stated:

> We have just gone through a rather severe recession, resulting in the largest number of bankruptcies since the Great Depression. Unless capital becomes available to the ****1205 *721** small business community which, in great part, makes up our middle class, our economy and society, as we know it today, is threatened. NSB's experience of twenty-five years is that the single most important factor for the future of small business in America is the availability of capital.
>
> The Small Business Administration is the only government agency that can monitor and determine how concentration in certain industries affects the small business community. SBA is able to make specific recommendations on how to maintain a balanced economy and advise other agencies of government on small business issues.

He emphasized that studies on how and where small business obtain credit, the impact of proposed tax laws, procurement policy, and how proposed regulations affect firms, by size of firm, need to be done.

NSB's policy position paper on the Small Business Administration

ISSUE NO. 36

The Small Business Administration was formed under a broad general mandate to protect and promote the interests of small business in the American economy. For more than 30 years, SBA has stood as the sole advocate for the small business community.

SBA's programs have become increasingly diverse, and conducted to serve constituencies beyond the small business community. Spokesmen within Congress and the Administration have raised the issue of the need either to reorganize or outright dismantle the agency.

PROPOSED ACTION

The Small Business Administration *must* maintain its status as an autonomous agency whose mission is to promote advocacy for and assistance to the small business community.

To ensure that SBA's mission remains focused on areas of greatest need:

1. The Congress should mandate a comprehensive review of all SBA programs to assess their efficiency and their appropriateness to the broad needs of the small business community. That review should be conducted under the direction of the private sector, with the leadership of the small business constituency.

2. In the delivery of services, SBA should be directed to increase its reliance on local resources in the private business sector

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

which have expertise in its program areas.

3. To increase small business' role in policy-making, the SBA Administrator would be a member of all Cabinet Council's affecting commerce, trade and the economy.

Lewis A. Shattuck testified as Secretary-Treasurer of Small Business United and as Executive Vice President of the Smaller Business Association of New England (SBANE).

Small Business United consists of regional, state and local associations located throughtout the United States. Members of the associations are entrepreneurs, small business owners/managers who believe in an organization that provides the executives of small ****1206 *722** businesses with an opportunity to participate in the legislative process.

Mr. Shattuck stated:

> I have had the opportunity to observe the operations of the SBA firsthand and have witnessed three previous attempts to abolish the Small Business Administration. I find it ironic that an agency so modest in size, with such an important mission, should be put on the defensive when it has responded through the years to the will of the Congress and the needs of its constituency.
>
> The Congress created the SBA in 1953 because it saw a need to promote and protect small business as insurance that there be a competitive free enterprise system. I see nothing in 1985 to diminish this vital concern. A strong case can be made stating that the SBA is threatened today only because it has done its job too well!
>
> The fact that our economic system *is* competitive, that the number of new businesses *is* growing at a record rate and that there *is* more access to capital, all have been cited as reasons the agency is no longer necessary. I believe the reason we are in an entrepreneurial boom in this country, with enormous job generation, is due in no small measure to the success the agency has had in fostering the creation of small enterprises which have made our economic system the envy of the world.
>
> During 1984, nearly 700,000 small businesses were formed. This country is in an entrepreneurial explosion unmatched by any other country on earth. In the last decade, while Western Europe lost 2 million jobs the U.S. created 20 million. The total number of jobs in this country has risen 50% since 1965, form 71 to 105 million today. Through the years, the SBA has meant the difference between success and failure for thousands and thousands of small businesses.

Jeffrey H. Joseph, Vice-President, Domestic Policy, Chamber of Commerce of the United States, made three points in his testimony: (1) the U.S. Chamber supports a strong, independent Small Business Administration agency representing small business interests in national policy formulation and providing and promoting services for small businesses; (2) the U.S. Chamber is prepared to accept cuts in SBA funding as part of a comprehensive federal budget package to slow the growth in federal spending and reduce the federal deficit without counterproductive tax increases; and (3) the SBA must be refocused and restructured to provide more effective representation of and services to small business in financing, management assistance, procurement, advocacy, and leveraging of state government and private sector resources for small businesses.

John W. McClure, Executive Vice President of Mercantile Trust Company, N.A., St. Louis, and Chairman of the American Bankers Association's Small Business Credit Committee, presented ABA's views on the Small Business Administration. The combined assets of ABA members comprise approximately 95 percent of the industry total. The ABA executive expressed concern that mounting ****1207 *723** deficits and seemingly uncontrollable federal outlays have led to uncertainty about our economic future. This uncertainty takes a heavy toll on the performance of all sectors of the economy, but its impact falls especially hard on those sectors dependent on a stable flow of reasonably priced long-term credit.

He testified that the banking industry has been a major participant in ABA's loan guarantee program authorized by section (7)(a) of the Small Business Act. As of September 30, 1984, 9,923 commerical banks (almost 70 percent of the industry total) had at least one guaranteed loan outstanding. Of that total, 1,627 had 10 to 24 loans and 635 banks had 25 or more loans.

He stated:

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

We believe the Administration's proposed elimination of the 7(a) Loan Guarantee Program would have an adverse effect on the ability of our members to provide financial assistance in their communities. In addition to increasing the liquidity and credit strength of our members, the 7(a) Loan Guarantee Program is helpful in promoting economic development, particularly for many smaller community banks. The majority of our members are smaller, independent, community-type organizations that have regulatory constraints on the amount of funds they can lend to any one customer. However, the guaranteed portion of a 7(a) loan is not included in the legal lending limit formula. To illustrate, a bank with a $500,000 legal lending limit could extend up to $1,000,000 of credit to an eligible small business borrower by using the 7(a) Loan Guarantee Program. Furthermore, a bank originating SBA guaranteed loans may sell the guaranteed portion of such loans in an active and recognized secondary market to preserve the funds for additional loans in the community. The small businesses that would be affected by the Administration's proposed elimination of the 7(a) Loan Guarantee Program could lose their only source of financing or find themselves unable to develop a viable long-term financing package.

Moreover, recent information indicates that the 7(a) Loan Guarantee Program has little or no impact on the credit market or the ability of other small businesses to get loans. For example, based upon data received from a representative nationwide sample of over 500,000 NFIB member-firms in April 1984, commercial banks were the major source of the most recent loan for small businesses ranging in size from less than $50,000 to $3,000,000 or more in gross sales, and the major source of the most recent loan in every category relating to a firm's years in business.

Given the importance of the 7(a) Loan Guarantee Program in long-term financing, the ABA believes that the Administration's proposed elimination of the program would impose hardships on many small businesses and the communities in which they are located.

John P. Kelly, Jr., testified as Executive Vice President of the National Bankers Association (NBA). The National Bankers Association ****1208 *724** represents the interest of the Nations 104 minority banks, located in nearly 30 states and over 60 cities and includes banks owned by American Indians, Aleuts, Asians, Blacks, Hispanics, and Women.

The National Bankers Association testified in favor of H.R. 1281 and opposed any substantial restructuring or the outright elimination of the Small Business Administration. NBA stated its opposition in four points:

1. On balance the SBA has made a positive contribution to the Nation's economy and to the millions of Americans who share the dream and reality of the American free enterprise system. The SBA is the only source of equity and working capital that the government makes available to the small business and individual who pays taxes.

The Administration's proposal to abolish SBA would achieve a short term, nominal reduction in the Nation's deficit. However this action will not help to rectify the long term causes of this or future deficits. In fact elimination of the SBA will contribute to future deficits.

3. The elimination of the SBA's business loan and investment fund would discriminate against small businesses and individuals desiring to go into business.

4. As a natural consequence of the three reasons just cited, it would follow that the elimination or restructuring of the SBA, without providing for the replacement of its Business Loan Investment Fund (BLIF) programs, would be contrary to the Federal Government's constitutional duty to promote all industry and commerce.

Brooks H. Browne, Vice President of Allied Lending Corporation in Washington, D.C., testified on behalf of the National Association of Government Guaranteed Lenders. NAGGL is an organization of lenders, brokers, and investors that actively participate in the loan guarantee program of the SBA. NAGGL represents both large and small lenders who collectively are responsible for a large part of SBA guaranteed lending activity done nationally. The Association recognizes that there are major benefits to helping small business—one is employment and another is creation of additional tax revenues. It is estimated that each dollar of SBA financing generates $7 of revenue to local and federal government. And for every one billion of SBA guaranteed loans, approximately 100,000 jobs are created or retained.

In summary, he stated:

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

I hope you will agree that the facts, as documented by GAO and others, do not support Administration contention that such a loan guarantee program is unnecessary. The figures I have shared with you show just the opposite—that this loan guarantee program is a vital source of long term capital for this country's small business community. It is a program which generates revenues in excess of its costs to the government and is an excellent partnership between the public and private sectors.

On behalf of lenders active in the loan guarantee program of the SBA throughout the country, the National Association ****1209 *725** of Government Guaranteed Lenders adamantly supports the retention of the SBA loan guarantee program as outlined in your proposed legislation, H.R. 1281, with no reduction in guarantee levels below the current 90%.

Two witnesses presented testimony on the impact of the administration's proposal on the minority small business community.

Jose Antonio Font, President of the Ibero-American Chamber of Commerce in Washington, D.C., supported the continuation of SBA as an independent agency both on a philosophical basis, and on the agency's benefits to the Hispanic community. The Committee heard of SBA's needed loan, venture capital, procurement and management assistance program's contribution to the Hispanic businesses.

Benjamin C. Maynigo, Executive Director of the Asian Pacific American Chamber of Commerce (APACC) testified that keeping SBA and its financing and management assistance programs is 'fulfilling America's promises' to the Asian minority business community.

APACC's experience in international trade provided the Committee with some interesting data on what our competitors are doing on behalf of their small concerns:

In 1984, the U.S. had trade deficit amounting to $123.3 billion. Of this deficit, $36.8 billion was with Japan; $20.4 billion was with Canada; $11.1 billion was with Taiwan; $8.7 billion was with West Germany; and $4 billion was with South Korea. This means that $81 billion or about $^2/_3$ of the entire trade deficit has been caused by only five countries. After studying the economic policies of these five countries, we found that they have one thing in common. That is, a tremendously high percentage of government financing for small businesses.

In Japan, in 1982, 43% of all government financing to further policy implementing objectives was used to finance small businesses. This amounted to $22.5 billion. In fact, to emphasize the importance of small businesses, a separate financial institution named Small Business Financing Corporation (SBFC) was even established by the government. Loans from this institution have been used to promote particular industries.

In Canada, they have three important programs that provide financial assistance to business firms. The industrial and regional development program (IRDP), the federal business development program (FBDP), and the small business loan program (SBLP). The projects involved in the IRDP are innovation, modernization/expansion, marketing assistance, establishment of new businesses, restructuring of existing businesses and industrial development. Most of the funds go to small and medium-sized companies. In 1983, IRDP had a budget of $350 million.

The federal business development program (FBDP), is a Crown Corporation that supplies both the capital and technical assistance to firms. From its inception in 1944 until 1961, loans were made only to small and medium-sized ****1210 *726** manufacturing businesses. Individual loans currently average about $200,000 but can go as much as $10 million. Total direct loans and guaranteed loans were almost $900 million in 1981.

The Small Business Loan Program (SBLP) guarantees loans up to $100,000 and provides management assistance. Eligible applicants must have annual sales less than $1.5 million.

In West Germany, about 70% of domestic loans disbursed through the KFW, the West German Government investment bank, go to small and medium-sized businesses. Furthermore, in 1982, 68.9 percent of the European recovery program loans went to small and medium-sized businesses.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The West Germany Government has also begun several programs to give financial support to small and innovative firms.

In Taiwan, more than 50% of its industrial output is produced by small and medium-sized businesses. The small and medium business credit-guarantee fund was founded in 1974 to provide credit guarantees to financial institutions that lend to such firms. As of July 1983, 30,000 firms had received guarantees. The Eximbank of China also offers preshipment and short-term export credits for purchases from small and medium-sized machinery producers in Taiwan.

In Korea, the government has several specialized financial institutions that support small businesses. One is the Small and Medium Industry Bank, which concentrates on smaller sized companies, the other is the Citizens National Bank which provides short-term credit to individuals and small companies. The Korea credit-guarantee fund (KCGF) was established to provide credit guarantees for certain businesses unable to obtain financing from the financial institutions. The fund also provides management and technical assistance. At least 40% of KCGF guarantees must go to small and medium-sized business.

Mr. Chairman, and members of the committee, as you can see from the facts presented, our more successful trading partners have given priority to small businesses through government financial support. They recognize that the small businesses provide the jobs and the economic stability needed to stay competitive in international trade.

There is no reason why we have to be different. There is no reason why we have to weaken ourselves. There is no valid reason to abolish SBA.

Thomas Fairfield, the President of the Fairfield Company of Minneapolis, Minnesota, and the President of the American Surety Association testified in support of the Small Business Administration and the SBA's Surety Bond Guarantee (SBG) program.

****1211 *727** He states:

We believe that the administration is making a grave error in eliminating the SBA and more particularly in proposing the elimination of the SBG program. As taxpayers we are sensitive to the burgeoning cost of government and the potential for increased taxes. However, we feel just as strongly that the SBG program is absolutely necessary to the survival of thousands of small construction companies across the United States. Further, instead of being a burden to the taxpayer, the SBG program saves the government millions of dollars each year.

The argument made for eliminating many of the SBA programs by the Office of Management and Budget is that the small businessman involved would be better served by the private sector. In the case of the SBG program, it is run by the private sector and supervised by the SBA. Both the private sector and the government share the risk in order to provide small and minority contractors with bonds which are not available to them in the standard surety market. Bonding, of course, is required by the Miller Act for all contractors working on government contracts. Thus, elimination of the only bonding source available to contractors without an impressive track record will have the immediate effect of eliminating thousands of contracting firms, and jobs, from the construction market.

His testimony set out data to prove conclusively that the SBG program makes a positive financial contribution to the government. These data are set out in full *infra*.

Surety Bond Guarantee Program—Statement of income and paid claims to date

PUBLIC SECTOR BENEFITS (ALL LEVELS OF GOVERNMENT)

A special analysis was made in 1977, of all bonded non-negotiated contracts guaranteed by SBA to ascertain and project the difference between the contract award prices and the bids of the second lowest bidders on public-financed contracts. The bid differential, called the 'bid spread,' would represent cost savings to the governmental units (contracting parties) generated by the operation of the SBG Program.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Another study, of 1000 contracts was completed in January 1985.

This special 1977 study showed that 38.7 percent (72% in 1985 study) of all SBG contracts were publicly financed contracts awarded through the bid process. For these, the average bid spread was 9.25 percent (meaning that the second lowest bidder's price averaged 9.25% higher than the winning low bid.) In the 1985 study, the spread had risen to 11.7% in the 8 years intervening.

This differential represents the minimum amount of additional expenditures that the various governments would have incurred had the SBG Program not been in operation. (Without the surety bond guarantees the small business contractors could not have complied with Government bonding requirements, and these public contracts would have been awarded at a higher cost to the lowest non-SBG bidder who could have obtained the required bonding.)

****1212 *728** The bulk of contracts awarded are publicly financed. Bid spreads can only be computed on non-negotiated (open bid) public contracts. Obviously there were additional savings (cost-avoidance) among negotiated contracts, but we would have no way of estimating the amount of such savings, or cost avoidance.

With application of the above percentages and rationale to SBG statistics, it becomes clear that a net overall financial benefit to the public sector has been realized. Accordingly, when the financial operations of the SBG Program are viewed as part of the larger picture of total government financial operations it can be concluded that the program has been economically self-sustaining.

The above does not include any benefits arising from the extra employment generated by contracts under the SBG Program, nor the taxes paid by such contractors and their employees—most of which taxes would not have existed, except for the availability of the work made possible by the SBG Program.

Surety Bond Guarantee Program—statement of income and piad claims to date[1]

Income:

Application fees	$2,100,670
Contractor fees	33,527,120
Surety premiums/fees	32,416,679
Total income	68,044,469

Expenses:

Administrative (SBA overhead)	3,832,491
Interest to Treasury	5,791,248
Total expenses	9,623,739

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Income before losses	58,420,730
Losses incurred from SBG claims:	
Claims incurred	300,317,011
Less: Recoveries, Refunds, etc	38,058,295
Net claims incurred	262,258,716
Net claims (loss/paid claims to date)	203,837,986

FN1 Inception—January 1971 through March 31, 1985.

Surety bond guaranty activity	**Current month**	**Cumulative**
Applications for guarantee received	614	338,285
Applications approved	594	318,273
Actual contracts awarded (low bid, etc.)	568	167,963
Contract totals (actually obtained)	60,431,775	13,102,431,971
Average contract size	106,394	78,008
Minority contractors assisted (number of contracts)	127	26,918
Minority contract totals (actually obtained)	14,407,259	2,034,720,799
Defaults recorded	65	11,183

Net profit/savings to government (Federal, State, local) January

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

1971 thru Mar. 31, 1985:

Public sector savings due to SBG Program awards (see Analysis)	$725,075,573
Net loss (paid claims and expenses to date less income)	-203,837,986
Net profit/savings to government to date	521,237,587

Analysis of public sector savings to SBG Program awards

The estimate of public sector savings from program inception in 1971 through March 31, 1985 was calculated as follows:

Total awards through the SBG Program inception thru March 31, 1985	$13,102,433,971
Less: Total awards, SBG Program, inception thru Feb. 28, 1985.	-13,041,249,558
Total awards, SBG Program, for month of March 1985	61,184,413
Percentage of awards from public sector	×.72
Amount of awards from public sector, month of March 1985	44,052,777
Awards from public sector thru February 1985	+6,319,424,158
Total awards from public sector thru March 1985	6,363,476,935
Amount of awards from public sector, month of March 1985	44,052,777
Bid Spread Factor (bid spread—11.7 percent)	×1.117
Projected public sector awards for month of March 1985—if no SBG Program	49,206,951
Projected public sector awards, inception thru February 1985—if no SBG Program	+7,039,345,557

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Projected public sector awards inception thru March 1985—if no SBG Program	7,088,552,508
Less: Total awards from public sector thru March 1985	-6,363,476,935
Public sector savings due to SBG Program awards	725,075,573

****1213 *729** Dr. John. F. Magnotti, Jr., Executive Vice President of the American Surety Association, supplemented the remarks of Mr. Fairfield.

He emphasized that the Surety Bond Guarantee is a procurement issue and was nothing to do with the loan guarantee programs, but that because the program name ends in 'guarantee,' it has been lumped together with the loan guarantee programs.

He stated:

> The fact is that many programs targeted for retention in the original budget proposed by the administration cannot be fulfilled without surety bonding. Primary examples are the current set-aside by the Department of Transportation for 10 percent of the dollars under the Surface Transportation Act for minority firms, as well as the regular set-aside programs in the construction area. We have maintained time and time again that the standard bonding market is reluctant to bond new small and minority construction firms to any effective degree. The only recourse for firms like these is the Small Business Administration's Surety Bond Guarantee Program. Without it, construction programs simply are not operable—given the requirement of the MIller Act for bonding on government construction contracts over $25,000. Mr. Stockman favors transfer of ****1214 *730** 'procurement' programs and their 'retention' in either the Small Business Administration or the Department of Commerce. It is obvious that he has not considered all of the aspects of the proposal since many of the procurement actions involve construction; and, again, construction is impossible without bonding. This approach is disingenuous at best and, at worst, will effectively eliminate participation by small and minority firms in the federal construction market.

The Honorable John V. Evans, Governor of the State of Idaho, presented testimony in support of retaining the Small Business Administration as an independent agency of the Federal Government. Governor Evans presented a detailed analysis of the part SBA plays in Idaho's economy and the American enterprise system:

> Idaho is a State of small businesses: 99.8 percent of our businesses employ under 500 employees; and 92 percent of our businesses are small, locally-owned firms with fewer than 20 employees. Eighth percent of the jobs in Idaho are in the small business sector. As you can well understand, the economic health of our State is directly related to the ability of these firms to grow and expand.
>
> The Small Business Administration In Idaho has been a great help in assisting these companies to grow. Last year, the agency supported the creation or continuation of 1,600 jobs.
>
> Our major national economic development challenge is to recreate an efficient, productive, and technologically-competitive American enterprise system within the world economy. To meet this challenge, massive new private sector investment into plants and equipment must be stimulated.
>
> There are many who believe that the ability to meet this challenge rests within the giant, multi-national Fortune 500 firms. However, small and medium-sized businesses must play the leading role. Over 80 percent of all new jobs are created by firms employing less than 100 people. The cost of creating a job in small business is 10 percent of the cost of creating a job in a Fortune 500 company.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The major problem for the small to medium-sized company wanting to expand is finding affordable long-term financing. There presently exists a 'financing gap' of these small to medium-sized companies. Financing in the $50,000 to $1,000,000, range is difficult to obtain. The private institutions, because of their sources of money, tend not to loan money for terms over five to seven years. This short period results in a debt service that most smaller companies cannot maintain. Therefore, they forego expansion plans. It is in meeting this need for capital that the Small Business Administration has been such a great help in Idaho.

Our small businesses have relied particularly on the SBA 7A and SBA 503 programs to help them obtain working capital and long-term financing.

****1215 *731** One banker recently stated in a public meeting that the SBA 7A program alone allowed his company to make $25 million more in operating loans in the time of high demand; the 90 percent guarantee feature in the 7A loans allows the lender to quickly sell these loans to the secondary markets and, thus, make more money available for lending in Idaho. Without the 7A and 503 programs from SBA, significant numbers of Idaho small businesses would not be able to expand or would have to delay expansion.

The current administration's plan to eliminate the Small Business Administration would have severe repercussions in Idaho. Idaho is a capital-poor State and we need financing programs that assist healthy small businesses to expand.

