H.R. CONF. REP. 103-213, H.R. Conf. Rep. No. 213, 103RD Cong., 1ST Sess. 1993, 1993 U.S.C.C.A.N. 1088, 1993 WL 302291 (Leg.Hist.)

****1088**P.L. 103-66, ***1** OMNIBUS BUDGET RECONCILIATION ACT OF 1993

DATES OF CONSIDERATION AND PASSAGE

House: May 27, August 5, 1993

Senate: June 23, 24, 25, August 6, 1993

Cong. Record Vol. 139 (1993)

House Report (Budget Committee) No. 103-111,
May 25, 1993 (To accompany H.R. 2264)

House Conference Report No. 103-213,
Aug. 3, 1993 (To accompany H.R. 2264)

HOUSE CONFERENCE REPORT NO. 103–213

August 4, 1993
[To accompany H.R. 2264]

****0** The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Omnibus Budget Reconciliation Act of 1993”.

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

TITLE VI–COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION PROVISIONS

TITLE VII–NUCLEAR REGULATORY COMMISSION PROVISIONS

TITLE VIII–PATENT AND TRADEMARK OFFICE PROVISIONS

TITLE IX–MERCHANT MARINE PROVISIONS

TITLE X–NATURAL RESOURCES PROVISIONS

TITLE XI–CIVIL SERVICE AND POST OFFICE PROVISIONS

TITLE XII–VETERANS' AFFAIRS PROVISIONS

TITLE XIII–REVENUE, HEALTH CARE, HUMAN RESOURCES, INCOME SECURITY, CUSTOMS AND TRADE PROVISIONS, FOOD STAMP PROGRAM, AND TIMBER SALE PROVISIONS

TITLE XIV–BUDGET PROCESS PROVISIONS

TITLE I–AGRICULTURAL PROGRAMS

SEC. 1001. SHORT TITLE AND TABLE OF CONTENTS.

(a) Short Title.–This title may be cited as the "Agricultural Reconciliation Act of 1993".

(b) Table of Contents.–The table of contents of this title is as follows:

Subtitle A–Commodity Programs

SEC. 1101. UPLAND COTTON PROGRAM.

(a) In General.–Section 103B of the Agricultural Act of 1949 (7 U.S.C. 1444–2) is amended–

(1) in the section heading, by striking "1995" and inserting "1997";

(2) in subsections (a)(1), (b)(1), (c)(1)(A), (c)(1)(B)(ii), and (o), by striking "1995" each place it appears and inserting "1997";

(3) in subparagraphs (B)(i), (D)(i), (E)(i), and (F)(i) of subsection (a)(5), by striking "1996" each place it appears and inserting "1998";

(4) in subsection (c)(1)(D)–

(A) in the subparagraph heading, by striking "50/92 program" and inserting "50/85 program";

(B) by inserting after "8 percent" both places it appears the following: "for each of the 1991 through 1993 crops, and 15 percent for each of the 1994 through 1997 crops (except as provided in clause (v)(II)),"; and

(C) in clause (v)–

(i) by striking "(v) Prevented planting.–If" and inserting the following:
"(v) Prevented planting and reduced yields.–
"(I) 1991 through 1993 crops.–In the case of each of the 1991 through 1993 crops of upland cotton, if"; and

(ii) by adding at the end the following new subclause:
"(II) 1994 through 1997 crops.–In the case of each of the 1994 through 1997 crops of upland cotton, producers on a farm shall be eligible to receive deficiency payments as provided in clause (iii) if an acreage limitation program under subsection (e) is in effect for the crop and–
"(aa) the producers have been determined by the Secretary (in accordance with section 503(c)) to be prevented from planting the crop or have incurred a reduced yield for the crop (due to a natural disaster) and the producers elect to devote a portion of the maximum payment acres for upland cotton (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the upland cotton acreage, to conservation uses; or
"(bb) the producers elect to devote a portion of the maximum payment acres for upland cotton (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the upland cotton acreage, to alternative crops as provided in subparagraph (E).."; and

(5) in subsection (e)(1)(D), by inserting after "30 percent" the following: "for each of the 1991 through 1994 crops, 29½ ***4** percent for each of the 1995 and 1996 crops, and 29 percent for the 1997 crop".

(b) Provisions Necessary to the Operation of the Program.–

(1) Deficiency and land diversion payments.–Section 114 of the Agricultural Act of 1949 (7 U.S.C. 1445j) is amended by striking "1995" each place it appears in subsections (a)(1) and (c) and inserting "1997".

(2) Acreage base and yield system.–Title V of such Act (7 U.S.C. 1461 et seq.) is amended–

(A) in section 503 (7 U.S.C. 1463)–

(i) in subsection (c)(3)–
(I) by striking "0/92 or 50/92"; and
(II) by striking "1995" and inserting "1997"; and
(ii) in subsection (h)(2)(A), by striking "1995" each place it appears and inserting "1997";
(B) in paragraphs (1) and (2) of section 505(b) (7 U.S.C. 1465(b)), by striking "1995" each place it appears and inserting "1997"; and

(C) in section 509 (7 U.S.C. 1469), by striking "1995" and inserting "1997".

(3) Payment limitations.–The Food Security Act of 1985 (Public Law 99–198; 99 Stat. 1354) is amended–

(A) in paragraphs (1)(A), (1)(B), and (2)(A) of section 1001 (7 U.S.C. 1308), by striking "1995" each place it appears and inserting "1997"; and

(B) in section 1001C(a) (7 U.S.C. 1308–3(a)), by striking "1995" both places it appears and inserting "1997".

SEC. 1102. WHEAT PROGRAM.