Since the inception of the Small Business Administration, Idaho has received $58.3 million through the SBA's direct loan program, $292 million in guarantee loans, $125.7 million in disaster loans, and $22.2 million in surety bonds, for a total of $498.2 million. These funds have been extremely beneficial to Idaho's small businesses.

The important issue I want to stress is that these funds are available from no other source. If the Small Business Administration is not in place, these investments will not occur and these businesses will have to delay or abandon their plans to expand and create more jobs for Idahoans. The tax income that is generated from an expanding business that is creating new jobs certainly pays back any costs incurred by the SBA in Idaho.

In conclusion, Idaho cannot afford the loss of approximately $30 million a year in finance programs, 1,600 jobs, and the essential technical assistance that the Small Business Administration provides. The businesses that borrow the funds pay taxes and help to increase the economic health of Idaho. The economy of Idaho and the Nation needs these programs. I believe the taxpayers of the Nation and Idaho are being served very well by the Small Business Administration.

John Ciccarelli, the State Director of the Massachusetts Small Business Development Center and also Vice President of the Association of Small Business Development Centers (ASBDC) presented testimony on the widespread impact of the 37 Small Business Development Centers (SBDCs) located in 36 states which provide a counseling and training network for small business in conjunction with SBA field offices and management assistance programs. In fiscal year 1984, when ten new SBDCs came on stream, in excess of 50,000 small businesses received SBDC counseling and 102,000 received training. Since the program's inception in 1979, 154,000 small businesses have received SBDC counseling and 365,000 have received SBDC training.

Numerous studies have shown that small businesses are particularly vulnerable in the first five years of life and that failure comes most often from a lack of capital and an absence of sound management and planning practices. The SBDC program provides free ****1216 *732** management assistance and low-cost educational seminars for the small business owner in an effort to mitigate some of the circumstances that threaten small business' survival. Established by Congress under Public Law 96–302 and strengthened in 1984 by Public Law 98–395, the SBDC program is a partnership of federal, state and local government, the education community and the private sector. Private sector support is on the increase.

Mr. Ciccarelli testified:

University-based SBDCs should play a major part in the new national program in recognition of their unique and vast resources-schools of law, business and engineering; libraries; access to sophisticated computer systems; and, state of the art research capabilities. He testified that with the support of the ASBDC, SBA has been exploring various means of greater

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

utilization of the university system, the private sector, and other economic and business development offices to deliver SBDC assistance. For example, in Massachusetts, SBDC outreach centers have been established in 14 local chambers of commerce, 4 community development corporations and 1 bank. In Pennsylvania, SBDC outreach centers have been established in 20 local chambers of commerce, in Connecticut all SBDC counseling is delivered through 7 regional chambers of commerce; in Illinois, the SBDC program is coordinated through the State Department of Commerce and Community Affairs; and in Florida, SBDC counsel is provided through 33 local chambers of commerce.

At the university level SBDCs are developing a strong emphasis on technology transfer. More schools of engineering and law, departments of computer science, and other specialized areas of expertise are being integrated into the SBDC system. As an example, the new small business development center in Kansas will provide high technology assistance to small businesses through four engineering centers.

In addition, many small business development centers are moving ahead as full participants in SBA's new Small Business Innovation Research Program. The SBDC located at St. Louis University, through its consortium schools of the University of Missouri, is heavily involved in training and management assistance in this important program for small business innovation and research.

The small business development centers are also linked to community economic development. This activity can take many forms but most importantly it is the ability to bring sound business services to areas in greatest need. For example, in Massachusetts the Athol-Orange area of the Commonwealth, located about 30 miles north of Amherst is one of six areas which has not experienced the tremendous economic growth as other areas of the Commonwealth. A little over two years ago the unemployment rate was 18 percent more than double the state average and a very desperate situation existed. Today the unemployment ****1217 *733** rate has dropped to 8.5 percent and a new vitality has struck the area. The SBDC has played a vital role in working with local officials to provide counseling and training to businesses in the area, helping to mobilize bank and private sector support and insuring that programs such as the SBA's lending program, IDB, and other federal and state programs were utilized to the fullest. Examples such as this are evident throughout the national SBDC program and illustrates the flexibility of the SBDC program. Whether its high tech or rural economic development the SBDC program can address the needs quickly and efficiently.

The impact of the SBDC program has been tremendous. In 1983, the University of Georgia conducted a study of the impact of SBDC counseling on client businesses of nine mature SBDCs. The findings of this research are truly amazing.

One year after counseling, SBDC clients performed better than the general business population in terms of sales, profits and employment. Sales increased 25 percent, profits by 83 percent and employment by 23 percent above the rate of all businesses in those states.

Most importantly, the study found that state and federal direct taxes generated by this increase in performance far exceeded the investment in the program. For every one dollar in federal funds spent on the SBDC program, $9.40 was returned to the federal government in new taxes. For every one dollar in state money supporting the SBDC programs, $10.90 was returned in new state taxes.

A micro view of an SBDC's benefits to the community may be helpful. Two pertinent examples are Massachusetts and Pennsylvania.

The Massachusetts SBDC was created in 1980 and began servicing clients in 1981. The results of three impact surveys of clients receiving five hours or more of counseling and for which we had economic data indicate the following: 75 percent increased sales amounting to $100,073,480; 58 percent increased profits amounting to $20,000,622; 38 percent increased employment amount to 3,151 new jobs.

This activity has resulted in the generation of over $15 million in new state and federal taxes. When compared to the amount spent on the Massachusetts SBDC for counseling and administration during this period, for every dollar spent on the Massachusetts SBDC program $10 of new state and federal taxes were generated.

In Pennsylvania, according to a survey of SBDC clients, from October 1979 to December 1982, SBDC assisted clients

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

created over 8,000 new jobs. The use of a Chase econometric model estimates an additional 5,700 spin off jobs were created. These jobs translate into over $44 million in increased tax revenues enabling a return of $26.50 to the taxpayer for every $1 in federal funds spent on the SBDC.

Additionally, 46 percent of the survey respondents experienced a profit increase after counseling by a center and ****1218 *734** 44 percent saw an increase in sales. Further, 82 percent of the respondents stated that they would recommend the SBDC's services to other businesses.

In Wisconsin, the support for the program is even greater as 98 percent of the Wisconsin SBDC clients support the program, plan to use SBDC services again and would recommend SBDC services to others.

Although the SBDC program is still young, these statistics demonstrate that nationally the SBDCs have had significant positive value to both small businesses and the communities in which they reside. Recently, critics of the SBDC program have referred to a survey which concludes that small business owners will not go to 'college and university business administration teachers' for advice in business management. This is probably a true statement but irrelevant to any review of the SBDC program. The fact that 150,000 small businesses sought help from SBDCs in fiscal year 1984 and over 500,000 since its inception belies the argument that they are unwilling to come to the universities.

They are coming in increasing numbers—not to the universities, but to the small business development centers which in some cases are located at universities, but might also be located in a downtown storefront, in a chamber of commerce, or even the office of a local bank.

Once a small business person requests assistance from an SBDC, who is providing the consulting and training services? The SBDC state directors and the SBDC consulting staffs are comprised of people with substantial years of private sector experience and strong educational backgrounds in management, financing, accounting, and other business disciplines. In addition, the SBDC uses many private sector resources to deliver both counseling and training to small businesses. The following table indicates the qualifications of SBDC state directors, their years of private sector experience, and the use of private sector resources to deliver SBDC counseling and training.

SBDC	Directors education graduate degree		Directors years of private nonacademic sector experience	percent of SBDC counseling delivered thru private source (cost reimbusement basis)	Percent of SBDC training delivered thru private source (cost reimbursement basis)
	Yes	No			
Alabama	X		5 (management)	10% (30%)	50% (0)
Arkansas	X		3 (CPA)	0	50% (10%)
Connecticut		X	35 (management)	10% (5%)	90% (10%)
Florida	X		2 (manufacturing)	15% (1%)	65% (5%)
Georgia	X		4 (management)	30% (10%)	65% (50%)
Illinois		X	9 (management)	42% (20%)	40% (15%)

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Iowa	X		2 (management)	53%	53% (80%)
Kansas	X		7 (management)	50% (95%)	70% (85%)
Kentucky	X		21 (management)	10% (10%)	80% (10%)
Louisiana	X		28 (management)	25% (2%)	15% (0)
Maine	X		15 (management)	10% (100%)	25% (100%)
Massachusetts	X		9 (management)	10% (9%)	64% (58%)
Mississippi	X		12(management/industrial development).	10% (100%)	25% (80%)
Missouri	X		20 (management/business owner).	20% (5%)	65% (15%)
Nebraska	X		3 (technical/jouralist)	30% (90%)	25% (80%)
New Jersey	X		4 (technical)	20% (20%)	10% (80%)
New Hampshire	X		3 (management)	10% (5%)	50% (50%)
New York	X		5 (management)	10% (2%)	20% (8%)
Oregon	X		5 (management)	40% (10%)	90% (50%)
Pennsylvania	X		5 (management)	5% (0)	76% (0)
Rhode Island		X	7 (technical)	70% (90%)	40% (50%)
South Carolina		X	20 (management)	7% (65%)	48% (97%)
Tennessee	X		16 (management)	13% (10%)	90% (2%)
Texas (Houston)	X		15 (management)	30% (10%)	60% (50%)
Utah	X		10 (management	15% (13%)	30% (25%)
West Virginia	X		20 (management)	10% (0)	40% (0)
Wisconsin	X		12 (management)	30% (25%)	50% (48%)

****1219 *735** The table therefore presents a telling view of SBDCs. Their staffs are generally very well educated and have anywhere from two to thirty-five years of private sector work experience. SBDC clients are getting service from a high quality resource at a cost they can afford.

Additionally, SBDCs rely to a great extent on the private sector. As the table shows, as much as 70 percent of an SBDC's

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

counseling and 90 percent of an SBDC's training may be delivered through the private sector. This negates the oft-stated criticism that SBDCs compete with the private sector. In fact, only through the leveraging of resources provided by the SBDCs can a private consultant afford to work with the small business clients in that segment of the market addressed by SBDCs. These businesses are small with very limited resources. As they grow and expand their financial bases, these companies will seek out further assistance from private sector consultants on a fee-for-service basis.

> SBDCs are an effective public, private partnership serving to both coordinate and deliver management assistance to small business. By using the federal funding as a base, the SBDCs have become catalysts in their respective states for developing and improving small business management assistance activities. The SBDCs have leveraged the federal money with state, university, and private sector resources to reach a sector of the small business community that would not otherwise receive any assistance.

Allan G. Bense, Executive Vice President and Director of First National Bank in Panama City, Florida, a community bank with approximately 68 million dollars in assets, one of the top volume SBA lenders in the country, located in a community of approximately 100,000 residents, appeared on behalf of the Independent Bankers Association of America to ask the Committee to continue the Guaranteed lending Programs of the Small Business Administration. The First National Bank is a SBA Certified Lender. Since ****1220 *736** 1977 the community banks in Panama City have originated 352 guaranteed loans for a total dollar amount of 61 million dollars. First National Bank presently has loans on its books and in servicing in excess of 8 million dollars. Mr. Bense testified as follows:

> The primary reason that we have consistently utilized the SBA program is that we saw it as a means of making loans to small businesses that, for one reason or another, could not be made on a direct loan basis. Due to the fact that banks must maintain liquidity, the making of long term small or medium sized commercial loans was, and still is, almost impossible. Other sources of long term financing were also unavailable because Panama City was simply too small to attract lending by Life Insurance companies, and the local Savings & Loan Associations were reluctant to make commercial loans.
>
> The SBA Guaranty Loan Program enabled banks to correct these market failures which existed in Panama City. By having 90% of our loan to a small businessman guaranteed by the SBA, and with a consistent secondary market available to purchase the guranteed portion of this loan, we have now been able to provide long term financing for our small business customers that years ago we were unable to make. We are also able to make term loans where the credit was good but because this was a new business, or the existing business had limited capital, or there was a weakness in collateral, we would have not been able to provide financing.
>
> The SBA Guaranteed Loan Program has served to correct market failures which unfortunately exist in our free enterprise economy. Through the development of the secondary market for the sale of SBA guaranteed loans, small banks now have access to the national credit markets that, without the SBA Guaranteed Loan Program, would not be available. The process, quite simply, brings money from the capital surplus areas, such as New York, and redistributes it to the capital deficit areas, such as Panama City. Thus, for example, I can originate a $100,000 90% SBA Guaranteed loan, sell off the guaranteed portion, or $90,000, and First National Bank gets back $90,000 of that $100,000 loan that we originated. I can take that $90,000 and lend it out to another small business customer who will again employ additional people for that business. If you continue this on, you can easily see that a substantial number of jobs can be created by the proper and effective use of the SBA Guaranty Program.
>
> The vast majority of businesses financed by the SBA Guaranteed loans become successful enterprises. Of the 46 SBA Guaranteed loans that we presently have on our books, only one of our loans is over 30 days past due, and I hope that by the time I get back home, that loan is paid current. Of the $20 million dollars or so in SBA Guaranteed loans that I have personally originated, I can think of taking losses on only two or possibly three of those loans. ****1221 *737** We do not selfishly take advantage of the SBA Guaranty Program and the only reason that we utilize the program is because it helps to strengthen a good potential loan that doesn't quite meet our stringent credit policy.
>
> Contrary to popular belief, we have found that the SBA is probably the most efficient governmental agency that we deal with. Our loan requests are either approved or denied three days from the date they receive a completed application. I find our district SBA Loan Officers to be flexible, knowledgeable and although I don't always agree with their decisions, I respect them for the time and effort that I know they put into our loan requests. The SBA Guaranty Program is the most

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

> efficient government program we deal with that effectively utilizes private sector resources and expertise. It allows capital deficit areas, such as Panama City, access to capital that otherwise is unavailable. It allows us to help the John Johnsons and Robert Wards realize their dreams of independence and success—the fundamentals that built our great country. On behalf of the Independent Bankers Association of America, I urge you to remember that the SBA Guaranty program generates far more revenue for the government than it costs the government. Support small business—keep the Guaranty program in effect.

James Fletcher, Vice Chairman of the American Association of Minority Enterprise Small Business Investment Companies (AAMESBIC), presented testimony on minority small business, need for venture capital financing. Mr. Fletcher is also President of the Neighborhood Fund, Inc., a Chicago-based MESBIC designed to help capitalize neighborhood businesses. The Neighborhood Fund was licensed in 1978 as a subsidiary of the Illinois Neighborhood Development Corporation, a bank holding company. Other subsidiaries of that company include the Neighborhood Institute, a not-for-profit neighborhood development corporation, and South Shore Bank, of which Mr. Fletcher also serves as President. South Shore Bank is known as the Nation's first and only development bank. Mr. Fletcher stated:

> The MESBIC program serves a well-documented public policy objective. MESBICs are mandated to invest 'solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages'. As OMB Director David Stockman himself has admitted, in some cases public interest and social policy gains outweigh the importance of pure market efficiency.
>
> Although the MESBIC program accomplishes important public policy goals, the public/private sector nature of the MESBIC program insures that investments are made on sound business criteria.
>
> The MESBIC industry has opened new business opportunities—and even new market opportunities—to the minority ****1222 *738** small business community. During 1984, over 37% of MESBIC investments were targeted towards firms in the transportation, communications, and utilities. In fact, MESBICs have invested in over 75% of the minority-owned communications and telecommunications properties across the country. The expertise of those investment companies has been responsible for financing the majority of minority cable franchises in the country. While other programs are providing support services through procurement programs, minority vendor activities, and fair share agreements, MESBICs are creating business opportunities, expanding existing businesses, and investing in a company's long term success.
>
> Since 1976, the MESBIC industry has invested over $391 million in 4,772 small business concerns. MESBIC investments since 1977 have helped to create or maintain over 75,000 jobs. More importantly in terms of the budget, MESBIC investments since 1978 have generated federal and state tax revenues of approximately $478 million. When combined with the unemployment wages saved through MESBIC job generation, the total benefit over the seven-year period is approximately $886 million. In looking at the annual cost to the government of administering the MESBIC program, the excess government revenue over costs is well over $150 million.

Mr. Fletcher presented the following to show the benefit of the taxpayers' investment in the MESBIC program.

MESBIC investment statistics, 1984

	Financings
Total number MESBIC financings	$1,087
Estimated revenue of MESBIC Portfolio Co.	$883,731,000
Estimated total employees	14,131

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Estimated Portfolio Co. employee payroll tax:	
Federal taxes	$38,153,700
State and local taxes	12,717,900
Total	50,871,600
Estimated Portfolio Co. Corp. taxes paid:	
Federal	11,046,637
State/local	3,976,789
Total	15,023,426
Estimated payroll taxes collected:	
Employees	15,897,375
Company	15,897,375
Total	31,794,750
Unemployment taxes:	
Federal	572,305
State	4,451,265
Total	5,023,570
Total governmental collections	102,710,000
Unemployment wages saved	82,666,350

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Annual Federal and State tax benefit	185,376,350
Annual Federal revenue benefit	164,230,000
Cost to taxpayer (SBA leverage cost):	
Preferred stock	12,500,000
Debentures	828,000
Total	13,328,000
Excess of Government revenue over cost	150,902,000
Government cost to benefit ratio	12.32
Government return on annual investment (percent)	1,132

****1223** Judith MeGough, Executive Vice President of the Allentown Economic Development Corporation in Allentown, Pennsylvania, and past Region III Director for the National Association of Development Companies, presented the Committee with compelling testimony for retention of the LDC program, one the SBA's several financing assistance programs targeted for 'termination' by the administration.

> Allentown Economic Development Corporation is a private, non-profit development corporation serving businesses within the city limits of Allentown, Pennsylvania. AEDC provides technical assistance and financing services to businesses and developers, utilizing a wide range of public and private resources including SBA 503 and 7(a) programs, UDAG, IDB's, Pennsylvania Industrial Development Authority Bonds, SBIC loans, private venture capital, and locally developed loan programs. AEDC has been successful in attracting more than $100 million of new investment in Allentown and creating over 2,700 employment opportunities. In 1981, the unemployment rate in Allentown was 14.5 percent. Today, unemployment is down to 7.8 percent—we believe as a direct result of the successful economic development efforts in our city.
>
> I would like to outline the benefits of SBA credit programs, particularly the 503 loan program. SBA's credit programs for small business serve a vital public purpose for the country as a whole—they provide long-term, affordable sources of financing to viable small businesses that is not available through other sources. These businesses in turn add needed jobs and tax revenues, locally and on a national level. SBA's credit programs have a significant impact on small businesses that are active in the credit markets. These programs reach 11 percent of the small businesses that enter the credit markets. SBA's 503 program, in particular, uniquely fills the long-term credit gap of growing small businesses by providing fixed-asset, bricks-and-mortar financing at affordable rates for up to 25 years.
>
> The program can make the difference between getting chance to grow and stagnating. For example, a tool and die ****1224 *740** company in Columbus, Ohio, wanted to construct a much larger facility and add equipment in order to take advantage

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

of government contracting oportunities. Total cost of the project was $400,000. The firm's bank offered it five years on 70 percent of the equipment costs, at a floating rate 2 percent over prime. On the real estate, the bank offered 10 years on 70 percent of the cost (ballooning at 7 years), at prime plus 1 ½ percent. The business's first year debt service would have been $57,300. Downpayment would have been $120,000.

The situation changed when the 503 became involved. Since the bank's portion of financing was reduced to 50 percent, it agreed to make one consolidated loan, with a 15-year term, at prime, plus 1 percent. The annual cost to the business was reduced by about $14,000 because of the 503—and its downpayment fell from $120,000 to $40,000. The business could not have afforded the expansion without the 503.

For the most part, the jobs created are unskilled or require little training and experience. These are the jobs that take—and keep—people off the welfare roles, and hold the line on unemployment compensation and other federal programs designed to assist the unemployed. In other words, this federal jobs program works by targeting jobs to the areas and people who need them most.

The SBA 503 program, while participating in almost $2 billion of capital growth in this country, has a loss ratio of only 1.6 percent, which is more than offset by new job opportunities and added tax revenues.

The SBA 503 program is a sound, private/public partnership that leverages limited public funds with local private investment dollars—with a payback to all parties involved. It does not replace the private marketplace—it supplements the private capital market. Most important, it provides impetus to bring needed private capital to qualified small businesses.

Walter B. Stults, President of the National Association of Small Business Investment Companies (NASBIC), the national trade association for the SBIC industry, testified in favor of an independent SBA and in support of H.R. 1281, to assure funding authority for SBA and its financial assistance program which are vital to small business. Mr. Stult's testimony was an extensive discourse on the need for venture capital for small firms.

In ordinary times, this three-year authorization legislation would be critically important to our industry, since it provides the basic authority for SBA to provide loans to fully-invested SBICs and MESBICs. Our efforts have been somewhat hampered over the past several years when no one was certain how many dollars, if any, SBA would have to lend to the industry.

Today, however, the legislation before you is immeasurably more significant, because it stands in stark contrast to the Administration's proposal to kill all of SBA's financial ****1225 *741** assistance programs. NASBIC's Board of Governors has made the preservation of SBA and its effective financial programs our industry's highest legislative priority, so we made this statement in favor of H.R. 1281 with no reservation. It is a positive response to a completely negative proposal.

There is no subsidy in the SBIC program!! When SBICs borrow from the Federal Financing Bank, with an SBA guaranty, they pay more than the cost of money to the Treasury. For the past eighteen months, operating SBICs and those applying for licenses have paid sufficient fees to cover most of the costs of operating the investment arm of SBA. In addition, for the past four months, SBICs have paid a 'user fee' to SBA when they borrow. SBICs will pay the SBA more than $2-million each year in user fees. This source of income alone will offset all the administrative costs of the program, without taking into consideration taxes paid by SBICs themselves, their partners or shareholders, and the increased taxes paid by SBIC portfolio companies and their employees.

The SBIC program has proven to be an exceedingly low-risk undertaking for the Government. In spite of the fact that most SBICs are venture investors and we find that losses are inevitable in our business, the industry's record since 1958 clearly confirms that, on a composite basis, the performance of the entire portfolio of all SBICs overcomes such losses by a substantial margin. I am sure I need not remind you that each SBIC bears 100% of each loss it sustains and SBA loses only only after the entire capital of the SBIC is wiped out. This is the genius of the program—private dollars are at risk.

Mr. Stockman implied in his Senate testimony on the SBA that we do not need SBICs now that a large venture capital industry exists. I reject that conclusion for five reasons.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

(1) SBICs still account for about 15% of the resources of the total venture capital universe and the loss of the more than $2-billion committed to SBICs would be an enormous blow to U.S. small businesses.
(2) Every SBIC and venture capital manager tells me that the entire venture capital industry cannot finance all the qualified investment opportunities it sees—it's not a case of 'too many dollars chasing too few good deals'.
(3) Most SBICs invest in situations which are not feasible for other venture capital firms. By using leverage, SBICs can make an acceptable return on their invested capital by providing funding to entrepreneurs in traditional industries. For that reason, SBICs are able to assist a much wider range of businesses than the firms in other segments of the venture capital industry. The statistics bear this out. In 1984, for example, private venture funds invested some $3.4 billion in only 900 companis—an average investment of about $4.0 million. By comparison, SBICs invested $425 million in 2,755 small companies—an ****1226 *742** average investment of $155,000. Clearly, SBICs are serving a much different market than the private venture funds.
(4) The SBIC industry has a far greater geographical dispersion than the rest of the industry; there are licensees in 46 States. Small business benefits from this broad distribution of SBICs.
(5) The highly cyclical nature of the non-SBIC segment of the venture capital industry could mean that no venture capital dollars would be available if there were no SBICs. Mr. Carlson of Cray Research testified that his company was able to raise money only from an SBIC, because there were almost no active venture capital firms in 1975. Cray was not the only firm facing that situation in the mid-70s; SBICs constituted almost the only game in town during those five or six years. The same situation prevailed from 1963 to 1968 when almost every venture capital dollar invested came from SBICs. I believe we may face that condition again in the coming years, so it would be folly to wipe out the SBIC industry.

I challenge anyone to tell me that SBICs are an 'unAmerican' aberration in our free enterprise economic system!! The private sector and SBA have joined in this unique partnership program; we've put up the capital and the management skills—and the risk of loss—while the Federal Government has provided some important incentives to encourage the expansion of our activities.

Appendage to NASBIC Testimony of April 30, 1985

SBIC PROGRAM: A PUBLIC-PRIVATE PARTNERSHIP THAT WORKS

Since their inception in 1958, SBIC's have provided $5.0 billion in venture capital to approximately 70,000 firms. Many of these small firms have experienced remarkable economic growth, generating new jobs and revenues. In the last ten years, SBA estimates over 250,000 new jobs have been created by small firms receiving SBIC financing.

Examples of small companies that received financing from the SBIC Program:

	At time of SBIC financing				As of last available data				
	As of—	**Sales**	**Profits**	**Employees**	**As of—**	**Sales**	**Profits**	**Taxes**	**Employees**
Apple Computer, Inc	Sept. 30, 1977	$773,977	$41,575	63	Sept 30, 1983	$982,769,000	$76,714,000	$69,408,000	2,050
Federal Express Corp	June 30, 1973	6,769,112	(4,460,896)	518	May 31, 1984	1,436,305,000	115,430,000	(15,964,000)	18,400
Intel Corp	Dec. 31, 1969	565,874	(1,887,808)	218	Dec. 31, 1983	1,121,943,000	116,111,000	62,344,000	19,400
Rolm Corp	July 3, 1979	292,253	(358,586)	32	July 1, 1983	502,643,000	60,952,000	25,409,000	7,049

Cray Research, Inc	Dec. 31, 1972	58,327	(3,137)	12	Dec. 31, 1983	125,008,000	26,071,000	19,991,000	1,551
Pandick, Inc	May, 1965	3,315,665	55,497	655	Aug. 31, 1983	121,086,000	10,038,000	9,653,000	1,300
Lifetime Systems, Inc	Dec. 31, 1979	707,000	(260,000)	19	Dec. 31, 1983	9,644,000		12,000	220
Digital Switch Corp	June 30, 1979	0	(639,532)	20	Dec. 31, 1983	127,052,000	25,473,000	19,737,000	894
NBI, Inc.	June 30, 1976	451,186	(859,809)	55	June 30, 1983	96,780,000	4,590,000	1,095,000	1,856
Network System Corp	Dec. 31, 1975	25,690	(348,099)	12	Dec. 31, 1983	47,030,000	10,030,000	7,275,000	462
Recorded totals		12,959,084	(8,720,925)	1,604		4,570,259,000	445,757,000	198,960,000	53,172

****1228 *744** A number or government officials who were unable to come to the National Hearings in Washington, D.C., nonetheless wanted the Committee to know of their support for its efforts.

The following Governors submitted testimony or letters in support of a continued, independent U.S. Small Business Administration as being beneficial to their States:

The Honorable Mark W. White, Jr. of Texas.

The Honorable William A. O'Neill of Connecticut.

The Honorable Mario M. Cuomo of New York.

The Honorable Thomas H. Kean of New Jersey.

The Honorable Richard D. Lamm of Colorado.

The Honorable Toney Anaya of New Mexico.

The Honorable Martha Layne Collins of Kentucky.

The Honorable John Carlin of Kansas.

The Honorable Michael S. Dukakis of Massachusetts.

The Honorable Terry E. Branstad of Iowa.

The Honorable Edwin W. Edwards of Louisiana.

The Honorable William Sheffield of Alaska.

The Honorable Victor Atiyeh of Oregon.

The Honorable Edward D. Diprete of Rhode Island.

The Honorable George R. Ariyoshi of Hawaii.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Honorable Richard F. Celeste of Ohio.

The Honorable Wayne Mixson of Florida.

Also, Petitions and Memorials were received calling upon Congress to maintain an independent and funded U.S. Small Business Administration from the following State Legislatures and governing bodies:

The State Senate of Oklahoma.

The State Senate of Illinois.

The State Senate of Kansas.

The Senate and House of Representatives of the State of Maine.

The Senate of the Commonwealth of Massachusetts.

The Legislative Assembly of the State of North Dakota.

The Legislature of the Territory of Guam.

The Council of the City of New York.

The Legislature of the Virgin Islands of the United States.

Need for the Legislation

The bill H.R. 2540, as introduced, incorporates H.R. 1281 but with savings of $1.3 billion.

RECOMMENDED AUTHORIZATIONS FOR FISCAL YEARS 1986 THROUGH 1988

Prior to October 1, 1977, the Small Business Act authorized the appropriation of such sums as necessary to carry out the provisions and purposes of the Act; and the Small Business Investment Act authorized the appropriation of specific cumulative dollar amounts to carry out the programs authorized by the Act. Effective October 1, 1977, open-ended authorizations for programs and payment of salaries and expenses were sharply curtailed. Public Law 98–59 amended the Small Business Act to specifically authorize the dollar amount of program levels for fiscal years 1978 and 1979; to authorize ****1229 *745** the appropriation of the dollar amount needed to carry out the program levels specified and to authorize the appropriation of amounts necessary to carry out Small Business Act programs for which specific dollar authorizations are not provided. The Small Business Committee has determined, after substantial experience, that multi-year authorizations for the Small Business Administration are absolutely necessary. Such authorizations give Congress, the Executive, and the small business community a clear indication of goals and priorities for a reasonable period of time and permit the Administration to know authorizing provisions prior to developing the budget proposals.

The Subcommittee's hearings in this and the last Congress have shown that the administration's efforts to terminate or reduce drastically loan and other programs of the Small Business Administration are misguided. Small and medium-sized firms continually need large amounts of credit to participate in the projected economic recovery and the country needs the thousands of new jobs these businesses will generate. Often, the Committee has found some banks are far too interested in providing debt capital to large projects in high-growth areas. Although banks have a duty to their depositors and shareholders, they often neglect the small business community that surrounds them. This phenomenon, coupled with the major and continuing outflow of debt funds to foreign loans of questionable value, adversely affect small businesses which are unable to find another source of funding.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Committee is in agreement that deficits must be controlled and reduced. However, the premise of H.R. 2540 as introduced is that by holding SBA loan programs, in the main, at 1985 appropriated levels, the small business community would be better served than by making unwarranted cuts.

Business loan and investment fund fiscal year 1985 appropriated program levels

	Millions
General business loans:	
Direct & IP	108
Guaranteed	2,650
Handicapped loans:	
Direct & IP	24
Guaranteed	5
Economic business loans:	
Direct & IP	45
Guaranteed	60
Energy loans:	
Direct & IP	3
Guaranteed	15
Development company loans:	
Direct & IP	5
Guaranteed	450

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Investment company loans:	
Direct & IP	47
Guaranteed	265
Veterans loans:	
Direct & IP	25
Guaranteed	0
Total business loans:	
Direct & IP	257
Guaranteed	3,445

****1230 *746** NEW DIRECT LOAN PROGRAM

The SBA provides financial assistance to qualifying small businesses in two principal ways. Most assistance is in the form of guarantees of commercial loans. However, the agency can also make loans directly to small businesses to obtain commercial financing even with a government guarantee.

Some individuals and businesses find it virtually impossible to obtain commercial financing, no matter how meritorius their proposal may be. The direct program fills an important gap in helping these businesses get started and to enter the mainstream of the economy, while at the same time creating jobs and promoting innovation.

Of the $257 million approved for new direct loans, $108 million was available to qualifying small business generally, and the balance is earmarked for specialized loan programs. These include $24 million for handicapped assistance loans, $45 million for loans to businesses in areas of high unemployment or owned by low-income individuals, $3 million for businesses developing or marketing new energy conservation technology, and $25 million for loans to veterans.

Recently, there has been substantial criticism of the direct loan program. Some have argued that the high rate of past due loans, the small amount of funds and the substantial amount of paperwork necessary for these loans indicates that they should be abolished. SBA has attempted in the past several years to improve the quality of direct loans, but some would argue that the loss rate is still too high when compared to losses under the guarantee programs.

7(a) guaranteed loans, a reaffirmation

The Committee, unlike certain administration critics, has long been aware of the beneficial role of the Small Business Administration's 7(a) guaranteed loan program. The SBA's primary lending program enables commercial lenders to make

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

long-term loans to small businesses which SBA guarantees to repay in the event of borrower default. Any administration move toward abolishing the 7(a) program would seriously weaken lenders' ability to respond to small businesses in need of long-term financing.

The 7(a) program rests on a solid foundation of supporting data. The General Accounting Office made a study of 951 lenders participating in the program to determine how the 7(a) program interacts with the credit market in financing small business ventures. These lenders were scientifically selected from among 8,900 small, medium and large lenders that made SBA-guaranteed loans during fiscal years 1979–81.

GAO received and analyzed 739 responses. These responses showed that the SBA guarantee was an important factor in banks' decisions to lend to new businesses and to businesses with less equity than banks usually require. About 82 percent of lenders responding indicated that 7(a) guaranteed loans either would not have been made without the SBA guarantee or would have been made on more stringent terms. The assistance also helped provide jobs.

****1231 *747** Banks are more willing to make longer maturity loans to small businesses with the guarantee. For example, lenders responding to GAO estimated that 74 percent of SBA guarantees carry maturities of 6 or more years, whereas only 15 percent of non-SBA small business loans help small businesses to maintain an adequate cash flow.

The guarantee increases banks' ability and willingness to make larger loans because the guaranteed portion of the loan does not count against federally regulated lending limits. Some 43 percent of responding lenders said the guarantee enabled them to make larger loans than otherwise permitted by bank policy regulations.

The Committee remains convinced that the impact of the administration's proposed program termination and budgetary reduction on small businesses' ability to obtain long-term loans are against the data on program demand and are clearly misguided. Therefore, H.R. 2540, as introduced, provides 7(a) guarantee program level authority of $3.18 billion, the same level as 1985.

Disaster assistance

The Small Business Administration provides loan assistance to disaster victims, including homeowners, businesses, and nonprofit institutions. When disaster strikes it is important that damaged property be replaced or repaired and businesses be provided with adequate working capital for recovery as soon as possible. SBA disaster loans serve this purpose and minimize disruption of jobs, business revenues, and taxes. In so doing, they play a vital role in restoring the economic health of a disaster-stricken community, often making the difference in the survival of business necessary to that recovery.

During fiscal 1984, 14,133 disaster loans were approved for more than $314 million to businesses, homeowners, and others affected by hurricanes, tornadoes, earthquakes, flooding, windstorms, hail, mudslides, fires, and other disasters. During fiscal 1983, 12,233 disaster loans were approved for more than $198 million.

The Committee was shocked by the administration's proposal to terminate assistance to all disaster victims. The Committee can only conclude that the White House was unaware that SBA disaster loans play a vital role in rebuilding homes and restoring the economic health of a disaster-stricken community, often making the difference in the survival of businesses necessary to that recovery.

Labor surplus area procurement

Under section 15 of the Small Business Act, qualified small business concerns participate in their fair share of Federal Government contracts for goods and services. The Committee continues to be concerned regarding maintenance of this fair share and that procurement dollars be used in a manner best calculated to yield the highest possible return to the taxpayer. In order to achieve this purpose, it is necessary that procurement funds where feasible be positively correlated with job creating potential, and that opportunities for economic stimulus as measured by the number of unemployed be maintained.

****1232 *748** Small businesses create more of the net new jobs than large firms do. This impact is even higher in areas of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

economic distress; small concerns can provide as much as 80 percent of net new jobs. Prior Committee action directs all Federal agencies to target contracts and small business set-asides to firms in or near areas of high unemployment according to a hierarchy of need, with small businesses in labor surplus areas at the top of the list. However, the Committee has been advised of an unintended hardship in current Department of Labor labor surplus area (LSA) determinations. This problem is addressed by Mr. Seiberling's bill H.R. 447.

Rather than only using countywide statistics to determine eligibility, the Department has relied on a system which also considers subcounty jurisdictions over 50,000 population on an individual basis. Commendably, this has helped target the LSA designations to specific, rather than broad, areas. However, it has created two problems: First, the system treats small cities inequitably, providing for designation of cities over 50,000 but not for cities under 50,000 suffering from similar rates of unemployment. Second, this inequity is exacerbated in counties with cities over 50,000 population. Those large cities—which tend to have higher than average unemployment rates—are separated from the rest of the smaller cities, suburbs, and rual areas, leaving the 'balance of county' with a somewhat depressed unemployment rate. Ironically, in some cases, if the larger cities were not separated from the rest of the county, the county would qualify for assistance and, through the county, the smaller cities as well.

Since targeting of the designations has been so long a practice and is arguably the preferred way of computing eligibility and directing certain federal procurement, there is a need to refine the Department of Labor existing targeting procedures to allow smaller cities to qualify on their own for LSA status. H.R. 2540 accomplishes this objective.

H.R. 2540, as introduced, program levels and modifications

On May 16, 1985, the Chairman introduced H.R. 2540, legislation to reauthorize the Small Business Administration for fiscal years 1986 through 1988 and save some $1.5 billion more than a freeze in current programs alone would have.

The Chairman had introduced an earlier version of this bill, H.R. 1281, which provided a similar 3-year authorization and would have yielded savings of some $320 million. Since introduction of the initial bill, the Subcommittee held field hearings in seven cities and an additional three days of hearing in Washington at which testimony was heard from over 200 small businesses. Their message, along with the one received from a bipartisan group of some two dozen Governors and State legislatures is the same: Save the SBA and leave it viable. The Committee wholeheartedly agrees with this message. But the Committee foresaw that the mood in Congress requires an even greater reduction in outlays by the Small Business Administration. As a result, the Chairman revised the earlier legislation in order that H.R. 2540 as introduced would achieve savings of some $1.5 billion over the next 3 fiscal years as compared to a 1-year freeze.

****1233 *749** The program level for surety bond guarantees would be set at $900 million. The program level for the pollution control bond guarantees would be set at $50 million. The level of salaries and expenses to operate the Small Business Administration would be frozen at $205.34 million.

An innovation in H.R. 2540 prohibits the Federal Financing Bank from acquiring debentures issued by small business investment companies with the SBA guarantee. Existing law authorizes the Federal Financing Bank to purchase these debentures which it does with money derived from the Treasury. The bill would prohibit this and instead have SBA sell the debentures to investors, thereby eliminating Federal outlays as the SBA guarantee is only a contingent liability. This is an extremely contingent liability that in the approximately 25 years in which this program has operated, SBA has guaranteed $2 billion in debentures and has lost only $36 million. The bill further limits the amount of assistance which may be provided annually under the Surety Bond Guarantees Program to $900 million per year and under the Pollution Control Bond Guarantee Program to $50 million per year.

Transfer of Residual Functions to Commerce, a Rejection

PROCUREMENT FUNCTIONS

Although the focus of the Committee's efforts in this Congress has been assuring through enactment of H.R. 2540, that there

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

will be an independent SBA with financing, management assistance and disaster loan programs in place, the record must also reflect its disagreement with the administration's plan to transfer SBA's remaining functions to the Department of Commerce, especially procurement and advocacy.

This Committee is charged with the responsibility to carry forward a policy embodied in the Small Business Act of 1953: to insure a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government . . . be placed with small business enterprise. However, the small business share of Federal contracts continues to be inadequate. Congress has always insisted on small business participation in Government procurement because it improves and broadens the competitive base and the defense industrial base; provides innovative technology; lowers procurement costs; performs a vital role in industrial mobilization; and disperses procurement funds industrially and geographically. Unfortunately, the share of the Federal prime contract dollar awarded to small business is disproportionately low despite the fact that by Federal definition over 98 percent of all business establishments are classified as small. Statistics also indicate that this trend is not improving. Evidence further indicates that Federal procurements are highly concentrated in the hands of a few large business concerns.

Now is not the time to deemphasize small business procurement but to improve the small business community's access to Federal procurement and increase contracting opportunities. This is not the time to establish a new system with all the conflicts of interest ****1234 *750** problems inherent in putting small business procurement programs in a Cabinet agency for big business.

For example, to promote set-aside contract opportunities for small concerns SBA has procurement center representatives stationed at all Federal installations, both military and civilian, which have major buying programs, and some assigned on a liaison basis to installations with smaller, but still significant, buying programs. When the procurement center representative recommends that a requirement be procured under a small business set-aside, and that recommendation is rejected business by the contracting officer, or when the recommendation of the small business specialist of the installation for a set-aside is rejected by the contracting officer, the SBA as an independent agency has the right to appeal this rejection to the Secretary of the Department or head of the agency involved.

If at all possible, procurement center representatives will recommend that such requirements (including those for architectural and engineering services, research, development, testing and evaluation) be processed as small business set-asides. This means that the procurement would be restricted to small business firms only, and large business firms would not be permitted to submit bids or proposals on the procurement. This is often at odds with the procuring agencies bias toward established big business sources.

Another example would be the subcontracting program established under P.L. 95–507 to (1) enable small business concerns and small business concerns owned by the disadvantaged to be considered fairly as subcontractors and suppliers to contractors performing work as prime contractors under Government contracts; (2) insure that such prime contractors and subcontractors will cooperate with the appropriate procurement agency and with SBA; and (3) enable SBA as monitor and independent advocate to obtain from any Government agency information concerning subcontracting by its prime contractors and their subcontractors. Only an independent agency could monitor compliance with these programs government-wide.

The Committee notes with great disapproval the most blatant example of this administration's plan: the administration's disingenuous and/or ill-advised proposal to 'transfer' the Small Business Administration's Minority Small Business and Capital Ownership Development Program which is designed to make more business opportunities available to minority individuals. This program brings together all SBA's services and those of private industry, banks, local communities and other Government agencies to substantially increase the number of and opportunities for minority owned businesses. Though this program those eligible firms are assisted in developing the capability to compete effectively in the nation's marketplace.

As part of this program Section 8(a) of the Small Business Act authorizes SBA to act as prime contractor and to enter into contracts with the United States Government and any Federal department, or agency for their procurement needs. This authority, together with the aforementioned other financial, technical and management resources at its disposal, allows SBA to contract to supply their goods, services, and construction needs, by subcontracting for ****1235 *751** the actual performance of the work to 8(a) companies. Note that by statute the firms that are awarded 8(a) contracts must receive management and technical help in planning and operating stages of the business, and must participate in a 'Capital

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Ownership Program' as a condition of receiving 8(a) contracts.

And what are the programs at SBA's disposal to successfully operate its MSB/COD program?

1. *Financial Assistance*.—SBA can make direct business loans to minority borrowers. Minority small business loans can be made under any of SBA's business loan programs; however, a specific amount of direct loan funding and loan guarantee authority is reserved only for businesses located in areas of high unemployment or businesses owned by low-income individuals. More than three-fourths of these 'economic opportunity' loans go to minority businesses.

2. *Management Assistance*.—In addition to SBA's own management assistance specialists, the agency can contract for private sector business consultants to counsel businesses owned by economically and socially disadvantaged individuals or businesses located in areas of high unemployment.

3. *Long Term and Equity Capital*.—Specialized investment companies may provide equity funds, long-term loans and management assistance to small firms owned by socially or economically disadvantaged persons through MESBIC program.

4. *Bonding Assistance to Firms*.—Minorities can benefit from surety bond guarantees up to $1,000,000 on construction or services contracts. Contract financing may be available to any small firm with an assignable contract.