Section 107B(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1445b–3a(c)(1)(E)) is amended–

(1) in the subparagraph heading, by striking "0/92 program" and inserting "0/85 program";

(2) in clause (i), by inserting after "8 percent" both places it appears the following: "for each of the 1991 through 1993 crops, and 15 percent for each of the 1994 through 1997 crops (except as provided in clause (vii)),"; and

(3) by adding at the end of the subparagraph the following new clause:

"(vii) Exceptions to 0/85.–In the case of each of the 1994 through 1997 crops of wheat, producers on a farm shall be eligible to receive deficiency payments as provided in clause (ii) if an acreage limitation program under subsection (e) is in effect for the crop and–
"(I)(aa) the producers have been determined by the Secretary (in accordance with section 503(c)) to be prevented from planting the crop or have incurred a reduced yield for the crop (due to a natural disaster); and
"(bb) the producers elect to devote a portion of the maximum payment acres for wheat (as calculated under subparagraph (C)(ii)) equal to more ***5** than 8 percent of the wheat acreage, to conservation uses; or
"(II) the producers elect to devote a portion of the maximum payment acres for wheat (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the wheat acreage, to alternative crops as provided in subparagraph (F).".

SEC. 1103. FEED GRAIN PROGRAM.

Section 105B(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1444f(c)(1)(E)) is amended–

(1) in the subparagraph heading, by striking "0/92 program" and inserting "0/85 program";

(2) in clause (i), by inserting after "8 percent" both places it appears the following: "for each of the 1991 through 1993 crops, and 15 percent for each of the 1994 through 1997 crops (except as provided in clause (vii)),"; and

(3) by adding at the end of the subparagraph the following new clause:

"(vii) Exceptions to 0/85.–In the case of each of the 1994 through 1997 crops of feed grains, producers on a farm shall be eligible to receive deficiency payments as provided in clause (ii) if an acreage limitation program under subsection (e) is in effect for the crop and–

"(I)(aa) the producers have been determined by the Secretary (in accordance with section 503(c)) to be prevented from planting the crop or have incurred a reduced yield for the crop (due to a natural disaster); and

"(bb) the producers elect to devote a portion of the maximum payment acres for feed grains (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the feed grain acreage, to conservation uses; or

"(II) the producers elect to devote a portion of the maximum payment acres for feed grains (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the feed grain acreage, to alternative crops as provided in subparagraph (F).".

SEC. 1104. RICE PROGRAM.

Section 101B(c)(1)(D) of the Agricultural Act of 1949 (7 U.S.C. 1441–2(c)(1)(D)) is amended–

(1) in the subparagraph heading, by striking "50/92 program" and inserting "50/85 program";

(2) in clause (i), by inserting after "8 percent" both places it appears the following: "for each of the 1991 through 1993 crops, and 15 percent for each of the 1994 through 1997 crops (except as provided in clause (v)(II)),"; and

(3) in clause (v)–

(A) by striking "(v) Prevented planting.–If" and inserting the following:

"(v) Prevented planting and reduced yields.–

***6** "(I) 1991 through 1993 crops.–In the case of each of the 1991 through 1993 crops of rice, if"; and

(B) by adding at the end the following new subclause:

"(II) 1994 through 1997 crops.–In the case of each of the 1994 through 1997 crops of rice, producers on a farm shall be eligible to receive deficiency payments as provided in clause (iii) if an acreage limitation program under subsection (e) is in effect for the crop and–

"(aa) the producers have been determined by the Secretary (in accordance with section 503(c)) to be prevented from planting the crop or have incurred a reduced yield for the crop (due to a natural disaster) and the producers elect to devote a portion of the maximum payment acres for rice (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the rice acreage, to conservation uses; or

"(bb) the producers elect to devote a portion of the maximum payment acres for rice (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the rice acreage, to alternative crops as provided in subparagraph (E).".

SEC. 1105. DAIRY PROGRAM.

(a) In General.–Section 204 of the Agricultural Act of 1949 (7 U.S.C. 1446e) is amended–

(1) in the section heading, by striking "1995" and inserting "1996";

(2) in subsections (a), (b), (d)(1)(A), (d)(2)(A), (d)(3), (g)(1), and (k), by striking "1995" each place it appears and inserting "1996";

(3) in subsection (c)(3)–

(A) in the first sentence of subparagraph (A), by striking "The Secretary" and inserting "Subject to subparagraph (B), the

Secretary";

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following new subparagraph:

"(B) Guidelines.–In the case of purchases of butter and nonfat dry milk that are made by the Secretary under this section on or after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, in allocating the rate of price support between the purchase prices of butter and nonfat dry milk under this paragraph, the Secretary may not–

"(i) offer to purchase butter for more than $0.65 per pound; or
"(ii) offer to purchase nonfat dry milk for less than $1.034 per pound.";

(4) in subsection (h)(2)–

***7** (A) by striking "and" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(C) during each of calendar years 1996 and 1997, 10 cents per hundredweight of milk marketed, which rate shall be adjusted on or before May 1 of the respective calendar year in the manner provided in subparagraph (B)."; and

(5) in subsection (g)(2), by striking "1994" and inserting "1996".

(b) Provisions Necessary to the Operation of the Program.–Section 101(b) of the Agriculture and Food Act of 1981 (7 U.S.C. 608c note) is amended by striking "1995" and inserting "1996".

(c) Reduction in Price Received.–

(1) Definitions.–As used in this subsection:

(A) Bovine growth hormone.–The term "bovine growth hormone" means a synthetic growth hormone produced through the process of recombinant DNA techniques that is intended for use in bovine animals.

(B) Date of approval.–The term "date of approval" means the date the Food and Drug Administration, pursuant to authority under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b), first approves an application with respect to the use of bovine growth hormone.

(2) Reduction in price received.–In order to offset the economic effects of the sale of bovine growth hormone, the Secretary of Agriculture shall decrease the amount of the reduction in price received by producers specified in subparagraph (B) or (C) (as appropriate) of section 204(h)(2) of the Agricultural Act of 1949 (7 U.S.C. 1446e(h)(2)) by 10 percent during the period beginning on the date of approval and ending 90 days after the date of approval and, during the period, it shall be unlawful for a person to sell bovine growth hormone for commercial agricultural purposes.