What do these four programs which are diverse in nature but which form the cornerstones of the SBA's MSB/COD program which was to be 'transferred' to the Department of Commerce have in common? Each and every one had been terminated in the administration's proposal!

THE OFFICE OF ADVOCACY

The Office of Advocacy has to main objectives: to reduce the burdens that Federal policies impose on small firms, and to maximize the benefits that small firms receive from the Government. Several departments within Advocacy are working to achieve these goals. Advocacy has the role of 'ombudsman,' fighting for individual businesses—or groups of businesses—that feel that government ignores their interests.

As vital as small businesses are to the economy, however, they are often ignored by the government when laws are being made or regulations are implemented. Because they are small, and have so many varied interests and concerns, they are easily overlooked. Small business needs an independent legislatively-mandated spokesman at a high level of government. The Chief Counsel for Advocacy at SBA is the advocate for small business within the Federal bureaucracy—not because small business is just another special interest group in the economy, but because small business is that part of the economy most critical for the achievement of the largest number of national goals.

****1236 *752** By Congressional mandate, the Chief Counsel for Advocacy was charged to perform the following duties on a continuing basis: (1) serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other Federal agency which affect small business; (2) develop proposals for changes in the polices and activities of any agency of the Federal Government which will better fulfill the purposes of the Small Business Act and communicate such proposals to the appropriate Federal agencies; and (3) represent the views and interests of small businesses before other Federal agencies whose polices and activities may affect small business.

For the past several years the Small Business Committee have been trying to raise the visability of SBA and small business needs to the highest program and policy levels in the Government and give the SBA the additional tools it must have to fully respond to small businesses requirements. Congress has often found that when major policy measures are initiated by any administration, the impact of such initiatives upon small business is not sufficiently taken into account. When agencies and departments made their legislative proposals, they often are not aware of the disproportionate impact the proposals would have on smaller concerns.

It is also important to remember that direct communication between the nation's 14 million small businesses and the Congress is necessary to perform oversight and legislative functions. This is accomplished by section 206 of Public Law 94–305 which specifically states that 'The Chief Counsel may from time to time prepare and publish such reports as he

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

deems appropriate . . . The reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or Executive Department for any purpose prior to transmittal to the Congress and the President.'

The Chief Counsel for Advocacy has a different mission than that assigned to the rest of SBA. Strictly speaking, the Advocate, although part of the agency, is not in the SBA chain of command; he is a Presidentially appointed official with Senate confirmation. The Chief Counsel must represent the views of small business and in carrying out this mission is expected to present and fight for the views of the small business sector of the economy throughout the government. The views will not always be the same as those expressed by the SBA on behalf of the administration. Just as the attorney presents his client's position, the Chief Counsel for Advocacy presents his client's position: that of the small business community.

This tradition established by Public Law 94–305, that the Chief Counsel for Advocacy is responsible to the Congress and the Federal Government for the presentation of the views of the small business community, not necessarily his views or the views of the administration then in office, has been carried forward to the present day. It is the cornerstone of the office and is exemplified by the independent reports and testimony the Advocate is able to give when called upon for the small business position, the advice available to government as to what impact a givben law, or regulation will have on small entities, and by the Office's responsibilities for the White House Conference on Small Business.

****1237 *753** *What the Bill Would Do*

The bill would make changes in the direct loan program and provide a three-year authorization for SBA. Funding for the three remaining direct loan programs would be reduced 60 percent from the amounts contained in the regular appropriations bill for Fiscal Year 1985; guaranteed loan levels would be reduced by 10 percent; and SBA salaries and expenses would be frozen.

DIRECT LOAN PROGRAM

The bill would eliminate the general 7(a) direct loan program which since the agency's inception has been available to all small concerns. Future direct loans would be restricted to three specialized categories previously established in the Small Business Act. The program levels for direct loans for each of Fiscal Years 1986 through 1988 under the remaining programs, i.e., handicapped, economic opportunity, and veterans loan programs would be reduced from the amount appropriated for 1985 ($206 milion) to $80 million annually, a reduction of $126 million or 60 percent. MESBICs direct funding would be frozen at $41 million for each of Fiscal Years 1986 through 1988.

GUARANTEED LOAN LEVELS

The aggregate program level for guaranteed loans under the 7(a) regular business, handicapped, economic opportunity, energy and development company loan programs would be reduced by 10 percent from the 1985 appropriated level of $3.18 billion to $2.862 billion. SBICs would be frozen at $250 milion. Also SBIC and certain CDC 503 debentures would be sold to investors rather than acquired by the Federal Financing Bank.

DISASTER LOAN LEVELS

The $500 million program cap for 7(b)(1) and (2) physical disaster loans in Fiscal Year 1986 would be eliminated. The authorization for nonphysical disaster loan programs under section 7(b)(3) and 7(b)(4) would be eliminated.

SURETY BOND GUARANTEES

The program level for the surety bond guarantees program would be set at $900 million for each of Fiscal Years 1986–1988.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

POLLUTION CONTROL BOND GUARANTEES

The program level for the pollution control bond guarantees program would be set at $50 million for each of Fiscal Years 1986 through 1988.

SALARIES AND EXPENSES

The level of salaries and expenses to operate the agency would be frozen at $205.34 million for each of Fiscal Years 1986 through 1988.

****1238 *754** LABOR SURPLUS AREA

The Secretary of Labor in making Labor Surplus Area (LSA) determinations using any population criteria for purposes of priority of award of contracts under section 15 of the Small Business Act, would be required to consider populations of 25,000 or less.

PRIVATIZING SBIC DEBENTURES

Under existing law, debentures issued by SBICs are quaranteed by SBA and purchased by the Federal Financing bank. Under the unified budget approach these quarantees are picked-up and included in the budget even though they are of-budget. The bill would prohibit the Federal Financing Bank from purchasing the SBIC debentures which will be sold to private investors by the SBA or its agent as was done some 10 years ago. This prohibition removes the debentures from the unified budget.

SBA would be directed to sell $250 million of SBIC debentures to investors and to report to Congress. To facilitate sale of the debentures, SBA or its agent would be authorized to sell certificates representing fractional interests of a pool of the $250 million in SBIC debentures.

PRIVATIZING 503, DEBENTURES

Under existing law, debentures issued by 503 development companies are guaranteed by SBA and purchased by the Federal Financing Bank. Under the unified budget approach, these guarantees are picked-up and included in the budget even though they are off-budget. The bill would prohibit the Federal Financing Bank from purchasing Pilot Program 503 debentures of up to $235 million in FY 1986 and $280 million in FY 1987 which would be sold to investors by the SBA. This prohibition would remove the debentures from the unified budget.

SBA would be directed to report to Congress on these private sales. Funding for the ‘regular debentures’ which would still be sold to the Federal Financing Bank would be reduced from $450 million to $215 million in FY 1986 and from $450 million to $170 million in FY 1987.

To facilitate sale of the 503 debentures, SBA would be authorized to market trust certificates representing fractional interests in a pool of the 503 debentures sold to private investors.

DISASTER ASSISTANCE

Agricultural enterprises would be excluded from eligibility for physical disaster assistance under 7(b)(1) and 7(b)(2) of the Small Business Act. The 7(b)(3) Federal Government Impact Loan Program and the 7(b)(4) Economic Injury Loan Program would be abolished.

CONTRACT FRAUD

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

H.R. 2540 would amend the Small Business Act by adding criminal provisions dealing with small and minority business front companies to clarify whether existing Federal anti-fraud statutes cover ****1239 *755** situations when the misrepresentation is made to other than the Federal government, such as in grant or subcontract situations. The penalty under the general anti-fraud statute is a fine of $10,000 and/or imprisonment for not more than 5 years. H.R. 2540 would raise the maximum line to $50,000 while maintaining the maximum 5 years imprisonment. It would make all such activity illegal regardless of the level at which the misrepresentation was made.

PRIVATIZING 7(a) LOAN GUARANTEES

SBA's Administrator would be directed to report to Congress by December 15, 1985, and identify any sources outside the Federal Government which would provide 7(a) loan guarantees. A corporation owned by the Federal Government would be one option evaluated in the report.

LIMITATION ON USE OF SBA LOANS

Financial assistance would be prohibited under the section 7(a) loan program if it would benefit any applicant which performs abortions, engages in abortion research, promotes or recommends abortion, or provides abortion training. In all events, promotion or training for abortion would not be financed. However, if an applicant performs abortions or promotes or recommends abortion only in cases where the life of the mother would be endangered if the fetus were carried to term, such activities would not preclude SBA 7(a) assistance.

The Administrator of the Small Business Administration would be instructed to impose user fees for certain services provided by the agency. The Committee, in adopting the amendment, noted its concern that individuals benefiting from many of the services provided by the agency are receiving those services for free. Although user fees are imposed for some very limited services, there are no fees charged for others. Moreover, with the huge budget deficit facing the nation, the Committee believes that small business owners and individuals using SBA services should pay some nominal fee for the services they receive.

The legislation grants authority to the Administrator to charge fees for services rendered. Specifically, the Administrator would be required to issue regulations which impose fees for services provided by the SBA. The Administrator is given some discretion as to the amount of the fee that may be imposed, but limitations on the Administrator's authority are provided. There are three areas where the Administrator must change fees.

Publications

The agency makes numerous publications available to small businesses and other individuals interested in SBA material. Of the 190 publications available, 140 are provided at no charge.

The Committee requires the Administrator to impose a fee which at least recovers the cost of the publication. In no event, however, could the fee be more than $5 per publication.

****1240 *756** *Processing applications for loans*

The Committee believes that an additional, one-time fee should be charged for processing loan applications. The Committee believes that the Administrator should have the discretion to set an appropriate fee, but in no case should the fee exceed $100.

In addition, the Committee believes that the fee should be refunded if no action is taken on the application within a reasonable time period. That time period should be no more than six weeks.

Determination of small business entitlement

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The Small Business Act provides preferential treatment for certain small businesses in certain areas. The most obvious example is the '8(a)' program, which requires government agencies to set aside a certain percentage of government contracts for minority small businesses, which must receive an 8(a) designation.

The Committee believes that the SBA should charge no more than $100 for issuing this designation. If the designation is not provided for any reason, however, the fee would be refunded.

Study of fees for counseling services

The Committee notes with pleasure the tremendous success of the Small Business Development Center (SBDC) program. SBDC's provide counseling services to small businessmen and women in states that have the centers. In addition, the SCORE and ACE programs provide some counseling services.

The Committee expresses no opinion on the appropriateness of fees for users of SBDC's, and the SCORE and ACE programs. The Committee directs the Administrator to study the feasibility of imposing user fees for SBA-sponsored counseling services, including SBDC's, SCORE, and ACE. The report would be due within one year of enactment, and made available to the House and Senate Committees on Small Business and Appropriations.

Transfer of funds

Under the legislation, the Administrator is required to deposit the receipts from the fees in the general fund of the Treasury as 'proprietary receipts' of the Small Business Administration. Thus, although the funds would go to the general fund—and thus have an impact on the size of the deficit—they are to be used for SBA programs and activities, subject to the annual appropriations process.

Effective dates

In general, the bill requires the Administrator to advise the House and Senate Small Business Committees and the House and Senate Appropriations Committees of his proposed fees and the services for which fees will be imposed within sixty days of enactment of the bill. In addition, the Administrator is required to advise the committees of his proposed timetable for imposing the fees.

After informing the Congress of his proposals, the Administrator is expected to issue regulations to formally implement the fees. The ****1241 *757** Committee anticipates that the use fees will be in effect no later than March 1, 1986.

BUDGET AUTHORITY

The bill authorizes the following appropriations for the next three Fiscal Years (1985 appropriated level is $700.25 million): 1986—$593.34 million; 1987—$627.34 million; and 1988—$634.34 million.

Conclusion

The administration's proposal to terminate the Small Business Administration and the overwhelming rejection of this proposal by the Congress have major implications for the future of small business in America: aid, counsel and assistance to small business will continue to be a priority for decision-makers at all levels of government.

Enactment of the Small Business Act of 1953 and establishment of the Small Business Administration were expressions of Congressional policy for the preservation and strengthening of personal initiative, private enterprise and free competition. In addition to financial assistance to those unable to otherwise enter business Congress wanted to ensure that a fair proportion of Government contracts went to small concerns—not just to promote economic well-being, but to provide for the security of the Nation. To promote these policies Congress recognized that absolute need for an independent agency' . . . not affiliated . .

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

. or within any other agency or department of the Federal Government', and the Act so requires.'

Over the past thirty years the Small Business Act and its numerous amendments have laid the groundwork for broadening small business ownership among groups that control title capital, among socially and economically disadvantaged individuals and for assisting victims of floods and other catastrophes. The Committee believes that retaining an independent SBA is an absolute obligation arising from Federal Government policies and actions. It is not simply a hangover from WW II, but a counter balance to Federal agencies' takeover of the free market that resulted from that war. Today's Federal fiscal and monetary policies dictate businesses access to capital and credit, and Federal pronouncements on tax, credit, procurement and regulatory policy dominate our economy.

Congress and the President must decide what priority to place on small business concerns. The chances of success in virtually all efforts to assist small business will increase commensurately with the priorities that are set. As a result of the current debate over SBA's role, hopefully, all branches of the government will become more familiar with small business and its contributions to the Nation.

Quite possibly, the time has come for major changes in the scope and significance of programs within the Small Business Administration. Agencies do experience the need for major changes in their strategic mission and, for SBA, the time could not be more appropriate than it is now. With guidance and support from Congress and the President, the agency can build upon its solid foundation ****1242 *758** of service and greatly extend the scope and value of its programs. The SBA should concentrate on maximizing the number of successful small businesses and its Advocacy role in their behalf. The agency will also have to broaden its association with minorities, the business community, the academic community, and other agencies of government. The ultimate result should be comprehensive assistance to a far greater number of small enterprises. By engaging the cooperation of the private sector, the benefits could be even greater, because greater funding from the private sector against governmental encroachment; show vigorous, private sector support for the small business sector of the economy; provide for more support for small business than either the government or the private sector would be willing to provide, acting alone; and permit SBA to divert limited resources to areas critically in need of additional support.

The reauthorization and reaffirmation of SBA offers an opportunity to build a better future for small business, the agency itself, and America. Congress will continue to offer guidance about what to do, who should do it, and how to proceed. Most of the important issues are known. The time for studying small business has passed. The three-year authorization period this legislation provides is the time for action to maximize the number of successful small businesses.

Section-by-Section Analysis

Section 9101. *1986 Program Levels and Authorizations*.—Section 9101 amends section 20 of the Small Business Act and provides, in a new subsection (u), paragraphs (1) through (5), the following maximum program levels for Fiscal Year 1986:

Proposed paragraphs (1) and (2) authorize a total of $80 million in direct and immediate participation loans and $2.862 billion in deferred participation (guaranteed) loans and guarantees of debentures, earmarked as follows:

Proposed paragraphs (1) and (2) authorize a total of $80 million in direct and immediate participation loans and $2.862 billion in deferred participation (guaranteed) loans and guarantees of debentures, earmarked as follows:

(a) Handicapped assistance loans—$15 million in direct loans and $5 million in guaranteed loans;

(b) Economic opportunity loans—$45 million in direct loans and $60 million in guaranteed loans;

(c) Solar and other energy conservation loans—$15 million in guaranteed loans;

(d) Vietnam and disabled veterans' loans—$20 million in direct loans; and

(e) Development company assistance—$450 million in guaranteed loans and guarantees of debentures;

Proposes paragraph (3) authorizes small business investment company assistance of $41 million in direct purchases of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

debentures and preferred securities and $250 million in guarantees of debentures;

Proposed paragraph (4) authorizes surety bond guarantees of $900 million; and

****1243 *759** Proposed paragraph (5) authorizes pollution control bond guarantees of $50 million.

Section 1 further provides in a proposed subsection (v) of section 20 of the Act, a total authorization for Fiscal Year 1986 of $593.34 million.

Of the total authorization, $376 million is for the direct and immediate participation loan programs, for guarantees of loans and debentures and for the SBIC programs; $12 million is for the surety bond guarantees program; and $205.34 million is for salaries and expenses of the Administration.

Proposed subsection (v) also authorizes the appropriation of necessary funds to operate the disaster loan program authorized in section 7(b)(1) and (2) of the Act.

1987 Program Levels and Authorizations.—Section 1 also amends section 20 of the Small Business Act and provides, in a new subsection (w), paragraphs (1) through (5), the following maximum program levels for Fiscal Year 1987:

Proposed paragraphs (1) and (2) authorize a total of $80 million in direct and immediate participation loans and $2.862 billion in deferred participation (guaranteed) loans and guarantees of debentures, earmarked as follows:

(a) Handicapped assistance loans—$15 million in direct loans and $5 million in guaranteed loans;

(b) Economic opportunity loans—$45 million in direct loans and $60 million in guaranteed loans;

(c) Solar and other energy conservation loans—$15 million in guaranteed loans;

(d) Vietnam and disabled veterans' loans—$20 million in direct loans; and

(e) Development company assistance—$450 million in guaranteed loans and guarantees of debentures;

Proposed paragraph (3) authorizes small business investment company assistance of $41 million in direct purchases of debentures and preferred securities and $250 million in guarantees of debentures;

Proposed paragraph (4) authorizes surety bond guarantees of $900 million; and

Proposed paragraph (5) authorizes pollution control bond guarantees of $50 million.

Section 1 further provides in a proposed subsection (x) of section 20 of the Act, a total authorization for Fiscal Year 1987 of $627.34 million.

Of the total authorization, $410 million is for the direct and immediate participation loan programs, for guarantees of loans and debentures and for the SBIC programs; $12 million is for the surety bond guarantees program; and $205.34 million is for salaries and expenses of the Administration.

Proposed subsection (x) also authorizes the appropriation of necessary funds to operate the disaster loan programs authorized in section 7(b)(1) and (2) of the Act.

1988 Program Levels and Authorizations.—Section 1 also amends section 20 of the Small Business Act and provides, in a new subsection (y), paragraphs (1) through (5), the following maximum program levels for Fiscal Year 1988:

****1244 *760** Proposed paragraphs (1) and (2) authorize a total of $80 million in direct and immediate participation loans and $2.862 billion in deferred participation (guaranteed) loans and guarantees of debentures, earmarked as follows:

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

(a) Handicapped assistance loans—$15 million in direct loans and $5 million in guaranteed loans;

(b) Economic opportunity loans—$45 million in direct loans and $60 million in guaranteed loans;

(c) Solar and other energy conservation loans—$15 million in guaranteed loans;

(d) Vietnam and disabled veterans' loans—$20 million in direct loans; and

(e) Development company assistance—$450 million in guaranteed loans and guarantees of debentures;

Proposed paragraph (3) authorizes small business investment company assistance of $41 million indirect purchases of debentures and preferred securities and $250 million in guarantees of debentures;

Proposed paragraph (4) authorizes surety bond guarantees of $900 million; and

Proposed paragraph (5) authorizes pollution control bond guarantees of $50 million.

Section 1 further provides in a proposed subsection (z) of section 20 of the Act, a total authorization for Fiscal Year 1988 of $634.34 million.

Of the total authorization, $417 million is for the direct and immediate participation loan programs, for gurantees of loans and debentures and for the SBIC programs; $12 million is for the surety bond guarantees program; and $205.34 million is for salaries and expenses of the administration.

Proposed subsection (z) also authorizes the appropriation of necessary funds to operate the disaster loan programs authorized in section 7(b)(1) and (2) of the Act.

Section 9102(a) strikes the fiscal year 1986 authorization of $500 million for the section 7(b)(1) and 7(b)(2) disaster loan programs and the authorization for $100 million for the 7(b)(3) and 7(b)(4) nonphysical disaster loan programs in section 20(t) of the Act.

Section 9103(a) proposes a new subsection (n) of section 15 of the Small Business Act and provides a minimum population criterion of 25,000 when population criteria are used in determinations of Labor Surplus Areas for purposes of this section.

Section 9103(b) makes the proposed amendment in 3(a) effective 90 Days after the bill becomes law.

Section 9104(a) proposes a new section 320 to the Small Business Investment Act of 1958 to prohibit effective September 30, 1985 the Federal Financing Bank to purchase all or any part of—

(1) SBIC debentures;

(2) any interest in SBIC debentures; or

(3) any obligation secured by an SBIC debenture or a share in an SBIC debenture.

Section 9104(b) amends the table of contents of the 1958 Act to include the proposed section 320.

Section 9105(a) adds a new section 321 to Title III of the Small Business Investment Act of 1958 to provide authorization for the ****1245 *761** sale of SBIC government guaranteed debentures under the same terms and conditions established for the SBA's secondary market for the guaranteed established for the SBA's secondary market for the guaranteed portion of 7(a) loans under section 5(g) of the Small Business Act.

Section 9105(b) amends the table of contents of the 1958 Act to include section 321.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 9106(a) amends section 7(b) of the Small Business Act as follows:

(1) by prohibiting SBA from making disaster loans to agricultural enterprises pursuant to subsection (b) of section 7;

(2) by making a technical and conforming change; and

(3) and (4) by abolishing the 7(b)(3) and 7(b)(4) nonphysical disaster loan programs.

Section 9106(b) is a technical amendment which removes the undesignated paragraph provisions following section 7(c)(4) which have been superceded by section 7(c)(5).

Section 9106(c) strikes from section 18(a) of the Small Business Act the Avoidance of Duplication provisions. These provisions were amendments added thereto by P.L. 94–305, P.L. 96–302, and P.L. 98–270 which specified certain agricultural enterprise eligibility provisions for 7(b)(1) assistance prior to October 1, 1986.