SEC. 1106. TOBACCO PROGRAM.

(a) Domestic Marketing Assessment.–Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is amended by adding at the end the following new section:

"SEC. 320C. DOMESTIC MARKETING ASSESSMENT.

"(a) Certification.–A domestic manufacturer of cigarettes shall certify to the Secretary, for each calendar year, the

percentage of the quantity of tobacco used by the manufacturer to produce cigarettes during the year that is produced in the United States.

"(b) Penalties.–

"(1) In general.–Subject to subsection (f), a domestic manufacturer of cigarettes that has failed, as determined by the Secretary after notice and opportunity for a hearing, to use in the manufacture of cigarettes during a calendar year a quantity of tobacco grown in the United States that is at least 75 percent ***8** of the total quantity of tobacco used by the manufacturer, or to comply with subsection (a), shall be subject to the requirements of subsections (c), (d), and (e).

"(2) Failure to certify.–For purposes of this section, if a manufacturer fails to comply with subsection (a), the manufacturer shall be presumed to have used only imported tobacco in the manufacture of cigarettes produced by the manufacturer.

"(3) Reports and records.–

"(A) In general.–The Secretary shall require manufacturers of domestic cigarettes to make such reports and maintain such records as are necessary to carry out this section. If the reports and records are insufficient, the Secretary may request other persons to provide supplemental information.

"(B) Examinations.–For the purpose of ascertaining the correctness of any report or record required under this section, or of obtaining further information required under this section, the Secretary and the Office of Inspector General may examine such records, books, and other materials as the Secretary has reason to believe may be relevant. In the case of a manufacturer of domestic cigarettes, the Secretary may charge a fee to the manufacturer to cover the reasonable costs of any such examination.

"(C) Penalties.–Any person who fails to provide information required under this paragraph or who provides false information under this paragraph shall be subject to section 1001 of title 18, United States Code.

"(D) Confidentiality.–Section 320A(c) shall apply to information submitted by manufacturers of domestic cigarettes and other persons under this paragraph.

"(E) Disclosure.–Notwithstanding any other provision of law, information on the percentage or quantity of domestic or imported tobacco in cigarettes or on the volume of cigarette production that is submitted under this section shall be exempt from disclosure under section 552 of title 5, United States Code.

"(c) Domestic Marketing Assessment.–

"(1) In general.–A domestic manufacturer of cigarettes described in subsection (b) shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in accordance with this subsection.

"(2) Amount.–The amount of an assessment imposed on a manufacturer under this subsection shall be determined by multiplying–

"(A) the quantity by which the quantity of imported tobacco used by the manufacturer to produce cigarettes during a preceding calendar year exceeds 25 percent of the quantity of all tobacco used by the manufacturer to produce cigarettes during the preceding calendar year; by

"(B) the difference between–

"(i) ½ of the sum of–

"(I) the average price per pound received by domestic producers for Burley tobacco during the preceding calendar year; and

***9** "(II) the average price per pound received by domestic producers for Flue-cured tobacco during the preceding calendar year; and

"(ii) the average price per pound of unmanufactured imported tobacco during the preceding calendar year, as determined by the Secretary.

"(3) Collection.–An assessment imposed under this subsection shall be–

"(A) collected by the Secretary and transmitted to the Commodity Credit Corporation; and

"(B) enforced in the same manner as provided in section 320B.

"(d) Purchase of Burley Tobacco.–

"(1) In general.–A domestic manufacturer of cigarettes described in subsection (b) shall purchase from the inventories of the producer-owned cooperative marketing associations for Burley tobacco described in section 320B(a)(2), at the applicable list price published by the association, the quantity of tobacco described in paragraph (2).

"(2) Quantity.–Subject to paragraph (3), the quantity of Burley tobacco required to be purchased by a manufacturer during a calendar year under this subsection shall equal ½ of the quantity of imported tobacco used by the manufacturer to produce cigarettes during the preceding calendar year that exceeds 25 percent of the quantity of all tobacco used by the manufacturer to produce cigarettes during the preceding calendar year.

"(3) Limitation.–If the total quantity of Burley tobacco required to be purchased by all manufacturers under paragraph (2) would reduce the inventories of the producer-owned cooperative marketing associations for Burley tobacco to less than the reserve stock level for Burley tobacco, the Secretary shall reduce the quantity of tobacco required to be purchased by manufacturers under paragraph (2), on a pro rata basis, to ensure that the inventories will not be less than the reserve stock level for Burley tobacco.

"(4) Noncompliance.–If a manufacturer fails to purchase from the inventories of the producer-owned cooperative marketing associations the quantity of Burley tobacco required under this subsection, the manufacturer shall be subject to a penalty of 75 percent of the average market price (calculated to the nearest whole cent) for Burley tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(5) Purchase requirements.–Tobacco purchased by a manufacturer under this subsection shall not be included in determining the quantity of tobacco purchased by the manufacturer under section 320B.

"(e) Purchase of Flue-Cured Tobacco.–

"(1) In general.–A domestic manufacturer of cigarettes described in subsection (b) shall purchase from the inventories of the producer-owned cooperative marketing association for Flue-cured tobacco described in section 320B(a)(2), at the applicable ***10** list price published by the association, the quantity of tobacco described in paragraph (2).

"(2) Quantity.–Subject to paragraph (3), the quantity of Flue-cured tobacco required to be purchased by a manufacturer during a calendar year under this subsection shall equal ½ of the quantity of imported tobacco used by the manufacturer to produce cigarettes during the preceding calendar year that exceeds 25 percent of the quantity of all tobacco used by the manufacturer to produce cigarettes during the preceding calendar year.

"(3) Limitation.–If the total quantity of Flue-cured tobacco required to be purchased by all manufacturers under paragraph (2) would reduce the inventories of the producer-owned cooperative marketing association for Flue-cured tobacco to less than the reserve stock level for Flue-cured tobacco, the Secretary shall reduce the quantity of tobacco required to be purchased by manufacturers under paragraph (2), on a pro rata basis, to ensure that the inventories will not be less than the reserve stock level for Flue-cured tobacco.

"(4) Noncompliance.–If a manufacturer fails to purchase from the inventories of the producer-owned cooperative marketing association the quantity of Flue-cured tobacco required under this subsection, the manufacturer shall be subject to a penalty of 75 percent of the average market price (calculated to the nearest whole cent) for Flue-cured tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(5) Purchase requirements.–Tobacco purchased by a manufacturer under this subsection shall not be included in determining the quantity of tobacco purchased by the manufacturer under section 320B.

"(f) Crop Losses Due to Disasters.–

"(1) In general.–If the Secretary, in consultation with producer-owned cooperative marketing associations, determines that because of drought, insect or disease infestation, or other natural disaster, or other condition beyond the control of producers, the total quantity of a crop of domestic Burley tobacco or Flue-cured tobacco that is harvested and suitable for marketing is substantially less than the expected yield for the crop, and that pool inventories for the kind of tobacco involved have been depleted, effective for the calendar year following the year in which the crop loss occurs, the Secretary may reduce the minimum percentage of domestic tobacco specified in subsection (a) to a percentage below 75 percent, as determined by the Secretary, that reflects the reduced availability of domestic supplies of the kind of tobacco involved.

"(2) Determination of expected yield.–For purposes of paragraph (1), the Secretary shall determine the expected yield for a crop of Burley tobacco or Flue-cured tobacco by taking into consideration–

"(A) the total acreage planted to the crop (including acreage that the producers were prevented from planting because of a condition referred to in paragraph (1)); and

"(B) normal farm yields established for the crop.

***11** "(3) Deadline for determinations.–The Secretary shall make determinations under paragraph (1) about crop losses and announce the reduced percentage of the domestic tobacco pool not later than November 30 of the year in which the applicable crop of Burley tobacco or Flue-cured tobacco is harvested.".

(b) Budget Deficit Assessment.–

(1) In general.–Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following new subsection:

"(h)(1) Effective only for each of the 1994 through 1998 crops of tobacco, an importer of tobacco that is produced outside the United States shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to the product obtained by multiplying–

"(A) the number of pounds of tobacco that is imported by the importer; by

"(B) the sum of–

"(i) the per pound marketing assessment imposed on purchasers of domestic Burley tobacco pursuant to subsection (g); and

"(ii) the per pound marketing assessment imposed on purchasers of domestic Flue-cured tobacco pursuant to subsection (g).

"(2) An assessment imposed under this subsection shall be paid by the importer.

"(3)(A) The importer shall remit the assessment at such time and in such manner as may be prescribed by the Secretary.

"(B) If the importer fails to comply with subparagraph (A), the importer shall be liable, in addition, for a marketing penalty at a rate equal to 37.5 percent of the sum of the average market price (calculated to the nearest whole cent) of Flue-cured and Burley tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(C) This subsection shall be enforced in the same manner as subparagraphs (B) and (C) of paragraph (1), and paragraphs (2) and (3), of section 106A(h).

"(4) Any penalty collected by the Secretary under this subsection shall be deposited for use by the Commodity Credit Corporation.".

(2) Importer assessments for no net cost tobacco fund.–Section 106A of such Act (7 U.S.C. 1445–1) is amended–

(A) in subsection (c), by inserting "and importers" after "purchasers";

(B) in subsection (d)(1)(A)–

(i) by striking "and" at the end of clause (i); and
(ii) by inserting after clause (ii) the following new clause:
"(iii) each importer of Flue-cured or Burley tobacco shall pay to the appropriate association, for deposit in the Fund of the association, an assessment, in an amount that is equal to the product obtained by multiplying–
***12** "(I) the number of pounds of tobacco that is imported by the importer; by
"(II) the sum of the amount of per pound producer contributions and purchaser assessments that are payable by domestic producers and purchasers of Flue-cured and Burley tobacco under clauses (i) and (ii); and";

(C) in subsection (d)(2)–

(i) by inserting "or importer" after "or purchaser";
(ii) by striking "and" at the end of subparagraph (B);
(iii) by inserting "and" at the end of subparagraph (C); and
(iv) by adding at the end the following new subparagraph:
"(D) if the tobacco involved is imported by an importer, from the importer."; and

(D) in subsection (h)(1)–

(i) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and
(ii) by inserting after subparagraph (A) the following new subparagraph:
"(B) Each importer who fails to pay to the association an assessment as required by subsection (d)(2) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, for a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.".

(3) Importer assessments to no net cost tobacco account.–Section 106B of such Act (7 U.S.C. 1445–2) is amended–

(A) in subsection (c)(1), by striking "producers and purchasers" and inserting "producers, purchasers, and importers";

(B) in subsection (d)(1)–

(i) by designating the first and second sentences as subparagraphs (A) and (B), respectively; and
(ii) by adding at the end the following new subparagraph:
"(C) The Secretary shall also require (in lieu of any requirement under section 106A(d)(1)) that each importer of Flue-cured and Burley tobacco shall pay to the Corporation, for deposit in the Account of the association, an assessment, as determined under paragraph (2) and collected under paragraph (3), with respect to purchases of all such kinds of tobacco imported by the importer.";

(C) in subsection (d)(2), by adding at the end the following new subparagraph:

"(C) The amount of the assessment to be paid by importers shall be an amount that is equal to the product obtained by multiplying–

"(i) the number of pounds of tobacco that is imported by the importer; by

***13** "(ii) the sum of the amount of per pound producer and purchaser assessments that are payable by domestic producers and purchasers of the respective kind of tobacco under this paragraph.";

(D) in subsection (d)(3), by adding at the end the following new subparagraph:

"(D) If Flue-cured or Burley tobacco is imported by an importer, any importer assessment required by subsection (d) shall be collected from the importer."; and

(E) in subsection (j)(1)–

(i) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and
(ii) by inserting after subparagraph (A) the following new subparagraph:
"(B) Each importer who fails to pay to the Corporation an assessment as required by subsection (d) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.".