Section 9107 adds a new paragraph 16 to section 7(a) of the Small Business Act to impose on the small business borrower a 3 percent fee on any guaranteed loan with a term over one year.

Section 9108 amends Title V of the Small Business Investment Act of 1958 by adding a new Section 504.

Proposed 504(a) establishes Pilot Program for public or private sale of section 503 debentures of up to $235 million in FY 1986 and up to $280 million in FY 1987. A pilot secondary market program is also established as under the 7(a) guaranteed loan program secondary market provisions of section 5(g) of the Small Business Act by proposed 504(b).

Proposed 504(c) prohibits the Federal Financing Bank's purchase of:

(1) any 503 debenture sold under the pilot program in section 504(a),

(2) any share of any obligation described in paragraph (1) above, or

(3) any instrument secured by a 503 debenture sold in the pilot program.

Proposed 504(d) requires that SBA report on results of the pilot program either 90 days after all pilot program debentures are sold each year or October of each year, if this is the earlier of the two dates.

Section 9109 amends Section 16 of the Small Business Act by adding a new subsection (d), paragraphs (1) through (4).

Proposed subsection (d) establishes a penalty of a fine of up to $50,000 and imprisonment for up to 5 years, or both, for anyone making a knowing misrepresentation of small business status or disadvantage on:

(1) prime contracts under section 9 or 15 of the Small Business Act;

(2) subcontracts under section 8(a) of the Small Business Act;

****1246 *762** (3) subcontracts included in subcontracting plans under section 8(d) of the Small Business Act; or

(4) any contract awarded under a Federal law that uses criteria of section 8(d) of the Small Business Act for a definition of program eligibility.

Section 9110 requires SBA's Administrator to report by December 15, 1985, to the Small Business Committees of the Congress on the options available for establishing a non-Federal Government 7(a) guaranteed loan program. The creation of a Federal Government owned corporation to make such guarantees shall be evaluated as part of the report.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 9111 amends SBA's section 7(a) business loan authority by adding a new paragraph (17) to such subsection. The proposed paragraph prohibits loans to any applicant who performs abortions, engages in abortion research, promotes abortions or trains any individual to perform abortions, except it allows financing of applicants involved in performing, promoting or recommending abortions in cases where the life of the mother would be endangered if the fetus were carried to term.

Section 9112(a) adds a new subsection (i) to section 5 of the Small Business Act:

Proposed paragraph (1) of subsection (i) requires the Administrator of SBA to establish user fee regulations for the following services:

(A) SBA publications,

(B) loan applications,

(C) determinations of eligibility of small concerns for assistance or preferential treatment as a small business concern or any type of such concern.

Proposed paragraph (2) sets limits on fees as follows:

(A) Fees for publications to be the lesser of $5 or cost.

(B) Application processing fees are not to exceed $100.

(C) Eligibility determination fees are not to exceed $100.

Proposed paragraph (3) of subsection (i) requires fees under this subsection to be used to offset costs to the extent provided by appropriation Acts.

Section 9112(b) requires SBA's Administrator to report within one year after this bill becomes law on the feasibility of:

(1) charging for management assistance or other counseling; and

(2) charging a participating financial institution an annual fee of between one quarter of one percent and one percent of the outstanding balance of all 7(a) loan guarantees to that institution; and based on the revenue possibilities, providing a loss reserve or for the cost of administration.

Section 9112(c) requires within 60 days of enactment of H.R. 2540 an SBA report detailing any fees contemplated under the proposed section 5(j).

* * * * *

****1247 *771** *CBO COST ESTIMATES*

***772** U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 1985.

Hon. PARREN J. MITCHELL,
Chairman, Committee on Small Business, U.S. House of Representatives, 2361 Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached table which shows the difference between the budget impact of H.R. 2540, with Committee amendments for reconciliation purposes, and the baseline used for S. Con. Res. 32, the First Concurrent Resolution on the Budget—Fiscal Year 1986, as passed on August 1, 1985.

If you wish further details on this estimate, we would be pleased to provide them.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director*.

COST OR SAVINGS (-) RELATIVE TO THE BASELINE OF H.R. 2540, WITH COMMITTEE AMENDMENTS

(By fiscal Years, in millions of dollars)

	1986	1987	1988	3-yr total
SBA business programs—Function 370:				
Budget authority	-429	-618	-686	-1,733
Outlays	-365	-596	-622	-1,583
SBA disaster program—Function 450				
Budget authority			-459	-459
Outlays	-129	-421	-457	-1,007
Total, Small Business programs				
Budget authority	-429	-618	-1,145	-2,192
Outlays	-494	-1,017	-1,079	-2,590
Interest paid to the Treasury—Function 900				
Budget authority		27	83	110
Outlays		27	83	110
Total—H.R. 2540, with committee amendments:				
Budget authority	-429	-591	-1,062	-2,082
Outlays	-494	-990	-996	-2,480

Note: Details may not add to totals due to rounding.

****1248 *773** TITLE X—COMMITTEE ON VETERANS' AFFAIRS

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, October 1, 1985.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to instructions contained in the conference agreement to the First Concurrent Resolution on the Budget for Fiscal Year 1986, enclosed herewith are the recommendations of the Committee on Veterans' Affairs that would, if enacted, bring the committee into compliance with such instructions.

On September 11, 1985, the Committee voted 14 to 12, with a quorum present, to report H.R. 1538, as amended, to the House. We understand the full text of H.R. 1538 will be contained in the reconciliation measure as reported to the House. We are enclosing the legislative language, the report language to accompany the legislation, the Congressional Budget Office cost estimate and the ramseyer. Should you need additional information, please let us know.

Sincerely,

JOHN PAUL HAMMERSCHMIDT,
Ranking Minority Member.
G.V. (SONNY) MONTGOMERY,
Chairman.

Enclosures.

REPORT TO ACCOMPANY RECOMMENDATIONS FROM COMMITTEE ON VETERANS' AFFAIRS

INTRODUCTION

In its fiscal year 1986 budget submission, the Administration requested funds for a 4.1% cost-of-living adjustment (COLA) for service connected disability compensation and dependency and indemnity compensation (DIC) programs.

On April 17, 1985, the Subcommittee on Compensation, Pension and Insurance conducted a hearing to review legislation concerning these programs. The subcommittee received testimony from the Veterans Administration, the Disabled American Veterans, the Paralyzed Veterans of America, AMVETS, The Amreican Legion, the Veterans of Foreign Wars, the Vietnam Veterans of America, Inc., the Non Commissioned Officers Association, the Gold Star Wives of America, Inc., the Retired Officers Association and the National Association of Military Widows.

Veterans Administration witnesses testified that the Administration would support a compensation increase effective December 1, 1985, equal to that received by social security and non-service-connected pension beneficiaries.

On July 11, 1985, the subcommittee recommended H.R. 1538, as amended, to the full committee, which would provide for a 4.1% COLA to become effective December 1, 1985. The subcommittee amended the bill to provide that DIC be paid to the surviving spouse of a former Commandant of the Coast Guard at the same ****1249 *774** rate provided to surviving spouses of other military service chiefs. The subcommittee also amended the bill to establish an Advisory Committee on American Indian Veterans.

On February 7, April 23 and April 25, 1985, the Subcommittee on Hospitals and Health Care held hearings on various aspects of the Veterans Administration's health care programs.

The subject of the February 7 hearing was the Veterans Administration's Department of Medicine and Surgery fiscal year 1986 budget, including proposed cost savings legislation concerning reimbrusement from third pary insurance carriers for cost of medical care and treatment to veterans with non-service-connected disabilities, as well as the establishment of a means test for certain non-service-connected disabled verterans. Testimony was received from the Veterans Administration.

On April 23 and 25, 1985, hearings were held to receive testimony concerning the 'Older Veterans' Health Care Amendments' (H.R. 505), including the impact of the Administration's proposed means test and third party reimbursement legislation on the Department of Medicine and Surgery. Testimony was received from the Veterans' Administration;

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

veterans' service organizations; the Department of Social Services, Bryn Mawr, PA; the National Association of Area Agencies on Aging, and the American Health care Association.

On September 11, 1985, the full committee met to consider H.R. 1538 as amended by the Subcommittee on Compensation, Pension and Insurance. The committee amended the bill to: (1) provide a 3.7% COLA; (2) meet the target savings mandated by the congress in the 1986 Budget Resolution conference agreement, and (3) require the Veterans Administration to undertake a study of any long-term, adverse, gender-specific health effects in female veterans resulting from exposure to herbicides containing dioxin while serving in the Armed Forces in Vietnam.

By a vote of 14 to 12, the full committee, with a quorum present, ordered H.R. 1538, as amended, to be reported to the House for consideration. The full text of H.R. 1538, as amended, is contained in this title.

SUMMARY OF TITLE X OF THE COMMITTEE BILL

Part A—Compensation Rate Increases

H.R. 1538, as ordered reported, would increase the rates of compensation effective December 1, 1985 by 3.7 percent for service-connected disabilities as well as dependency and indemnity compensation for surviving spouses and children of veterans who die of service-connected causes. The bill would also increase by 3.7 percent the aid and attendance allowance payable to eligible veterans and surviving spouses, the additional amounts for dependents and survivors, and the clothing allowance for certain veterans.

Part B—Health-Care Eligibility Reform

The bill would reform and improve eligibility for veterans' health care in VA facilities. The Veterans Administration would be required to provide inpatient and outpatient care to:

****1250 *775** (1) service-connected disabled veterans;

(2) former prisoners of war;

(3) veterans exposed to certain herbicides and ionizing radiation;

(4) veterans of the Spanish-American War, Mexican border period of World War I;

(5) veterans in receipt of non-service-connected pension benefits; and

(6) a veteran with one dependent whose income does not exceed $25,000 (or $19,000 for a single veteran).

The bill would provide that non-service-connected disabled veterans with income above that shown in subparagraph (6) above may be provided VA inpatient and outpatient medical care provided: (1) space and resources are available, and (2) the veteran pays an amount equal to the initial inpatient deductible required under Medicare (estimated to be $492 in fiscal year 1986). The veteran would not be required to pay the $492 deductible more than once for a 12-month period. A determination as to whether a veteran would be required to pay the deductible would be based upon the same criteria and procedures used in determining annual income and net worth for non-service-connected pension purposes.

These provisions which affect eligibility for health care would expire on September 30, 1988, unless the Congress acts to extend this date. In the event that such provisions do expire, the law governing eligibility will revert to that which is presently effective.

The bill would also (1) authorize the Veterans' Administration to bill private insurance companies for the care non-service-connected disabled veterans who have insurance; (2) repeal the current provision of law that allows a veteran

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

over the age of 65 to receive care in VA facilities regardless of such veteran's ability to pay for his or her care elsewhere; and (3) authorize VA to require non-federal health care providers that furnish hospital care and services to veterans to accept the same payment from VA for such services to veterans that is now accepted for Medicare purposes.

Part C—Miscellaneous Provisions

The bill would establish an Advisory Committee on American Indian Veterans and would require the Administrator of Veterans' Affairs to conduct an epidemiological study of long-term, adverse health effects, if any, in females who served in the Armed Forces of the United States in the Republic of Vietnam and who were exposed to herbicides containing dioxin during such service.

DISCUSSION OF TITLE X OF THE COMMITTEE BILL

Part A—Compensation Rate Increases

The basic purpose of the disability compensation program, throughout its history, has been one of providing a measure of relief from the impaired earning capacity of veterans disabled as the result of their military service. The amount of compensation payable varies according to the degree of disability, which, in turn, is required by law to represent, to the extend practicable, the average ****1251 *776** impairment in earning capacity resulting from such disability or combination of disabilities in civil occupations.

To be eligible to receive disability compensation, a veteran must have contracted a disease, suffered a non-misconduct injury, or aggravated an existing disease or injury in the line of duty during active duty service and have been discharged under other than dishonorable conditions.

Historically, the Congress has increased compensation rates whenever there hs been an appreciable increase in the cost-of-living index, since the rates are not indexed to the Consumer Price Index by law. This is necessary to ensure that inflation does not erode the purchasing power of those receiving compensation and DIC benefits.

The Administration's fiscal year 1986 budget request submitted earlier this year recommended a 4.1 percent cost-of-living allowance (COLA) for the service-connected disability compensation and dependency and indemnity compensation (DIC) programs. The 4.1 percent rate adjustment represented what was anticipated for the indexed non-service-connected pension program, based on the changes in the Consumer Price Index (CPI) from the third quarter of calendar year 1984 to the third quarter of calendar year 1985. The increase proposed by the Administration would become effective December 1, 1985.

In its report to the Committee on the Budget (March 15, 1985), the committee recommended that the First Concurrent Budget Resolution contain new budget authority and outlays for a 4.1 percent increase effective December 1, 1985. The resolution as passed by the House included a 4.1 percent increase as did the conference agreement.

In hearings before the Subcommittee on Compensation, Pension and Insurance on April 17, 1985, spokesmen for the Veterans Administration testified that the Administration would support an increase equal to that received by social security and non-service-connected pension beneficiaries effective December 1 of this calendar year.

On July 11, the subcommittee recommended a 4.1 percent COLA, as proposed by the Administration.

On August 1, the House and Senate adopted the conference agreement to the First Concurrent Resolution on the Budget for fiscal year 1986. Under the agreement various committees of the House and Senate were instructed to report changes in laws within their jurisdiction sufficient to reduce budget authority and outlays by specified amounts during the next three fiscal years. The agreement directed the Committee on Veterans' Affairs to report a bill that would reduce budget authority and outlays by $300 million in fiscal year 1986, $400 million in fiscal year 1987 and $450 million in fiscal year 1988.

When the committee met on September 11 to consider H.R. 1538, as recommended by the Subcommittee on Compensation,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Pension and Insurance, in order to carry out the instructions of the House and Senate, the chairman of the committee (Mr. Montgomery) and the ranking minority member (Mr. Hammerschmidt) proposed that the compensation and dependency and indemnity compensation COLA be set at 3.7 percent based on the most recent CPI projection. ****1252 *777** According to the Congressional Budget Office, social security and veteran pension beneficiaries are expected to receive a COLA between 3.4 percent and 3.7 percent, effective December 1, 1985.

Since the committee has always attempted to provide compensation and DIC beneficiaries at least the same COLA provided to social security and pension beneficiaries, and since the committee is instructed to save $1.15 billion over the next three years, the reported bill would provide a 3.7 percent COLA.

Should the proposed rate increase be enacted, the changes in compensation and DIC rates effective December 1, 1985 would be as follows:

PROPOSED COMPENSATION AND DIC RATES EFFECTIVE DECEMBER 1, 1985

	Monthly rate increase	
	From	**To**
Percentage of disability or subsection under which payment is authorized:		
(a) 10 percent	$66	$68
(b) 20 percent	122	127
(c) 30 percent	185	192
(d) 40 percent	266	276
(e) 50 percent	376	390
(f) 60 percent	474	492
(g) 70 percent	598	620
(h) 80 percent	692	718
(i) 90 percent	779	808
(j) 100 percent	1,295	1,343

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Higher statutory awards for certain multiple disabilities are also increased by the committee bill.

The following increases are provided for surviving spouses of deceased veterans whose deaths are service-connected and who are receiving dependency and indemnity compensation (DIC) payments:

Pay grade	From	To
E–1	$476	$494
E–2	490	508
E–3	502	521
E–4	535	555
E–5	549	569
E–6	561	582
E–7	589	611
E–8	621	644
E–9	[1]649	[1]673
W–1	602	624
W–2	626	649
W–3	644	668
W–4	682	707
O–1	602	624

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

O–2	621	644
O–3	665	690
O–4	703	729
O–5	775	804
O–6	873	905
O–7	944	979
O–8	1,035	1,073
O–9	1,111	1,152
O–10	[2]1,217	[2]1,262

FN1 If the veteran served as sergeant major of the army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $726.

FN2 If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps or Commandant of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $1,353.

****1253** Part B—Health-Care Eligibility Reform

Current rules on veterans health care eligibility

Under exiting law, the provision of Veterans Administration health care to all veterans is discretionary; if VA facilities are not available, any veteran may be denied needed care.

A distinction exists between eligibility for hospital, nursing home, and outpatient care. Generally, a veteran who signs a statement that he or she is unable to defray necessary medical expenses is eligible for hospital or nursing home care. In addition, veterans with service-connected disabilities, former prisoners of war, veterans exposed to dioxin or ionizing radiation, and veterans who are sixty-five years of age or older are eligible for care if the Veterans Administration has facilities to provide care, without regard to their ability to defray the costs.

Outpatient services are provided in more limited circumstances. A veteran who seeks treatment for a service-connected disability, has a service-connected disability rated 50% or more, or is a former prisoner of war is eligible for medical services on an outpatient basis for any disability. Existing provisions of law grant similar eligibility for outpatient care to veterans of World War I, the Mexican border period, the Spanish-American war, or to those who are entitled to increased pension based

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

on the need of regular aid and attendance or by reason of being permanently housebound. All of these veterans who are eligible for outpatient care my be denied such care if VA facilities are not available to provide care. Moreover, veterans with service-connected disabilities rated less than 50%, as well as all other non-service-connected veterans who allege inability to defray the cost of care, are eligible for outpatient services only to obviate the need for VA hospital care or to complete treatment begun in the hospital. Once again, the restriction of providing care 'within the limits of VA facilities' applies, so that on a given day all eligible veterans, or 10% of eligible veterans, or, hypothetically, no eligible veterans may be provided necessary care.

Number of veterans eligible for health care and available resources

Although there are over 28 million living veterans, the VA estimates there are only 12 million veterans eligible for health care. This estimate is not precise because insufficient data exist on veterans' income and ability to defray necessary medical expenses. Further, in spite of attempts to measure the impact of various proposals to limit eligibility, there is no precise definition of the population of veterans presently eligible for VA health care.

Despite this lack of refinement in estimates of veterans eligible for VA health care, the Administration is evidently concerned ****1254 *779** about the costs that could be entailed in providing care to a large number of veterans who may be eligible once they reach age 65. The committee views the challenge of caring for the older veteran in more optimistic terms. If the population of eligible veterans were clearly defined, and if the Administrator was required to provide needed health care services to the precisely defined group, a more rational planning process would ensue.

If enacted, the committee bill would accomplish this goal. The committee believes that instead of trying to shrink the pool of eligible veterans without any mandate to provide care for those veterans who remain eligible, the Federal government should clearly identify those veterans who, as a matter of policy, should receive health care, and mandate that they be provided care in VA facilities.

The most recent reports available to the committee indicate that there is an excess of VA hospital beds in most states. The VA has the capacity to respond in areas where there is a high demand for outpatient care by providing additional resources to meet such demands. Not only does the VA require adequate resources in order to meet the changing demand for health care, it is essential that the VA possess a resource allocation system that is responsive to the demands of service-connected, needy and other categories of veterans. This requires bold and creative VA leadership coupled with a more precise definition of those for whom the VA should care. Consequently, the committee is proposing legislation that creates a mandate to provide care to a defined and limited number of veterans so that VA planners can manage available resources to meet the health care needs of a clearly deserving population of veterans.

The administration's proposed means test

When the Administration's budget for fiscal year 1986 was transmitted to the Congress in early February, it included a brief description of a proposed means test for veterans seeking health care. The Administration proposed to continue to provide medical care, within the limits of VA facilities, to the following categories of veterans: (1) service-connected veterans, for any disability; (2) veterans who were prisoners of war; (3) veterans exposed to certain herbicides or ionizing radiation; (4) VA pensioners; (5) World War I, Spanish-American War, and Mexican border period veterans; and (6) veterans with an income level below twice the VA pension rate standard, estimated to be approximately $15,000 in 1986 for a veteran with one dependent, or approximately $11,400 for a single veteran.

According to these budget documents, a means test would be applied to all other veterans. The administration's proposal would exclude veterans whose family income exceeds the threshold level until the veteran's out-of-pocket medical expenses exceed certain amounts. The amounts are not specified in the budget document.

The Administrational so proposed to repeal the existing provision of law which makes veterans over age 65 eligible for health care regardless of their financial means.

Finally, the Administration informed the committee that it intended to propose legislation to require reimbursement from

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

private ****1255 *780** insurance plans for care provided to veterans who have no service-connected disabilities.

Despite urgent requests for more specific information at several committee hearings regarding these legislative changes, the Veterans Administration did not transmit its proposed means test legislation until April 18, 1985. The Administration's proposal concerning recovery from third party insurers was transmitted on May 7, 1985.

In the absence of any specific information on the proposed means test or its impact on veterans who use the VA health care system, the Subcommittee on Hospitals and Health Care requested the Congressional Budget Office to obtain further information regarding the Administration's proposal in order to estimate the impact of the means test. According to CBO, full implementation of the Administration's means test would eliminate approximately 15% of the 680,000 veterans who were expected to be hospitalized in VA facilities in FY 1986. The means test would also eliminate about 18% of the over three million veterans who are expected to receive outpatient care in FY 1986. Approximately 21,000 employees of the VA's Department of Medicine and Surgery would be eliminated by fiscal year 1987 if the Administration's proposal were adopted by the Congress and fully implemented.

The Veterans Administration criticized the CBO analysis because of its failure to take into account unmet demand for VA health care.

The committee bill

After the Administration revealed its proposed means test, the committee determined that major parts of the plan were unacceptable for the reasons discussed below. Accordingly, the committee developed the following approach and rationale to health care eligibility reform.

Income threshold—The Congressional Budget Office noted that between 15% and 18% of current or expected users of the VA health care system would be excluded by the Administration's means test. The median family income for a family headed by a veteran is approximately $25,000. Only about 25% of families have incomes below $15,000. The Administration's proposal would have excluded single veterans with incomes in excess of $11,418. Considering the costs of medical care, the committee believes the Administration's proposed income threshold is unrealistically low and would exclude veterans who cannot afford private medical care. Based on these and other factors, the committee decided that an income threshold of $25,000 for a veteran with one dependent is more appropriate and that the threshold for a single veteran should be approximately $19,000. These amounts are approximately 3.34 times the levels established in the VA pension program. For each additional dependent the income threshold would increase by approximately $3,200. The committee's selection of the higher income threshold is based on a belief that it is essential to adopt a uniform, national standard at a level allowing for the high cost of living in many major metropolitan areas, and in Alaska and Hawaii.

****1256 *781** *Method of determining income and assets*—The Administration's proposed means test would base income determinations on standards used in VA's pension program, except for the exclusion of certain unreimbursed medical expenses. In determining whether a veteran's income is below the threshold, the Administration's proposal would not allow a veteran to decuct his or her medical expenses or those incurred for a spouse or dependent, additionally, the test for determining whether a veteran has assets which would make him or her ineligible for health care is not specified in the Administration's proposal. The committee believes the current pension income and asset tests are well thought out and accepted by veterans. The committee believes that their application should be specifically required in the measure ordered reported by the committee.

'*Spend-down' or expected medical expense contribution*—The Administration's legislative proposal does not provide explicit information on this aspect of its means test. If a veteran's family income exceeds the income threshold, he or she would be expected to pay a share of this excess income for medical expenses. If a veteran's countable income, without deduction for medical care expenses, exceeds the income threshold by an insignificant amount, the admitting clerk would have no choice but to refer the veteran to another source for necessary care. After the veteran had paid a specified amount for his or her own medical care, an amount which increases progressively with income, the VA could provide necessary medical care.

The committee believes that the 'spend down' requirement is unnecessarily complicated and would be very difficult and expensive to administer. The burden of proving that a veteran has made the expected medical expense contribution would fall

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

on the veteran, creating an onerous record-keeping requirement. As an alternative, the committee bill would authorize the VA to treat veterans whose income exceeds the revised income threshold, provided there is capacity to provide needed care, and provided the veteran agrees to pay an amount equal to the inpatient Medicare deductible, estimated to be $492 in 1986.

Commitment to providing health care

When compared with the Administration's proposal, the committee bill provides a major advantage to veterans. Under existing law, as well as under the Administration's proposal, an eligible veteran is unable to predict whether care will be available when needed. This uncertainty arises by virtue of the fact that under current law and under the Administrator's proposed means test the Administrator 'may' provide care 'within the limits of Veterans Administration facilities.' There is no requirement that the Administrator do so. In contrast, the committee bill would require VA to provide health care to several categories of veterans.

The bill would require the Department of Medicine and Surgery of the VA to plan to care for all eligible veterans under a new section 610 of title 38, United States Code. The care would be provided in the VA facility where the veteran applied for admission, or another VA medical facility within a reasonable distance. The VA is also authorized to obtain care at Department of Defense (DOD) facilities ****1257 *782** where space is available, or, in the case of a service-connected disabled veteran, for a service-connected disability in a private facility on a contract basis. The committee proposal would not change current law regarding beneficiary travel.

The VA must understand the the intent of the committee is to mandate health care to a limited, defined group of veterans and to provide care to the extent possible to an additional group of veterans where space is available and where the veteran voluntarily agrees to pay a deductible. This intent is evidenced by the committee's substitution of the word 'shall' for the word 'may' in pertinent sections of law.

The committee bill would amend the basic eligibility requirements for veterans seeking hospital and outpatient treatment. The present six categories of veterans eligible for such health care would be revised and restated as nine separate categories. In addition, the current limitation on furnishing hospital care (but not nursing home care) 'within the limits of Veterans Administration facilities' would be made inapplicable to eight of the nine categories of eligible veterans.

The VA would be required to provide inpatient care to service-connected veterans; former prisoners of war; veterans exposed to certain herbicides in Vietnam; veterans exposed to ionizing radiation; VA pensioners; World War I, Spanish—American War, Mexican border period veterans and veterans who meet a specified income level. Under current law, a separate eligibility exists for veterans sixty-five years of age or older; the proposed revision would make no distinction between veterans over 65 years of age or those under 65.

A new separate category of eligibility would be established for veterans who served in World War I or two earlier conflicts, the Spanish—Americans War or the Mexican border period. An additional, all-inclusive category for veterans who do not fall into one of the eight other categories would also be established; this last category would consist of those veterans whose income and assets exceed the income limitation and enable them to defray the costs of needed care. They would be required to pay an annual deductible in order to receive needed care. Such care could only be provided within the limits of VA facilities.

Under existing law, an eligible veteran who seeks hospital care at a particular VA medical center on a given day, and who is determined by the examining physician to be in need of inpatient care, is generally admitted to the medical center. If the facility is unable to provide necessary care, the veteran may be referred to a nearby VA facility which can provide the needed care. Yet, in other similar cases, the veteran may simply be told that the facility cannot provide needed care and he or she is turned away. In addition, some veterans who present themselves at a VA medical center and do not require immediate care are requested to return at a scheduled time in order that more urgently needed care can be provided to other veterans.

The committee expects that this referral and deferral process may have to be expanded and strengthened at some future date in order to accommodate the revised eligibility provisions of the committee bill. Clearly, there is capacity for more hospital and nursing ****1258 *783** home services at existing VA facilities. The VA is authorized by law to establish 125,000 hospital beds and nursing home beds, and is required to operate and maintain at least 90,000 hospital and nursing home beds. In 1970,

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

the VA operated 166 hospitals and over 106,000 hospital and nursing home beds. In 1984, the VA operated 172 hospitals but only 88,915 hospital and nursing home beds. According to the VA's 1984 Annual Report, approximately 20% of these beds were empty on an average day. It can be seen, then, that despite the opening of six new facilities since 1970, the VA has reduced its number of operating beds by more than 17,000.

Thus, in addition to assuring that each medical center has the capacity to care for eligible veterans who require immediate care, the VA may have to improve its ability to locate other VA medical centers which can accommodate demand when it exceeds the capacity of a particular VA medical center. An expanded referral capability should not be limited to existing medical districts or even regional boundaries, since the proposed bill requires the Veterans Administration to provide such care in VA facilities. It makes no sense to delay providing meeded care in one location at the same time that another location has available capacity to provide necessary treatment. The VA will be requested to treat the veteran, seek a bed in another VA facility within reasonable distance, locate a bed in a DOD hospital nearby or, where applicable, contract for such care. Since the VA is operating far fewer beds than authorized, it could expand its bed capacity within existing facilities should that become necessary.

Evidence of inability to defray expenses

The committee bill would add a new provision to existing law concerning evidence of an individual's inability to defray the cost of necessary medical care. Existing law provides that veterans who meet the eligibility criteria for Medicaid, VA pension, or who have a service-connected disability are presumed to be unable to defray the cost of necessary medical care. A new category of presumptive eligibles would be added by the proposed committee bill. A veteran would be eligible for necessary medical care under the 'unable to defray' category if his or her family's income is equal to or less than 3.34 times the maximum annual rate of pension payable to totally disabled veterans under chapter 15 of title 38. The following chart illustrates the applicable income levels:

Status	Maximum annual pension rate	Maximum income for health care
Single	$5,709	$19,068
With 1 dependent	7,478	24,977
Each additional dependent	968	3,233

In determining a veteran's family income (referred to as 'attributable income' in the bill), the Administrator would make such determination in the same manner used in determining income for the VA's pension program. The maximum income level for health care would be increased each year by the same percentage increase applicable to the maximum pension rate.

****1259 *784** The VA pension rule pertaining to net worth limitations is substantially restated in the language of the bill, and is to be applied in essentially the same manner to medical care eligibility determinations. It provides that if a veteran or his immediate family have sufficient assets (referred to as the 'corpus of the estate') which under all the circumstances, could reasonably be expected to be consumed in order to provide for the veteran's maintenance, then the veteran would be able to defray necessary medical expenses.

The Administrator, in implementing this rule, would follow the definition of 'corpus of estate' as is done in adjudication of pension claims and would therefore include all real and personal property owned by the veteran except the veteran's dwelling, including a reasonable lot area, and personal effects suitable to and consistent with the veteran's reasonable mode of life. Under existing guidelines, an estate of less than $25,000 would not ordinarily make a veteran ineligible for pension.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Similarly, a rule of reason would have to be adopted to determine whether it is reasonable for a veteran to be required to sell some part of his or her real property in order to pay the required deductible. In no event would the veteran be required to dispose of his dwelling.

Veterans who are able to defray the cost of care

The provision of the committee bill pertaining to veterans who are able to defray the cost of care describes the amount of, and conditions under which, an annual deductible would be paid. For inpatient care or nursing home care, the deductible would be equal to the lesser of the cost of care, or the inpatient deductible paid by persons who have Medicare coverage. A person insured under Medicare and admitted to a hospital is required to pay a deductible which is calculated by the Secretary of Health and Human Services in accordance with a formula set out in the Medicare authorizing statute. *See* 42 U.S.C. section 1395e (section 1813 of the Social Security Act). The committee is advised that for fiscal year 1985 the deductible is $400; it is estimated by CBO to be $492 for fiscal year 1986.

A veteran would not be required to pay the inpatient deductible more than once in any twelve-month period. Moreover, under Medicare, a person who is hospitalized for more than 60 days is assessed an additional coinsurance payment for each additional day of care equal to 25% of the inpatient hospital deductible; after 90 days, the copayment rises to 50% of the inpatient hospital deductible for each additional day. This copayment requirement would not be applicable to veterans.

The total outpatient copayment payable in any twelve-month period would be capped at the deductible payable for an inpatient admission. The amount of the copayment per visit would be 20% of the estimated nationwide average cost of the VA outpatient visit during the fiscal year in which the services are furnished. Effective October 1, 1984, the VA established a charge of $75 for an outpatient visit for use in connection with recovery under the Federal Medical Care Recovery Act, 42 U.S.C. 2652. Although not specifically endorsing the method used to calculate this rate, the committee expects the charges established under this section would be based on cost data similar to those used to calculate this rate. The Administrator ****1260 *785** would be required to update the estimated average cost on an annual basis. The amount paid by a veteran for outpatient services during any twelve-month period would be credited to the inpatient deductible in the event that the veteran was admitted to inpatient treatment during the twelve-month period.

The committee strongly urges the Administrator to consider using commercial practices, such as accepting credit cards, in the implementation of the outpatient copayment requirement. This is to insure that the costs of such billings are minimized. Otherwise, the cost of such billings could exceed the amount collected.

Clarification of the requirement that care be provided

The committee bill would also restate in positive law existing VA policies affecting the provision of health care in VA facilities. The existing definition of VA facilities anomalously includes restrictions on eligibility for health care provided by private facilities under a contract with the Administrator. These restrictions on eligibility are made applicable to veterans by virtue of references to care in 'Veterans Administration facilities' in the sections of law which govern eligibility for hospital, nursing home, domiciliary, and outpatient care. By revising the language governing the eligibility for such care, the committee does not intend to alter the restrictions in existing law on providing contract care. The committee believes that although these restrictions are in need of revision for clarity and ease of understanding, such revision may provoke further misunderstanding if included in a bill which substantively modifies other provisions affecting health care eligibility.

The committee has also included language which clarifies existing policies of the VA regarding the treatment of individuals who are entitled to care from another government agency. Veterans who are incarcerated, or who are committed by order of a civil or criminal court of appropriate jurisdiction, are two examples of individuals who are entitled to care from another government agency. While these veterans may be technically eligible for VA care, the agency has not accepted their applications because of its inability to guarantee the safety of other patients and because of its inability to insure that such patients do not leave without authorization. The committee bill does not affect this policy.

Similarly, the Administrator has always been authorized to determine when care is to be provided, the type of care provided, and to prescribe limitations on the types of medical care to be furnished. The committee's intent in restating this authority is

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

to make it clear that current Agency authority remains in full force and effect.

Effective date

The provisions of the committee bill would apply to hospital care, nursing home care and medical services furnished more than 60 days after enactment. However, a veteran in an inpatient or outpatient status on the day before the effective date would not be affected by the revised eligibility or deductible provisions for care furnished in connection with a spell of illness for which treatment was furnished prior to the effective date.

****1261 *786** The committee bill would also repeal the existing schedule of priority for outpatient care since the schedule is inconsistent with the committee's intent that the Administrator shall provide care to all eligible veterans.

The provisions of the bill which affect eligibility for health care would expire on September 30, 1988. Should Congress fail to extend or make the eligibility reform provisions permanent, the law governing eligibility will revert to that which is presently in effect.

Third party recovery

The Veterans' Administration has on several occasions, under both Democratic and Republican Administrations, submitted proposed legislation to the Congress to amend title 38 of the United States Code to provide for the right of the United States to recover the costs of hospital, nursing home or outpatient medical care furnished by the VA to veterans to the extent that they have health insurance or similar contracts. Two general issues have been addressed by the proposed legislation: (1) the right of the United States, through an Act of Congress, to recover medical costs from third parties for health care delivered to veterans in Federal facilities without cost to the veteran; and (2) the right of the United States, through the Act of Congress, to prohibit so-called 'exclusionary' clauses in contracts or other agreements which would negate recovery efforts.

The committee opposed these previous third-party recovery proposals in consideration of issues raised during committee hearings on the matter which can be summarized as follows:

First, insurers have raised constitutional questions, despite Department of Justice opinions to the contrary, that third-party recovery proposals exceed the powers of the Federal government. Questions have been raised in particular reference to the Fifth Amendment of the Constitution prohibition against the taking of property without compensation. In the insurer's view, a proposal to require insurers to pay for 'free' care provided to eligible veterans is a 'taking' of property from insurers and self-funded employers.

Second, insurers have protested the shift of the costs of an unknown amount of medical care from Federal taxpayers to those who pay insurance premiums.

Third, the Veterans' Administration has, on several occasions, cited the high cost of a comprehensive cost-billing system which would be necessary for the VA to prepare statement of charges for reimbursement.

Finally, the Veterans' Administration has expressed reluctance in the past to submit to 'utilization review' and other cost control mechanisms employed by insurers.

The Veterans' Administration Health-Care Personnel Act of 1980, P.L. 96–330, modified the provision of law that prohibited the Administrator from looking behind a veteran's statement under oath that he or she was unable to defray necessary medical expenses. As was stated in the House Report accompanying the legislation, the modification was 'designed to allow the Administrator to determine whether certain veterans are able, based on outside income, or adequate private insurance coverage, or both, to receive treatment for non-service-connected disabilities outside the Veterans' ****1262 *787** Administration.' (House of Representatives Report No. 96–958, p. 16, 96th Congress, 2d Session). The committee clearly stated that the change was being made in lieu of legislation authorizing recovery of the costs of VA medical care from insurers of veteran patients. The VA failed to carry out the intent of Congress by not implementing this provision of law.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Reconciliation instruction agreement

On August 1, 1985, the House and Senate reached agreement on the First Concurrent Budget Resolution for fiscal year 1986. The agreement required the Committee on Veterans' Affairs to report legislation on matters within its jurisdiction that would reduce budget authority and outlays by $300 million in FY 1986, and by $1.15 billion during the next three fiscal years.

Despite its previous opposition to the concept of third-party recovery, the committee is confronted with a mandate by the congress to achieve considerable savings and the committee believes there are no other proposals. Which would produce equivalent savings and which would not adversely affect ongoing veterans' benefits and services. Accordingly, in view of the repeated endorsement of third-part reimbursement by the Administration and others as well, and the need to achieve savings during the next three fiscal years, the committee is recommending legislation to authorize third-party recovery from health care insurers for non-service-connected disabled veterans who obtain health care in VA facilities.

In considering the previous objections of the committee to a third-party recovery authority for the VA, the committee also notes the following:

First, in a letter to the Chairman of the Senate Committee on Veterans' Affairs dated April 26, 1985, the Acting Assistant Attorney General, Philip D. Brady, reiterated the Department of Justice's long-held view that there is no constitutional prohibition against seeking reimbursement from third-party payers. Earlier expressions of the Department's views on this matter are contained in a letter dated April 14, 1979, to the Honorable Alan Cranston, Chairman, Senate Committee on Veterans' Affairs, from Patricia M. Wald, Assistant Attorney General, and in a letter dated June 11, 1973 to Paul H. O'Neill, Associate Director for Human and Community Affairs, Office of Management and Budget, from Robert G. Dixon, Jr., Assistant Attorney General. Mr. Brady wrote:

'[W]e strongly adhere to our view that the proposed legislation is constitutional . . . [T]he proposed legislation . . . is, in our view, well within the Government's power to regulate . . . Congress may reasonably determine that it is in the public interest to spread part of the cost of providing this health care among all persons (or all veterans) with health insurance in order to precluded either a windfall to the health insurance companies or a government financial benefit to nonveteran policyholders.

'. . . Far from 'taking' property belonging to private parties, the proposed legislation simply determines how government subsidies will be allocated in the future. The proposed legislation operates in classic regulatory fashion in that it governs only future conduct and allows private insurers (and all others affected) to adjust their behavior in light of the regulation.'

****1263 *788** The committee has designed its legislation in a manner consistent with the Administration's approach addressed by the Justice Department opinion.

Second, the feared shift on the costs of VA care to premium payers appears to the minimal. According to the General Accounting Office, a premium increased of between $.93 and $2.69 per year is expected for each of the approximately 112 million policyholders with comprehensive hospitalization insurance coverage if the companies pass on benefit payments and administrative costs to all of their policyholders.

Third, the committee expects that the need expressed by the VA for a cost billing system will be met by the diagnostic related group resource allocation system being established in the VA, which will enhance its ability to negotiate costs with insurers. The Department of Medicine and Surgery has expended substantial funds and staff resources in providing an extensive computer system in each hospital which can be used to support their billing and collection efforts.

Last, the utilization review within the VA provides a basis for working with insurers with related features of their contracts, policies, or other arrangements.

The right of the United States to recover the cost of certain care and services from third parties would be revised by the bill. It would restate the existing provisions of law without substantive modification except for the addition of a new category of care for which the United States may seek recovery. Both the existing and proposed law apply only to care and services for non-service-connected disabilities. The new category is for care provided to a veteran with no service-connected disability who is entitled to care, or reimbursement for care, from a third party such as an employee health care insurer. This authority would be in addition to the Administrator's existing authority to collect under workers' compensation laws, automobile

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

'no-fault' insurance policies, and 'victims of crime' compensation funds.

The committee is aware that the United States has had to litigate the meaning of the existing provisions of law on several occasions where third parties sought to read the language in a manner inconsistent with Congressional intent. The repetition of terms used in existing law in the revision of this section is intended to signify that there is no change with respect to these terms from the original Congressional intent in enacting this measure.

In allowing recovery from third parties for the cost of care or treatment furnished by the Veterans' Administration, the law presently creates an independent right in the Government which it may enforce by subrogation, intervention, or a separate action. The nature of the Government's right is similar to that conferred by the Federal Medical Care Recovery Act, 42 U.S.C. § 2651. The languge in the committee bill does not affect or diminish the Government's right to action, nor would the Government lose its right to recovery if it does not intervene in an action that is commenced within 180 days. The language in the committee bill protects the injured person's right to recover for damages incurred, but it is not intended to prevent an independent action if a timely action by the veteran is not brought.

****1264 *789** Since the United States' authority to recover is limited to the extent that the veteran is entitled to reimbursement or indemnification for care or services, the amount that the United States may collect under the authority of this section is limited to the reasonable cost of the care provided less any applicable insurer-required deductible or copayment amount. Similarly, if a State law or a relevant contractual provision to which a veteran is subject sets a maximum amount which an individual is entitled to recover, regardless of the provider of services, then the United States would not be able to recover beyond that amount since it is the amount which the veteran may be reimbursed. However, during markup of the bill, the Chairman of the Subcommittee on Hospitals and Health Care (Mr. Edgar) offered an amendment, which was adopted by the committee, to clarify that the phrase 'to the extent that the veteran . . . would be eligible to receive reimbursement or indemnification for such care' means that no third party payer would be required to reimburse the VA for a health care service that is not covered under the terms and conditions of its contracts, policies or other agreements with veterans. Of course, third party payers would no longer be able to refuse to reimburse based on a general exclusion of care provided by the VA.

The Veterans Administration would not be authorized to bill a third party payer for the cost of care covered by the deductible which a veteran is required to pay to the VA in order to receive needed care. However, a veteran who pays the deductible in order to receive inpatient or outpatient care would not be responsible for any additional amount which would be payable under the terms of his or her insurance policy.

The Administrator would be authorized by the revised provision to waive, settle, or compromise any claim of the United States pursuant to this section. This is intended to clarify the Administrator's authority in this regard. Prior to the enactment of the Federal Claims Collection Act of 1966, the VA had exercised its general authority to pursue and compromise claims. However, the passage of the Federal Claims Collection Act could be construed as limiting the Administrator's authority to settle claims. Since there was no stated intent to do so, a statutory restatement of this authority is desirable from Administration's point of view.

Exclusionary clauses prohibited

The bill would effectively nullify any contract provision agreed to after the date of enactment of this measure which seeks to bar the United States from recovery in connection with care furnished in the circumstances described in the bill. This prohibition is intended to have a prospective effect, and is not designed to impair any existing contractual arrangements which are not described in the revised section 624.

Authority to contract for services

The committee bill contains language patterned after section 3718 of title 31. The language is included in order to make it clear that the Administrator may enter into a contract with an organization that retains a portion of the amount collected as a fee for its services. The organization would be subject to the Privacy Act of ****1265 *790** 1974, 5 U.S.C. § 552a, the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*, and other State and Federal laws related to collection practices. The

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Administrator would retain the authority to resolve the debt in any manner without protest from the collection organization.