(c) Fees for Inspecting Imported Tobacco.–The second sentence of section 213(d) of the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r(d)) is amended by inserting before the period at the end the following: ", and which shall be comparable to fees and charges fixed and collected for services provided in connection with tobacco produced in the United States".

(d) Extension of Quota Reduction Floors.–

(1) Burley tobacco.–Section 319(c)(3)(C)(ii) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(c)(3)(C)(ii)) is amended–

(A) by striking "1993" and inserting "1996"; and

(B) by inserting before the period at the end the following: ", except that, in the case of each of the 1995 and 1996 crops of Burley tobacco, the Secretary may waive the requirements of this clause if the Secretary determines that the requirements would likely result in inventories of the producer-owned cooperative marketing associations for Burley tobacco described in section 320B(a)(2) to exceed 150 percent of the reserve stock level for Burley tobacco".

(2) Flue-cured tobacco.–Section 317(a)(1)(C)(ii) of such Act (7 U.S.C. 1314c(a)(1)(C)(ii)) is amended–

(A) by striking "1993" and inserting "1996"; and

(B) by inserting before the period at the end the following: ", except that, in the case of each of the 1995 and 1996 crops of Flue-cured tobacco, the Secretary may waive the requirements of this clause if the Secretary determines that the requirements would likely result in inventories of the producer-owned cooperative marketing association for Flue-cured tobacco described in section 320B(a)(2) to exceed 150 percent of the reserve stock level for Flue-cured tobacco".

***14** SEC. 1107. SUGAR PROGRAM.

(a) In General.–Section 206 of the Agricultural Act of 1949 (7 U.S.C. 1446g) is amended–

(1) in the section heading, by striking "1995" and inserting "1997";

(2) in subsections (a), (c), (d)(1), and (j), by striking "1995" each place it appears and inserting "1997"; and

(3) in subsection (i)–

(A) in paragraph (1), by striking "equal to" and all that follows through the period at the end and inserting the following: "equal to–

"(A) in the case of marketings during each of fiscal years 1992 through 1994, 1.0 percent of the loan level established under subsection (b) per pound of raw cane sugar (but not more than .18 cents per pound of raw cane sugar), processed by the processor from domestically produced sugarcane or sugarcane molasses, that has been marketed (including the transfer or delivery of the sugar to a refinery for further processing or marketing); and

"(B) in the case of marketings during each of fiscal years 1995 through 1998, 1.1 percent of the loan level established under subsection (b) per pound of raw cane sugar (but not more than .198 cents per pound of raw cane sugar), processed by the processor from domestically produced sugarcane or sugarcane molasses, that has been marketed (including the transfer or delivery of the sugar to a refinery for further processing or marketing).";

(B) in paragraph (2), by striking "equal to" and all that follows through the period at the end and inserting the following: "equal to–

"(A) in the case of marketings during each of fiscal years 1992 through 1994, 1.0722 percent of the loan level established under subsection (b) per pound of beet sugar (but not more than .193 cents per pound of beet sugar), processed by the processor from domestically produced sugar beets or sugar beet molasses, that has been marketed; and

"(B) in the case of marketings during each of fiscal years 1995 through 1998, 1.1794 percent of the loan level established under subsection (b) per pound of beet sugar (but not more than .2123 cents per pound of beet sugar), processed by the processor from domestically produced sugar beets or sugar beet molasses, that has been marketed."; and

(C) by adding at the end the following new paragraph:

"(6) Excess marketings.–In addition to the assessment required under paragraph (1) or (2), a processor who knowingly markets sugar in excess of the allocated allotment of the processor under section 359d of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359dd) shall pay an assessment in an amount that is double the applicable assessment required under paragraph (1) or (2) per pound of sugar marketed.".

***15** (b) Provisions Necessary to the Operation of the Program.–Section 359b of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359bb) is amended–

(1) in subsection (a)(1), by striking "1996" and inserting "1998"; and

(2) in subsection (d)–

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) In general.–During any fiscal year or portion thereof for which marketing allotments have been established, no processor of sugar beets or sugarcane shall market a quantity of sugar in excess of the allocation established for such processor, except to enable another processor to fulfill an allocation established for such other processor or to facilitate the exportation of such sugar."; and

(B) in paragraph (3), by inserting "knowingly" after "who" each place it appears.

SEC. 1108. OILSEEDS PROGRAM.

Section 205 of the Agricultural Act of 1949 (7 U.S.C. 1446f) is amended–

(1) in subsection (c)–

(A) in paragraph (1), by inserting after "$5.02 per bushel" the following: "for each of the 1991 through 1993 crops and $4.92 per bushel for each of the 1994 through 1997 crops"; and

(B) in paragraph (2), by inserting after "$0.089 per pound" the following: "for each of the 1991 through 1993 crops and $0.087 per pound for each of the 1994 through 1997 crops";

(2) in subsection (h), by striking "mature on the last day of the 9th month following the month the application for the loan is made." and inserting the following: "mature–

"(1) in the case of each of the 1991 through 1993 crops, on the last day of the 9th month following the month the application for the loan is made; and

"(2) in the case of each of the 1994 through 1997 crops, on the last day of the 9th month following the month the application for the loan is made, except that the loan may not mature later than the last day of the fiscal year in which the application is made."; and

(3) in subsection (m), by adding at the end the following new paragraph:

"(3) Applicability.–This subsection shall apply only to each of the 1991 through 1993 crops of oilseeds.".

SEC. 1109. PEANUT PROGRAM.