The bill would require the Administrator to promulgate regulations for determining the reasonable cost of care and services. The Administrator would also be authorized to contract with consultants or other contractors to assist in determining reasonable costs.

Access to records

Third parties will have access to clinical records for the purpose of verifying that services which are billed were in fact furnished. The confidentiality restrictions found elsewhere in title 38 are applicable to these records in all respects not addressed by this subsection. Thus, disclosure of records subject to the special protections found in 38 U.S.C. 4132 would have to be made in accordance with the provisions of that section. As a matter of policy, the committee believes that insurers should make every effort to obtain a veteran's consent to disclosure of information concerning treatment provided at a VA medical facility.

The bill defines the term 'third party' to mean a State or political subdivision of a State, an employer, an employer's insurance carrier, an automobile accident reparations insurance carrier (terms used in the existing law), insurance medical service, or health plan carrier, or contractor. These latter terms are intended to cover health insurance policies or similar contracts.

This definition specifically excludes Medicare or Medicaid (or similar State plans under title XVIII of the Social Security Act) from this section's coverage; therefore, recovery may not be sought for care where the source of reimbursement is Medicare or Medicaid. It is also the committee's intent to prohibit private insurance companies from seeking to collect from Medicare or Medicaid in instances where such programs are first payers. In the event the veteran has both Medicaid and private health insurance, the private health insurance would be payable in accordance with its terms, but no reimbursement from Medicare or Medicaid could be obtained by the VA or the private insurance company.

The revised law will be applicable to care and services provided on or after the date of enactment, but it would not affect agreements that were entered into before the date of enactment. However, any modification or renewal of the policy subsequent to the date of enactment, including a change in the premium rate, would have the effect of voiding any exclusionary clause applicable to care provided in a Veterans Administration medical facility.

Cap on contract care reimbursement rates

The committee bill would add a new section to chapter 17 of title 38 United States Code. The proposed new section would require non-federal providers of hospital services to Medicare beneficiaries to accept Veterans Administration beneficiaries on a similar basis. It would also require such providers to accept payments made by the Administrator in accordance with VA regulations as payments in full. In the event that a provider did not comply with these requirements, ****1266 *791** the Administrator could then initiate proceedings to enforce compliance through the Secretary of Health and Human Services.

Report on effect of committee bill

The bill would require the Administrator to provide the Committees on Veterans Affairs of the Senate and House of Representatives with a report on the effects of the eligibility reforms contained in the bill. The report should include, but not be limited to, the following: First, the number of veterans receiving health care from the VA during the report period, including the existence and extent of policies, contracts, or other arrangements with third parties for the purpose of providing, paying for, or reimbursing expenses for health services and, second, the number of veterans applying for health care from the VA during the report period, including the extent and existence of third party reimbursement arrangements and reasons why veterans who applied for care did not receive such care. It is the committee's intent that this reporting requirement not foster the growth of extraordinary data collection operations. Instead, the committee expects that the management information required by the report will be provided through the decentralized hospital computer program in the various medical facilities and other management information programs that exist in the VA.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Part C—Miscellaneous Provisions

Advisory Committee On American Indians

The committee bill would direct the Administrator of Veterans Affairs to establish an Advisory Committee on American Indians consisting of the Secretary of Labor, the Chief Medical Director and the Chief Benefits Director of the Veterans Administration, representatives of American Indian veterans (including those with service-connected disabilities) and individuals from the general public who are recognized authorities in fields pertinent to the needs of such veterans.

American Indians have played prominent roles in the military history of this country since its very beginnings, nearly 200 years ago. On March 13, 1778, George Washington wrote from Valley Forge to the Commissioners of Indian Affairs: '. . . I am empowered to employ a body of four hundred Indians, if they can be procured upon proper terms . . . I think they may be made of excellent use, as scouts and light troops mixed with our own parties.' During the Civil War, Indian regiments fought in both the Union and Confederate armies. Following the Civil War, Indians became part of the enlisted ranks of the U.S. Army where previously they had been hired as civilian auxiliaries and for scouting duty. On August 1, 1866, the U.S. Indian Scouts were established by order of the War Department. Regular enlisted men of the Army, the Scouts received the same pay and allowances and wore the same uniforms as their fellow servicemembers.

Continuing the traditions of their ancestors, many Indians served with distinction in the Army and other services during World Wars I and II, the Korean Conflict and during the Vietnam era. According ****1267 *792** to the 1980 Census, 44,500 American Indians served during World War II, 29,700 during the Korean Conflict, and 78,681 during the Vietnam era. Several sources estimate that an astonishing 23 to 26 percent of all Indians are also veterans. Contributions to the World War I effort were so remarkable in combat and at home that American citizenship was granted to thousands of honorably discharged Indian veterans. The eventual passage in 1924 of an Act of Congress to extend citizenship to all Indian people is largely credited with being a direct result of this Indian support of the Nation at war.

In spite of this long history of American Indian participation in our Nation's military conflicts, no major scientific study regarding veterans has identified Indian veterans as a specific group, and no assessment of their particular readjustment needs has ever been conducted. Although Public Law 98–160, the Veterans' Health Care Amendments of 1983, provides for a comprehensive study of the prevalence and incidence in the population of Vietnam veterans of post-traumatic stress disorder and other psychological problems, American Indian Vietnam veterans are not identified as a specific subgroup as are women, blacks and Hispanic veterans.

In September 1983, several Indian veterans who were working in Veterans' Administration Vet Centers were assembled to establish the National Working Group on American Indian Vietnam Veterans (NWG-AIVV). The purpose of this group was to study Vet Center service delivery to Indian veterans of the Vietnam era, determine if a problem exists, and within agency guidelines develop recommendations which might improve service. Surveys conducted by the NWG-AIVV indicate that some major differences exist between the American Indian Vietnam veteran and his non-Indian counterpart and that the American Indian population itself is diversified. The committee believes these significant differences argue for the need for a separate and extensive study which will display adequate sensitivity to the unique problems and nature of the American Indian population. Studies such as that mandated by P.L. 98–160 cannot adequately evaluate the status and needs of Indian veterans because that study will not take into consideration the unique cultural and social characteristics of the Indian population. It should also be pointed out that the first comprehensive study to evaluate the readjustment of Vietnam era veterans, 'Legacies of Vietnam: Comparative Adjustment of Veterans and their Peers,' did not include the American Indian Vietnam veteran in the sample used. Thus, there is in existence today no valid information regarding the particular needs of American Indian veterans.

The committee feels that the Congress and the Veterans Administration must recognize the contribution made by American Indians during times of war and the effect those wars may have had on them after their return home. The mission of the advisory committee established under H.R. 1538, as amended, would be to examine and evaluate programs and other activities of the Veterans Administration with regard to the needs of American Indian veterans. In order to accomplish its mission, it is the expectation of the committee that the advisory committee will carefully assess the needs of Indian veterans

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

in the areas of health care, including post-war psychological problems and alcohol and drug abuse, rehabilitation, employment, ****1268 *793** outreach, and other programs. Further, the advisory committee would evaluate the adequacy of current program administration and structure and make recommendations regarding steps to be taken to ensure maximum service to American Indian veterans. The advisory committee should investigate services provided by other agencies, such as the Indian Health Service and the Bureau of Indian Affairs, with a view to possible interagency agreements or other formal and informal linking mechanisms. Programs in the Department of Labor should also be reviewed for possible coordination and linkage.

Study of female veterans exposed to certain herbicides in Vietnam

The committee bill would direct the Administrator of Veterans' Affairs to provide for the conduct of an epidemiological study of any long-term adverse gender-specific health effects in females that may have resulted from exposure to herbicides containing dioxin while serving in the Republic of Vietnam during the Vietnam conflict.

In February, 1984, 90 Members of Congress wrote to the Administrator of Veterans Affairs expressing their concern that female Vietnam veterans had not been included in epidemiological studies then being conducted by the Centers for Disease Control (CDC) which Congress mandated. In July of this year, during a briefing on CDC's ongoing Agent Orange projects, spokesmen acknowledged the feasibility of such a study. Since that time, the Cabinet Council Agent Orange Working Group has been considering the development of a study on this subject.

Now that a draft protocol on the conduct of the study has been submitted to the Cabinet Council Agent Orange Working Group, the committee strongly believes that the health needs of female Vietnam veterans deserve the same expeditious and careful consideraton given to the studies now being conducted for male veterans who served in Vietnam. The original legislation did not limit the study to the male veteran population.

SECTION-BY SECTION ANALYSIS OF TITLE X

Section 1001

Subsection (a) would provide that this Act may be cited as the 'Veterans' Compensation and Health Care Amendments of 1985'.

Subsection (b) would provide that, except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

Part A—Compensation Rate Increases

Section 10011

Would provide that this part may be cited as the 'Veterans' Compensation Rate Amendments of 1985'.

****1269 *794** *Section 10012*

Would amend present section 314 relating to the rates of service-connected disability compensation.

Subsection (a) would amend subsections (a) through (j) of present section 314 to increase by 3.7 percent the basic monthly rates of compensation paid to veterans with service-connected disabilities rated from 10 to 100 percent. The committee bill would also increase by 3.7 percent:

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The limitations on the total amount payable monthly to a veteran entitled to compensation under subsection (k) who is also entitled to compensation under another subsection of present section 314;

The higher monthly rates of compensation authorized under subsections (1) through (o) and (s) of section 314 for veterans with certain combinations of severe disabilities;

The maximum amount payable monthly to a veteran under subsection (p), which authorizes the Administrator to pay the next higher rate or intermediate rate to a veteran whose disabilities exceed the requirements for any of the rates prescribed in section 314, or who is both blind and deaf;

The rates payable monthly under subsection (r) to veterans who are in need of aid and attendance;

The rate payable under subsection (s) to veterans who are permanently housebound; and

The additional amount payable under subsection (t) to certain veterans who have suffered the service-connected loss or loss of use of an extremity and the non-service-connected loss or loss of use of the other paired extremity.

Subsection (b) would authorize the Administrator to increase by 3.7 percent the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38. Public Law 85–857 generally codified in title 38 of the United States Code the law relating to veterans' benefits; section 10 of that law provides that any person who was receiving benefits as a veteran on December 31, 1958, under public laws administered by the VA but not so codified, is to continue to receive benefits at the rates payable under such public laws or under corresponding provisions of title 38, whichever is the greater, as long as he or she remains eligible.

Section 10013

Would amend paragraph (1) of present section 315 of title 38, relating to additional compensation payable monthly to veterans with service-connected disabilities rated as 30 percent or more disabling who have spouses, children, or dependent parents, to increase those allowances by 3.7 percent. Under paragraph (2) of present section 315, which is not amended by the Committee bill, the additional compensation payable for dependents to veterans rated from 30- to 90-percent disabled is prorated, so that, for example, a veteran rated at 30 percent receives 30 percent of the amount specified in paragraph (1) of section 315.

****1270 *795** *Section 10014*

Would amend present section 362 of title 38, relating to the clothing allowance payable annually to a veteran receiving compensation whose disability requires the use of a prosthetic or orthopedic appliance or appliances, including a wheelchair, that tends to wear out or tear the veteran's clothing, to increase that allowance by 3.7 percent.

Section 10015

Would amend present section 411 of title 38, relating to the rates of dependency and indemnity compensation (DIC) for the surviving spouses of veterans whose deaths are service connected.

Paragraph (1) would amend subsection (a) of present section 411 to increase by 3.7 percent the DIC benefit payable monthly to the surviving spouse of a veteran who has died as a result of service-connected disability. Under current law, a surviving spouse's DIC is paid according to the pay grade—service rank—of the deceased veteran. The DIC rate payable to the surviving spouses of veterans who had attained the grades of E–1 through O–10 would be increased by 3.7 percent, and proportionate increases would be provided in the rates payable to the surviving spouses of veterans who had served in the positions specified in footnotes 1 and 2 to the table of grades and rates in existing section 411. The enactment of these increases would automatically result in identical increases in the benefits payable at DIC rates under section 410(b) of title 38 to surviving spouses of certain veterans compensated at the 100-percent rate whose deaths were not service connected.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

The second footnote of the table of rates in section 411(a) would also be amended to make the DIC rate payable to the surviving spouse of a Coast Guard Commandant commensurate to the DIC rates payble to the surviving spouses of the other military service chiefs, such as the Chief of Staff of the Army. Under current law, the surviving spouses of the other military branches qualify for higher DIC rates than do surviving spouses of Coast Guard Commandants, despite the fact that the underlying pay grades of the persons upon whom entitlement is predicated are not equal by virtue of section 35(a) of Public Law 98–557. Paragraph (1) of section 105 would eliminate the disparity in DIC rates, and restore the historical linkage between DIC rates, and restore the historical linkage between DIC rates and the underlying military pay grades of the deceased veterans.

Paragraph (2) would amend subsection (b) of present section 411 to increase by 3.7 percent the dependents' allowance payable for each child under the age of 18 to a surviving spouse receiving DIC.

Paragraph (3) Would amend subsection (c) of present section 411 to increase by 3.7 percent the additional amount of DIC payable monthly to a surviving spouse who is a patient in a nursing home or who is helpless or blind or so nearly helpless or blind as to be in need of regular aid and attendance.

Paragraph (4) would amend subsection (d) of present section 411 to increase by 3.7 percent the DIC payable monthly to a surviving spouse who is so disabled as to be permanently housebound.

****1271 *796** *Section 10016*

Would amend present section 413 of title 38, relating to DIC for surviving children of veterans whose deaths where service connected, to provide a 3.7 percent increase in the monthly rates of DIC payable to the veteran's children where no surviving spouse is entitled. Benefits payable at DIC rates under present section 410(b) of title 38 to the surviving children of certain veterans compensated at the 100-percent rate whose deaths were not service connected would also be automatically increased as a result of this increase under section 413.

Section 10017

Would amend present section 414 of title 38, relating to supplemental DIC for certain surviving children.

Paragraph (1) would amend subsection (a) of present section 414 to provide a 3.7 percent increase in the additional allowance payable monthly to a child eligible for DIC who has attained the age of 18 and who became permanently incapable of self-support before reaching age 18.

Paragraph (2) would amend subsection (b) of present section 414 to provide a 3.7 percent increase in the DIC payable monthly, concurrently with the payment of DIC to a surviving spouse, to a surviving child who has attained the age of 18 and who become permanently incapable of self-support before reaching age 18.

Paragraph (3) would amend subsection (c) of present section 414 to provide a 3.7 percent increase in the additional DIC payable monthly, concurrently with the payment of DIC to a surviving spouse, to a surviving child pursuing a course of education approved under present section 104 of title 38.

Section 10018

Would provide that the amendments made by this title shall take effect on December 1, 1985.

Part B—Health Care Eligibility Reform

Section 10021

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Would provide that this part may be cited as the 'Veterans' Health-Care Eligibility Reform Act of 1985'.

Section 10022

Would amend various sections of chapter 17 of title 38, relating to eligibility for health-care services from the Veterans Administration.

Subsection (a) of Section 10022 would amend section 610 of title 38, United States Code.

Paragraph (1) of subsection (a) would revise section 610(a) to require the Administrator to furnish hospital care which the Administrator determines is needed to eight categories of veterans:

(1) to any veteran for a service-connected disability;

(2) to a veteran discharged for a disability incurred or aggravated in line of duty;

(3) to a veteran entitled to receive disability compensation;

****1272 *797** (4) to a veteran disabled by treatment or vocational rehabilitation;

(5) to certain veterans exposed to ionizing radiation or to dioxin;

(6) to former prisoners of war;

(7) to veterans of the Spanish-American war, Mexican border period, or World War I;

(8) to veterans who are unable to defray the expenses of necessary care (as defined in section 622).

The limitation on furnishing hospital care 'within the limits of Veterans Administration facilities' would be made inapplicable to these eight categories of eligible veterans. A ninth category of veterans seeking hospital care for treatment of a non-service connected disability would be eligible for such care only if they agreed to make a copayment in an amount discussed below. Such care could only be provided within the limits of VA facilities. Under existing subdivision (6) of section 610(a), a separate basis of eligibility for veterans sixty-five years of age or older is set forth; this subdivision would be eliminated by the proposed revision. The Administrator would continue to furnish nursing home care on a discretionary basis within the limits of VA facilities.

Paragraph (2) of subsection (a) would make conforming amendments to section 610(e).

Paragraph (3) of subsection (a) would add two new subsections to section 610. The proposed subsection (f) describes the amount of, and conditions under which, a copayment or deductible would be paid by veterans who do not fall into one of the categories proposed to be codified at section 610(a)(1)–(8). Prior to receiving needed care, a veteran who did not fall into one of these categories would be required to agree to pay a deductible. For inpatient or nursing home care, the copayment would be equal to the lesser of the cost of care or the inpatient hospital deductible required of persons who are eligible for Medicare.

Under the proposed subsection (f)(2), a veteran would not be required to pay the inpatient deductible more than once in any twelve month period. The proposed subsection (f)(3) provides that amounts collected from veterans would be deposited in the Treasury as proprietary receipts. As defined in the proposed subsection (f)(4), the inpatient Medicare deductible does not include the Medicare coinsurance requirement applicable to hospital stays of more than 60 days.

The proposed subsection (g) would clarify that the provision of services required to be furnished under section 610 is subject to the limitations on such services found in the definition of 'Veterans Administration facility' in section 601 of title 38. It would also clarify that nothing in section 610 requires the Administrator to furnish care to a veteran to whom another government agency has a duty to provide care in an institution of such government, and that the Administrator retains the discretion to determine the appropriateness and manner in which medical services, therapies, or programs are furnished under

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

chapter 17 of title 38.

Subsection (b) of section 10022 would amend the provisions of section 612 of title 38, which deal with eligibility for care on an outpatient basis. The provision of outpatient services to veterans described ****1273 *798** in proposed subsections (a), (f)(1), and (g) would be made mandatory under the reported bill. Under the proposed subsection (f)(3)(A), an eligible veteran who is able to defray the cost of necessary care would be required to agree to make a payment for each visit equal to 20% of the estimated average cost of an outpatient visit. The copayment would not be applicable to outpatient services provided in order to complete treatment incident to care in a VA hospital. The proposed subsection (f)(3)(C) would cap the amount of the copayment payable by a veteran in any twelve month period for both inpatient and outpatient services at the amount of the inpatient Medicare deductible, discussed above.

Paragraph (3) of Section 10022(b) would repeal subsection (i) of section 612.

Paragraphs (4) of Section 10022(b) would make clarifying amendments to subsection (j) of section 612.

Subsection (c) of Section 10022 would add a new subsection to section 622 of title 38, United States Code, which deals with evidence of an individual's inability to defray the cost of necessary medical care. Section 622 presently provides that veterans who meet the eligibility criteria for Medicaid, VA pension, or who have a service-connected disability are presumed to be unable to defray the cost of necessary medical care. A new category of presumptive eligibles would be added by the proposed subsection (b). Under the proposed subsection, a veteran would be eligible for necessary medical care under the 'unable to defray' category (recodified as section 610(a)(8)) if his or her family's income was equal to or less than 3.34 times the maximum annual rate of pension payable to totally disabled veterans under chapter 15 of title 38. This amount is referred to the health-care income threshold.

The substance of the rule set out in section 522 pertaining to pension net worth limitations is restated as proposed paragraph 2 of Section 622(b). It provides that if a veteran or his immediate family have sufficient assets (referred to as the 'corpus of the estate') which, under all the circumstances, could reasonably be expected to be consumed in order to provide for the veteran's maintenance, then the Administrator may refuse to determine that the veteran is unable to defray necessary medical expenses. Under the proposed subsection (b)(3), in determining a veteran's annual family income, the Administrator would consider the same items and sources of income and would allow the same exclusions allowed in the pension program as set forth in Chapter 15 of title 38.

Section 10022(d)

Would make conforming amendments to sections which contain references to the provisions amended by section 1022(a)–(c).

Section 10022(e)

Would provide that the provisions of this bill would apply to hospital care, nursing home care and medical services furnished after the end of the 60 day period beginning on the date of enactment of the proposed bill. However, a veteran who is in an inpatient or outpatient status on the day before the effective date would not be affected by the revised eligibility or deductible provisions for care ****1274 *799** furnished in connection with the same spell of illness for which treatment was furnished prior to the effective date.

Section 10022(f)

Would provide that the amendments made by section 10022 shall expire on October 1, 1988.

Section 10023

Would revise section 629 of title 38, United States code, which deals with the right of the United States to recover the cost of

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

certain medical care and services from third parties.

The proposed section 629(a) restates the existing provisions of section 629(a) without substantive modification except for the addition of an additional condition under which the United States may seek recovery. Both the existing and proposed section 629 apply only to care and services for non-service-connected disabilities. The new condition is for care provided to a veteran with no service-connected disability who is entitled to care or reimbursement for care under an insurance policy or other contract or arrangement for reimbursing expenses for heath services. This authority would be in addition to the Administrator's existing authority to collect under workers' compensation laws, automobile 'no-fault' insurance policies, and 'victims of crime' compensation funds.

Proposed subsection (b) is a restatement of existing subsection (c) of section 629.

Under proposed subsection (c), the Administrator would be authorized to waive, settle, or compromise any claim of the United States pursuant to this section.

Proposed subsection (d)(1) is patterned after section 3718 of title 31. It provides that the Administrator may enter into a contract with a collection service that retains a portion of the amount collected as a fee for its services. The organization would be subject to the Privacy Act of 1974, 5 U.S.C. § 552a, the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*, and other Federal and State laws related to debt collection practices. The Administrator would retain the authority to resolve a dispute, compromise a claim, and collection action, and refer a matter to the Attorney General.