(a) In General.–Section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3) is amended–

(1) in the section heading, by striking "1995" and inserting "1997";

(2) in subsections (a)(1), (a)(2), (b)(1), (g)(1), and (h), by striking "1995" each place it appears and inserting "1997"; and

(3) in subsection (g)–

***16** (A) in paragraph (1), by inserting after "1 percent" both places it appears the following: "for each of the 1991 through 1993 crops, 1.1 percent for each of the 1994 and 1995 crops, 1.15 percent for the 1996 crop, and 1.2 percent for the 1997 crop,"; and

(B) in paragraph (2)(A), by striking clauses (i) and (ii) and inserting the following new clauses:

"(i) collect from the producer a marketing assessment equal to the quantity of peanuts acquired multiplied by–
"(I) in the case of each of the 1991 through 1993 crops, .5 percent of the applicable national average support rate;
"(II) in the case of each of the 1994 and 1995 crops, .55 percent of the applicable national average support rate;
"(III) in the case of the 1996 crop, .6 percent of the applicable national average support rate; and
"(IV) in the case of the 1997 crop, .65 percent of the applicable national average support rate;
"(ii) pay, in addition to the amount collected under clause (i), a marketing assessment in an amount equal to the quantity of peanuts acquired multiplied by–
"(I) in the case of each of the 1991 through 1993 crops, .5 percent of the applicable national average support rate; and
"(II) in the case of each of the 1994 through 1997 crops, .55 percent of the applicable national average support rate; and".

(b) Assessment Under Peanut Marketing Agreement.–Section 8b(b)(1) of the Agricultural Adjustment Act (7 U.S.C. 608b(b)(1)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended–

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) any assessment (except with respect to any assessment for the indemnification of losses on rejected peanuts) imposed under the agreement shall–

"(i) apply to peanut handlers (as defined by the Secretary) who have not entered into such an agreement with the Secretary in addition to those handlers who have entered into the agreement; and

"(ii) be paid to the Secretary.".

(c) Provisions Necessary to the Operation of the Program.–Part VI of subtitle B of title III of the Agricultural Adjustment Act of 1938 is amended–

(1) in section 358–1 (7 U.S.C. 1358–1)–

(A) in the section heading, by striking "1995" and inserting "1997"; and

***17** (B) in subsections (a)(1), (b)(1)(A), (b)(1)(B), (b)(2)(A), (b)(2)(C), (b)(3)(A), and (f), by striking "1995" each place it appears and inserting "1997"; and

(2) in section 358e (7 U.S.C. 1359a)–

(A) in the section heading, by striking "1995" and inserting "1997"; and

(B) in subsection (i), by striking "1995" and inserting "1997".

SEC. 1110. HONEY PROGRAM.

Section 207 of the Agricultural Act of 1949 (7 U.S.C. 1446h) is amended–

(1) by striking "1995" each place it appears in subsections (a), (c)(1), and (j) and inserting "1998";

(2) in subsection (a), by striking "than 53.8 cents per pound." and inserting "than–

"(1) 53.8 cents per pound for each of the 1991 through 1993 crop years;

"(2) 50 cents per pound for each of the 1994 and 1995 crop years;

"(3) 49 cents per pound for the 1996 crop year;

"(4) 48 cents per pound for the 1997 crop year; and

"(5) 47 cents per pound for the 1998 crop year.";

(3) in subsection (e)(1)–

(A) by striking "and" at the end of subparagraph (C); and

(B) by striking subparagraph (D) and inserting the following new subparagraphs:

"(D) $125,000 in the 1994 crop year;

"(E) $100,000 in the 1995 crop year;

"(F) $75,000 in the 1996 crop year; and

"(G) $50,000 in each of the 1997 and 1998 crop years."; and

(4) in subsection (i)(1), by striking "1995" and inserting "1993".

SEC. 1111. WOOL AND MOHAIR PROGRAM.

The National Wool Act of 1954 (7 U.S.C. 1781 et seq.) is amended–

(1) in section 703 (7 U.S.C. 1782), by striking "1995" both places it appears in subsections (a) and (b)(2) and inserting "1997";

(2) in section 704 (7 U.S.C. 1783)–

(A) in subsection (b)(1)–

(i) by striking "and" at the end of subparagraph (C); and
(ii) by striking subparagraph (D) and inserting the following new subparagraphs:
"(D) $125,000 for the 1994 marketing year;

"(E) $100,000 for the 1995 marketing year;

"(F) $75,000 for the 1996 marketing year; and

"(G) $50,000 for the 1997 marketing year."; and

(B) in subsection (c), by striking "through 1995" and inserting "and 1992"; and

***18** (3) in section 706 (7 U.S.C. 1785), by inserting after the second sentence the following new sentence: "In determining the net sales proceeds and national payment rates for shorn wool and shorn mohair, the Secretary shall not deduct marketing charges for commissions, coring, or grading.".

Subtitle B–Rural Electrification

SEC. 1201. REFINANCING AND PREPAYMENT OF FFB LOANS.

(a) In General.–Title III of the Rural Electrification Act of 1936 (7 U.S.C. 931 et seq.) is amended by inserting after section 306B (7 U.S.C. 936b) the following new section:

"SEC. 306C. REFINANCING AND PREPAYMENT OF FFB LOANS.

"(a) In General.–A borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 may, at the option of the borrower, refinance or prepay the loan or an advance on the loan, or any portion of the loan or advance.