Paragraph (2) of this subsection restates the provisions of section 629(b) pertaining to the amount which the Administrator may recover. The amount recoverable may not exceed the lesser of the reasonable cost of care and services or the maximum amount specified by the law of the state or political subdivision concerned or by any contractual provision to which the veteran is subject. The Administrator would also be authorized to contract with health insurance carriers or other contractors to assist in determining or establishing reasonable costs.

Subsection (e) is a restatement of existing subsection (d).

Subsection (f) is patterned after the existing language of subsection (e). It would effectively nullify any contract provision agreed to after the date of enactment of this measure which seeks to bar the United States from recovery in connection with care furnished in the circumstances described in subsection (a) of section 629. The prohibition is worded so that it would operate prospectively without ****1275 *800** impairing contractural arrangements which are not described in this subsection.

Subsection (g) provides that amounts collected on behalf of the United States under this section shall be deposited in the Treasury as proprietary receipts.

Subsection (h) provides that third parties and the insured may have access to clinical records of a veteran beneficiary for the sole purpose of verifying that services which are billed were in fact furnished.

Subsection (i) defines the term third party to mean a State or political subdivision of a State, as employer, an employer's insurance carrier, an automobile accident reparation insurance carrier, (terms used in the existing section 629), insurance medical service, or health plan carrier, or contractor. This definition specifically excludes Medicare or Medicaid (or similar State plans under title XVIII of the Social Security Act) from this section's coverage; therefore, recovery may not be sought for care where the source of reimbursement is Medicare or Medicaid. Section 202(b) provides that this section will be applicable to care and services provided on and after the date of enactment, but it would not affect agreements that were entered into before the date of enactment. However, a modification or renewal of the policy subsequent to the date of enactment would have the effect of making the policy subject to this section.

Section 10024

Would add a new section to chapter 17 of title 38, United States Code. The proposed section 625 would require non-federal providers of hospital services to Medicare beneficiaries to accept Veterans Administration beneficiaries on a similar basis. It would also require such providers to accept payments made by the Administrator in accordance with VA regulations as

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

payments in full. In the event that a provider did not comply with these requirements, the Administrator could initiate compliance proceedings through the Secretary of Health and Human Services.

Section 10025

Would require the Administrator to report to the Committees on Veterans' Affairs on the number of veterans who receive health care over a one-year period, the number who applied for but did not receive such care, and the reasons why such veterans did not receive the care which they sought. The report would cover a one year period beginning on the effective date of the amendments made by section 202, and would be due 30 days after the end of the one year period.

Part C—Miscellaneous

Section 10031

Subsection (a) would require the Administrator to establish, by no later than October 15, 1985, an advisory committee to be known as the Advisory Committee on American Indian Veterans (hereinafter referred to as the Committee).

****1276 *801** *Subsection (b)* would authorize the Committee to examine and evaluate the furnishing of VA services to American Indian veterans, including an assessment of the specific needs of such veterans and the manner in which VA programs and activities meet those needs.

Subsection (c) would establish the membership of the Committee, to include:

The Secretary of Labor, or a representative of the Secretary of Labor designated by the Secretary after consultation with the Assistant Secretary of Labor for Veterans' Employment;

The Chief Medical Director and Chief Benefits Director of the VA; and

Members appointed by the Administrator from the general public, including representatives of American Indian veterans, American Indian veterans with service-connected disabilities, and persons who are recognized authorities in fields pertinent to the needs (such as health care needs and the delivery of health care services by VA) of those veterans.

Subsection (d) would authorize the Administrator to invite representatives of other departments and agencies of the Federal Government to participate in the meetings and activities of the Committee.

Subsection (e) would direct the payment to the members of the Committee for reasonable and necessary expenses, as determined by the Administrator, incurred in carrying out Committee duties on or after October 1, 1985.

Subsection (f) would require the filing of certain reports respecting the matters described in subsection (b) of section 301.

Paragraph (1) of subsection (f) would require the Committee to transmit to the Administrator, not later than November 1, 1986, a report on such matters that were examined and evaluated during fiscal year 1986. Additionally, it would require the Committee to transmit to the Administrator, not later than November 1, 1987, a report on such matters that were examined and evaluated during fiscal year 1987.

Paragraph (2) of subsection (f) would require the Administrator, within 60 days after receiving each report, to transmit to Congress a copy of such report together with any appropriate comments.

Subsection (g) of section 301 would provide that the Committee shall terminate on the date on which the second report is transmitted by the Committee pursuant to paragraph (1) of subsection (f).

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Section 10032

Would provide for an epidemiological study of any long-term, gender-specific adverse health effects in female veterans of exposure to phenoxy herbicides and the contaminant dioxin during service in the Republic of Vietnam.

****1277** *Subsection (a)* would require the Administrator to conduct such a study, and provides authority to expand the scope of the study.

Paragraph (1) of subsection (a) would require the Administrator to conduct an epidemiological study of any long-term adverse gender-specific health effects in female veterans who served in the Republic of Vietnam during the Vietnam conflict that may result ***802** from exposure to phenoxy herbicides (including Agent Orange) and dioxins produced during the manufacture of such herbicides.

Paragraph (2) of subsection (a) would authorize the Administrator to expand the scope of the study to include evaluation of long-term adverse gender-specific health effects in female veterans of such service that may result from other service-related factors, including exposure to other herbicides, chemicals, medications, or environmental hazards or conditions.

Paragraph (3) of subsection (a) would authorize the Administrator to also evaluate the means of detecting and treating adverse gender-specific health effects found through the study.

Paragraph (4) of subsection (a) would provide for the study to be conducted through contracts or agreements with public or private agencies or persons.

Subsection (b) would provide for establishing, monitoring, and reporting on a study protocol.

Paragraph (1) of subsection (b) would require the study to be conducted in accordance with a protocol approved by the Director of the Office of Technology Assessment (hereinafter referred to as the Director).

Paragraph (2) of subsection (b) would require the Director to monitor the study to ensure compliance with such protocol.

Paragraph (3) of subsection (b) would require the Director to submit to the appropriate committees of Congress a report explaining the basis of the Director's approval or disapproval of the protocol and providing the Director's conclusions regarding the scientific validity and objectivity of the protocol. Paragraph 3 would also require the Director, in the event a protocol has not been approved within 180 days following enactment of this Act, to submit to the appropriate congressional committees a report describing the reasons for such delay in approval and an updated report each 60 days thereafter until a protocol is approved.

Paragraph (4) of subsection (b) would require the Director to submit to the appropriate committees of Congress, at times specified in paragraph (4), reports on the conduct of the study as monitored by the Director. Such reports are to be submitted at the following times:

(A) before the end of the six-month period beginning on the date of the approval of the protocol by the Director;

****1278** (B) before the end of the 12-month period beginning on such date; and

(C) annually thereafter until the study is completed or terminated.

Subsection (c) would provide for the continuation of such study for as long after the submission of the first report under paragraph (d)(1) as the Administrator may determine reasonable.

Subsection (d) would require the Administrator, in accordance with a specific timetable, to submit annual reports to the appropriate committees of Congress and publish in the Federal Register any proposed actions respecting VA programs.

Paragraph (1) of subsection (d) would require the Administrator to submit to appropriate congressional committees, not later than 24 months following the date of approval of the protocol and annually thereafter, a report containing a description of the

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

study results ***803** up to that point, as well as such comments and recommendations for administrative or legislative action as the administrator considers appropriate.

Paragraph (2) of subsection (d) would require the Administrator to publish in the Federal Register, not later than 90 days after the submission of each report described in paragraph (d)(1), an explanation of any action that the Administrator proposes to take respecting VA programs.

Paragraph (3) of subsection (d) would provide for the expiration of the reporting requirement contained in paragraph (d)(1) upon the submission of a report after the completion of the epidemiological study.

Subsection (e) would reconcile this section with the Budget Act. Paragraph (1) of subsection (e) would defer the authorization of new budget authority prior to fiscal year 1987, and paragraph (2) would permit entering into contract under subsection 302(a) only where the necessary appropriated funds are available or where the Government's obligations under contract are expressly conditioned upon the availability of sufficient appropriated funds.

Subsection (f) would define the term 'gender-specific health effects in females,' for the purposes of this section, to include effects on female reproductive capacity, reproductive organs, reproductive outcomes, female-specific organs and tissues, and other effects unique to the physiology of females.

* * * * *

****1279 *825** COMMITTEE COST ESTIMATE

On September 30, 1985, the Congressional Budget Office provided the committee with a cost estimate of the committee legislation.

The committee generally accepts the cost estimate of the Congressional Budget Office however, the committee is not in agreement with the CBO estimate on the administrative cost involved with the implementation and operation of that provision of the bill requiring veterans with family income above $25,000 to pay a deductible. According to CBO, the cost would be about $20 million in fiscal year 1986.

According to the Veterans Administration, the administrative cost of this provision would be only $3.6 million. The committee is more in agreement with the VA estimate and has assumed a cost of $10 million, a figure somewhere between the two estimates. In addition, the committee has been advised by the Veterans' Administration that implementation of the provision which would set a ceiling on contract hospital care reimbursement rates at the rate payable under Medicare would save approximately $6 million in fiscal year 1986.

The committee believes the enactment of Title X will meet the mandate of the House and Senate for Function 700 savings. It is the committee's view that subject to the revisions noted above to the CBO cost estimate, Title X will produce savings as follows: $301 million in Budget authority and $297 in outlays in FY 1986; $505 million in budget authority and outlays in FY 1987; and $561 million in budget authority and outlays in FY 1988. The total for the three fiscal years is $1.367 billion in budget authority and $1.363 billion in outlays.

The Congressional Budget Office estimate is as follows:

CBO COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1985.

Hon. G. V. MONTGOMERY,
Chairman, Committee on Veterans' Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In response to your request, CBO has prepared the revised cost estimate for H.R. 1538, the Veterans' Compensation and Health Care Amendments of 1985, as ordered reported by the House Committee on Veterans'

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Affairs, September 11, 1985.

The estimate of H.R. 1538 sent to you on September 13 reflected our understanding that the means test established under Title II would be permanently authorized. We were informed by Committee staff this morning that the means test would only be authorized ****1280 *826** as a three-year pilot project. The cost estimate has been revised accordingly.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1538.

2. Bill title: Veterans' Compensation and Health Care amendments of 1985.

3. Bill status: As ordered reported by the House Committee on Veterans' Affairs, September 11, 1985.

4. Bill purpose: To increase by 3.7 percent the monthly benefits paid under the disability compensation and the Dependency and Indemnity Compensation programs; to require copayments of certain veterans seeking health care from the Veterans Administration (VA); to require reimbursement by third-party health insurers of the cost of care provided by the VA to insured veterans without service-connected disabilities; and for other purposes.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Function 700:					
Budget authority	69	-78	-143	-100	-160
Outlays	31	-75	-140	-97	-158
Function 570:					
Budget authority	2	3	3	0	0
Outlays	5	8	9	0	0
Net budgetary impact:					
Budget authority	71	-75	-140	-100	-160
Outlays	36	-67	-131	-97	-158

The effects of this bill would fall in budget functions 700 and 570.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

Basis for estimate: This estimate assumes an enactment date of October 1, 1985. if enactment of the bill should occur after this date, the budgetary impact in fiscal year 1986 could be significantly different from that shown above.

The following section-by-section cost analysis only addresses those sections of the bill that could be expected to have a significant budgetary impact.

Title I.—This title would increase by 3.7 percent the monthly rates payable under the disability compensation and the Dependency and Indemnity Compensation (DIC) programs. The increase would be effective on December 1, 1985.

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Budget Authority	311	366	358	349	340
Outlays	280	367	359	350	341

****1281** The cost of this title was estimated by multiplying the average costs in each year for all disability compensation cases and for all DIC cases by 3.7 percent. The resulting average increases in costs per year were then multiplied by the estimated number of cases in each program each year to calculate the annual cost. Future average cost and caseload levels were projected according to historical trends for veterans and survivors by periods of service.

The baseline for the First Concurrent Resolution on the Budget for Fiscal Year 1986 assumes a cost-of-living adjustment in compensation rates of 4.1 percent. This provision, by increasing compensation rates by only 3.7 percent would reduce spending in the compensation program below the levels assumed in the budget resolution by the following amounts:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Budget Authority	-34	-40	-39	-38	-37
Outlays	-30	-40	-39	-38	-37

Title II.—Section 202. This section would establish as a three-year pilot program a health-care income threshold equal to applicable income ceiling for VA pension multiplied by 3.34. All veterans with incomes below this amount and certain categories of veterans without regard to income would be considered eligible for hospital and ambulatory care in VA facilities without restriction. Veterans seeking hospital care whose incomes are above this amount would be provided care on a space available basis and would be required to pay a deductible equal to the deductible charged by Medicare. For outpatient care, veterans with restricted eligibility would be required to pay an amount equal to 20 percent of the average cost of an outpatient visit, but in no event would the total payments of a veteran in any given year exceed the amount of the Medicare deductible.

[By fiscal years, in millions of dollars]

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

	1986	1987	1988	1989	1990
Function 700:					
Budget Authority	-48	-91	-99	0	0
Outlays	-48	-91	-99	0	0
Function 570:					
Budget Authority	2	3	3	0	0
Outlays	5	8	9	0	0
Net budgetary impact:					
Budget Authority	-46	-88	-96	0	0
Outlays	-43	-83	-90	0	0

****1282** This estimate was derived through the use of a computer model that is based on a projection of total discharges expected from all VA hospitals in future years under current law. This projection was derived by multiplying age-specific projections of the veteran population by estimated use rates. (See Congressional Budget Office, *Veterans Administration Health Care: Planning for Future Years*, April 1984.) The model reduces the anticipated number of discharges by the percent estimated in each year who would qualify for unrestricted eligibility to health care under the bill and, thus, would not be subject to the means test.

Of the population subject to the means test, the model calculates the number who would exceed the income limit based on income distribution data from the *1979 National Survey of Veterans* conducted by the VA. It was assumed that 5.0 percent of those who would be required to pay copayments would choose to receive their care elsewhere. The remaining number of discharges was then multiplied by the projected Medicare deductible amount to determine the estimated amount of copayment collections. The number of discharges estimated to choose alternative care was multiplied by the projected average cost per patient treated to calculate the savings in this category. A similar process was used to estimate the copayment collections and the savings from those leaving the outpatient care system.

Based on data from the *Survey of Aging Veterans* (Lou Harris and Associates, 1983), it was estimated that in 1986 23 percent of the veterans who would choose to seek their health care outside of the VA rather than pay the required deductible would have Medicare Hospital Insurance and 21 percent would have Supplementary Medical Insurance. The shifting of these few cases from VA hospitals to Medicare-covered stays in private or community hospitals would result in the small offsetting cost in budget function 570 shown above.

This estimate assumes that the interview and paperwork required to evaluate a prospective patient with restricted eligibility would take one hour, on the average, and would be performed by a GS–7 employee. The assumed grade level is based on information from the VA. An average cost of billing and collecting inpatient deductibles of $30 per bill was used on data from the General Accounting Office (GAO) study, *Legislation to Authorize VA Recoveries from Private Health Insurance Would Result in Substantial Savings* GAO/HRD–85–24, Feb. 1985). This average cost was reduced to $20 per bill in the cases of copayment billings for outpatient care, however. Because the average copayment for outpatient care would be far less than for inpatient care, it is expected that collection efforts would be considerably less extensive for these bills.

****1283 *829** Several important assumptions were made in the development of this estimate. We assumed that the VA could

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

implement the means test and copayment provisions fully within 90 days of enactment of the legislation. This assumption is based on statements to that effect contained in a letter, dated July 16, 1985, from John Ditzler, M.D., Chief Medical Director of the VA, to Mack Fleming, Chief Counsel and Staff Director of the House Veterans' Affairs Committee. Should significantly more time be required to implement the legislation, the fiscal year 1986 savings could fall considerably below the level estimated above.

We have further assumed that this bill would not result in a significant increase in the use of contract care by the VA to provide care outside of the VA system. In an analysis of this legislation, the legal staff of the House Committee on the Budget has concluded that, based upon House precedents and interpretations of the Congressional Budget Act, this bill does not appear to establish an entitlement to health care for any category of veterans under the definition of an entitlement contained in section 401(c)2(C) of the Congressional Budget Act of 1974. Since the bill states that 'Nothing in this section requires the Administrator to furnish hospital care in a facility other than a Veterans Administration facility; . . .', it was assumed that veterans with unrestricted eligibility to care would only be eligible for care to the extent that resources were available within the VA system.

This estimate does not reflect the possibility that some additional demand for care could be induced by changes in the eligibility provisions of the bill or by the replacement of the poverty oath with a specific means test. This effect could not be included because the size and likelihood of the induced demand would be heavily dependent on the amount of publicity given to the changes by the VA and by veterans service organizations. This cannot be predicted with any certainty. Also, there is no data on which to base an estimate of the effect these amendments would have on the demand for care, even if the changes were highly publicized. The size of such induced demand is not expected to be large. Nevertheless, any additional demands for care resulting from these provisions would reduce the savings generated by the bill.

Section 203. This section would authorize the VA to recover from third-party health insurers the cost of medical care provided to insured veterans who have no service-connected disabilities.

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Budget authority	-203	-354	-403	-449	-500
Outlays	-203	-354	-403	-449	-500

Based on the GAO study of third-party reimbursement (GAO/HRD–85–24, Feb. 1985), it was assumed that 18.4 percent of the episodes of medical and surgical care in VA hospitals and 10.8 percent of episodes of psychiatric care would be provided to veterans with valid health insurance. Also based on this study, it was assumed ****1284 *830** that 85 percent, on the average, of the cost of care would be reimbursed by the insurer. An average cost for billing and collection activities of $30 per bill was used.

A factor not considered in this estimate is the possibility that the health insurers would fight the constitutionality of this legislation in the courts. In a 1979 review of a similar provision, S. 759, the Department of Justice concluded that there would be no constitutional bar to such legislation. Some delay in the receipt of recoveries would be expected, however, if the insurers choose to take the issue to the courts.

Section 204. This section would require that non-federal providers of medical care who receive payments from Medicare based on diagnosis-related-group (DRG) payment schedules accept similar payment policies by the VA when contracted by the Va to provide care to veterans.

The VA is in the process of converting their procedures for reimbursing non-federal hospitals for contract care of veteran patients to a DRG reimbursement schedule. This provision would require that a non-federal facility accept the DRG

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

reimbursement for a VA patient if such reimbursements are accepted for Medicare patients. We have estimated that this provision would have no significant budgetary impact, because we assume that, in the absence of the amendment, the VA would discontinue to contract with any facility that refused to accept DRG-based payments. The number of facilities refusing such payments should be quite small since the hospitals in question are already accustomed to accepting DRG reimbursements for Medicare patients.

Section 205. This section would require the VA to submit a report to the House and Senate Committees on Veterans' Affairs detailing the number of veterans receiving care under the provisions of this title, the number applying for but not receiving care, and the reasons for care not being provided.

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated authorization level	1	1	1	0	0
Estimated outlays	1	1	1	0	0

****1285** This estimate is based on information from the VA, which states that the data required by the report on veterans applying for but not receiving care would require approximately one hour per workday per VA medical facility. The salary and benefit cost of the labor involved would be about $9 an hour in 1986. This cost was inflated in the outyears for anticipated increases in federal pay.

Title III.—Section 302. This section would require the VA to conduct a study of the gender-specific health effects in females of military service in the Republic of Vietnam.

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated authorization level	8	0	0	0	0
Outlays	1	2	2	2	1

This estimate is based on information from the Center for Disease Control (CDC), which has already prepared a preliminary protocol for the required study. The CDC estimates that the study would take between three and four years to complete, once the final study protocol was approved, at a total estimated cost of $8.3 million.

6. Estimated cost to state and local governments: The Congressional Budget Office has determined that the budgets of state and local governments would not be directly affected by enactment of this bill.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 19, 1985, CBO submitted to the House Committee on Veterans' Affairs an estimate of H.R. 1538 as introduced in the House of Representatives on March 19, 1985. That version of the bill contained a 4.1 percent increase in VA compensation rates. No other provisions were included. Since the version of the bill ordered reported on September 11, 1985 differs from the introduced version in every respect, the two cost estimates should not be compared.

 © 2022 Thomson Reuters. No claim to original U.S. Government Works.

On September 10, 1985, CBO submitted a cost estimate of a draft version of Title II of H.R. 1538. Certain sections contained in the reported version of title were not included in the draft version. For this reason the estimates of the two versions of Title II differ slightly.

In addition, the earlier cost estimate stated that certain categories of veterans would be granted an entitlement to VA health care by the provisions of Title II. This statement was based on information from the Committee staff regarding the Committee's intent. However, based on a subsequent review of the legislation for possible Budget Act violations, the legal staff of the House Committee on the Budget concluded that the language of the bill does not appear to create an entitlement as defined by the Congressional Budget Act of 1974, because no payments would be required to be made by the government to any individual or government entity.

On September 12, 1985, CBO submitted an estimate of H.R. 1538 as reported on September 11. Based on information from Committee staff, that estimate reflected the assumption that the means test would be permanently authorized. Since that time, the bill has been amended to provide that the means test would operate for only three years as a pilot program.

9. Estimate prepared by: K.W. Shephard.

10. Estimate Approved by: G.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

1. 93 S.Ct. 364, 34 L.Ed.2d 415.

2. 100 S.Ct. 1723, 64 L.Ed. 354, rehearing denied 100 S.Ct. 3051.

3. 103 S.Ct. 2764, 77 L.Ed.2d 317.

1985 WL 25924, H.R. Rep. No. 300, 99TH Cong., 1ST Sess. 1985, 1986 U.S.C.C.A.N. 756, H.R. REP. 99-300 (Leg.Hist.)

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.