"(b) Penalty.–

"(1) Determination of penalty.–A penalty shall be assessed against a borrower that refinances or prepays a loan or loan advance, or any portion of a loan or advance, under this section. Except as provided in paragraph (2), the penalty shall be equal to the lesser of–

"(A) the difference between the outstanding principal balance of the loan being refinanced and the present value of the loan discounted at a rate equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid;

"(B) 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or

any portion of the loan or advance, being refinanced, multiplied by the ratio that–

"(i) the number of quarterly payment dates between the date of the refinancing or prepayment and the maturity date for the loan advance; bears to
"(ii) the number of quarterly payment dates between the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced was advanced and the maturity date of the loan advance; and

"(C)(i) the present value of 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or any portion of the loan or advance, being refinanced or prepaid; plus

"(ii) for the interval between the date of the refinancing or prepayment and the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced or prepaid was advanced, the present value of the difference between–

"(I) each payment scheduled for the interval on the loan amount being refinanced or prepaid; and
***19** "(II) the payment amounts that would be required during the interval on the amounts being refinanced or prepaid if the interest rate on the loan were equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid.

"(2) Limitation.–

"(A) In general.–Except as provided in subparagraph (B), the penalty provided by paragraph (1)(A) shall be required for refinancing or prepayment under this section.

"(B) Exception.–In the case of a loan advanced under an agreement that permits the refinancing or prepayment of the loan advance based on the payment of 1 year of interest on the outstanding principal balance of the loan advance, a borrower may, in lieu of the penalty required by paragraph (1)(A), pay a penalty as provided by–

"(i) paragraph (1)(B), if the loan advance has reached the 12-year maturity required under the loan agreement for the refinancing or prepayment; or
"(ii) paragraph (1)(C), if the loan advance has not reached the 12-year maturity required under the loan agreement for the refinancing or prepayment.

"(3) Financing of penalty.–

"(A) In general.–In the case of a refinancing under this section, a borrower may, at the option of the borrower, meet the penalty requirements of paragraph (1) by–

"(i) making a payment in the amount of the required penalty at the time of the refinancing; or
"(ii) increasing the outstanding principal balance of the loan advance guaranteed by the Administrator that is being refinanced under this section by the amount of the penalty.

"(B) Increased principal.–If a borrower meets the penalty requirements of paragraph (1) by increasing the outstanding principal balance of the loan advance that is being refinanced, the borrower shall make a payment at the time of the refinancing equal to 2.5 percent of the amount of the penalty that is added to the outstanding principal balance of the loan.

"(c) Loan Terms and Conditions After Refinancing.–

"(1) In general.–On the payment of a penalty as provided by subsection (b), the loan or loan advance, or any portion of the loan or advance, shall be refinanced at the interest rate described in paragraph (2) for a term selected by the borrower pursuant to paragraph (3), except that this paragraph shall not apply if the loan advance, or any portion of the advance, is prepaid by the borrower.

"(2) Interest rate.–The interest rate on a loan refinanced under this section shall be determined to be equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to a term selected by the borrower pursuant to paragraph (3).

"(3) Loan term.–Subject to paragraph (4), the borrower of a loan that is refinanced under this section–

***20** "(A) shall select the term for which an interest rate shall be determined pursuant to paragraph (2); and

"(B) at the end of the term (and any succeeding term selected by the borrower under this paragraph), may renew the loan for another term selected by the borrower.

"(4) Maximum term.–The borrower may not select a term pursuant to paragraph (3) that ends after the maturity date set for the loan before the refinancing of the loan under this section.

"(5) Existing loans.–In the case of the refinancing of a loan of a borrower pursuant to this section and the inclusion of a penalty in the outstanding principal balance of the refinanced loan pursuant to subsection (b)(3)–

"(A) the refinancing and inclusion of the penalty shall not be subject to appropriations or limited by the amount provided during a fiscal year for new loans, loan guarantees, or other credit activity;

"(B) the request of the borrower for the refinancing under this section may not be denied or delayed; and

"(C) the borrower may not be limited in the selection of any refinancing or prepayment option provided by this section to the borrower.".

(b) Regulations.–Not later than 45 days after the date of enactment of this section, the Administrator of the Rural Electrification Administration shall issue interim final regulations to carry out the amendment made by subsection (a).

Subtitle C–Agricultural Trade

SEC. 1301. ACREAGE REDUCTION REQUIREMENTS.

(a) In General.–Section 1104 of the Omnibus Budget Reconciliation Act of 1990 (7 U.S.C. 1445b–3a note) is amended–

(1) in subsection (a), by striking paragraph (2) and inserting the following new paragraph:

"(2) corn under which the acreage planted to corn for harvest on a farm would be limited to the corn crop acreage base for the farm for the crop reduced by not less than 7½ percent."; and

(2) in subsection (b)(2), by striking "grain sorghum, and barley,".

(b) Readjustment of Support Levels.–Section 1302 of such Act (7 U.S.C. 1421 note) is amended–

(1) in subsection (b)–

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;

(2) in subsection (c), by striking "and other programs"; and

(3) in subsection (d)–

(A) in paragraph (1)–

(i) by striking subparagraph (A); and
(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

***21** (B) in paragraph (2), by striking "(A), (B), and (C)" and inserting "(A) and (B)"; and

(C) in paragraph (3)–

(i) by striking "measures specified in subparagraph (A) of paragraph (1) and"; and
(ii) by striking "(B) or (C)" and inserting "(A) or (B)".

SEC. 1302. MARKET PROMOTION PROGRAM.

(a) Reduction of Funding Level.–Section 211(c)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5641(c)(1)) is amended by striking "through 1995" and inserting "through 1993, and not less than $110,000,000 for each of the fiscal years 1994 through 1997,".

(b) Secretarial Actions To Achieve Savings.–In order to enable the Secretary of Agriculture to achieve the savings required in the market promotion program established by section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623) as a result of the amendments made by this section:

(1) Unfair trade practices.–Paragraph (2) of section 203(c) of such Act is amended to read as follows:

"(2) Unfair trade practices.–

"(A) Requirement.–Except as provided in subparagraph (B), the Secretary shall provide assistance under this section only to counter or offset the adverse effects of a subsidy, import quota, or other unfair trade practice of a foreign country.

"(B) Exception.–The Secretary shall waive the requirements of this paragraph in the case of activities conducted by small entities operating through the regional State-related organizations.".

(2) Guidelines.–The Secretary of Agriculture should implement changes in the market promotion program established by section 203 of such Act, beginning with fiscal year 1994, in order to improve the effectiveness of the program and to meet the following objectives:

(A) Priority.–In providing assistance for branded promotion, the Secretary should give priority to small-sized entities.

(B) Graduation.–The Secretary should not provide assistance under the program to promote a specific branded product in a single market for more than 5 years unless the Secretary determines that further assistance is necessary in order to meet the objectives of the program.

(C) Contribution level.–

(i) In general.–The Secretary should require a minimum contribution level of 10 percent from an eligible trade organization that receives assistance for nonbranded promotion.
(ii) Increases in contribution level.–The Secretary may increase the contribution level in any subsequent year that an eligible trade organization receives assistance for nonbranded promotion.

(D) Additionality.–The Secretary should require each participant in the program to certify that any Federal funds received supplement, but do not supplant, private or ***22** third party participant funds or other contributions to program activities.

(E) Independent audits.–If as a result of an evaluation or audit of activities of a participant under the program, the Secretary determines that a further review is justified in order to ensure compliance with the requirements of the program, the Secretary should require the participant to contract for an independent audit of the program activities, including activities of any subcontractor.

(3) Tobacco.–No funds made available under the market promotion program may be used for activities to develop, maintain, or expand foreign markets for tobacco.

(c) Regulations.–Not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture shall issue regulations to implement this section and the amendments made by this section.

Subtitle D–Miscellaneous

SEC. 1401. ADMISSION, ENTRANCE, AND RECREATION FEES.

(a) Definitions.–As used in this section:

(1) Area of concentrated public use.–The term "area of concentrated public use" means an area administered by the Secretary that meets each of the following criteria:

(A) The area is managed primarily for outdoor recreation purposes.

(B) Facilities and services necessary to accommodate heavy public use are provided in the area.

(C) The area contains at least 1 major recreation attraction.

(D) Public access to the area is provided in such a manner that admission fees can be efficiently collected at 1 or more centralized locations.

(2) Boat launching facility.–The term "boat launching facility" includes any boat launching facility, regardless of whether specialized facilities or services, such as mechanical or hydraulic boat lifts or facilities, are provided.

(3) Campground.–The term "campground" means any campground where a majority of the following amenities are provided, as determined by the Secretary:

(A) Tent or trailer spaces.

(B) Drinking water.

(C) An access road.

(D) Refuse containers.

(E) Toilet facilities.

(F) The personal collection of recreation use fees by an employee or agent of the Secretary.

(G) Reasonable visitor protection.

(H) If campfires are permitted in the campground, simple devices for containing the fires.

(4) Secretary.–The term "Secretary" means the Secretary of Agriculture.

(b) Authority To Impose Fees.–The Secretary may charge–

***23** (1) admission or entrance fees at national monuments, national volcanic monuments, national scenic areas, and areas of concentrated public use administered by the Secretary; and

(2) recreation use fees at lands administered by the Secretary in connection with the use of specialized outdoor recreation sites, equipment, services, and facilities, including visitors' centers, picnic tables, boat launching facilities, and campgrounds.

(c) Amount of Fees.–The amount of the admission, entrance, and recreation fees authorized to be imposed under this

section shall be determined by the Secretary.

SEC. 1402. ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM AMENDMENTS.

(a) Environmental Conservation Acreage Reserve Program.–Section 1230(b) of the Food Security Act of 1985 (16 U.S.C. 3830(b)) is amended by striking "to place in" and all that follows through "acres".

(b) Conservation Reserve Program.–Section 1231(d) of such Act (16 U.S.C. 3831(d)) is amended–

(1) by striking "may" and inserting "shall";

(2) by striking "the amount of acres specified in section 1230(b)" and inserting "a total of 38,000,000 acres during the 1986 through 1995 calendar years"; and

(3) by striking "each of calendar years 1994 and 1995" and inserting "the 1995 calendar year".

(c) Wetlands Reserve Program.–Section 1237 of such Act (16 U.S.C. 3837) is amended–

(1) by striking subsection (b) and inserting the following new subsection:

"(b) Minimum Enrollment.–The Secretary shall enroll into the wetlands reserve program–

"(1) a total of not less than 330,000 acres by the end of the 1995 calendar year; and

"(2) a total of not less than 975,000 acres during the 1991 through 2000 calendar years."; and

(2) in subsection (c), by striking "1995" and inserting "2000".

SEC. 1403. FEDERAL CROP INSURANCE.

(a) Actuarial Soundness.–Section 506 of the Federal Crop Insurance Act (7 U.S.C. 1506) is amended by adding at the end the following new subsection:

"(n) Actuarial Soundness.–The Corporation shall take such actions as are necessary to improve the actuarial soundness of Federal multiperil crop insurance coverage made available under this title to achieve, on and after October 1, 1995, an overall projected loss ratio of not greater than 1.1, including–

"(1) instituting appropriate requirements for documentation of the actual production history of insured producers to establish recorded or appraised yields for Federal crop insurance coverage that more accurately reflect the associated actuarial risk, except that the Corporation may not carry out this paragraph in a manner that would prevent beginning farmers from ***24** obtaining adequate Federal crop insurance, as determined by the Corporation;

"(2) establishing in counties, to the extent practicable, a crop insurance option based on area yields in a manner that allows an insured producer to qualify for an indemnity if a loss has occurred in a specified area in which the farm of the insured producer is located;

"(3) establishing a database that contains the social security account and employee identification numbers of participating producers and using the numbers to identify insured producers who are high risk for actuarial purposes and insured producers who have not documented at least 4 years of production history, to assess the performance of insurance providers, and for other purposes permitted by law; and

"(4) taking any other measures authorized by law to improve the actuarial soundness of the Federal crop insurance program while maintaining fairness and effective coverage for agricultural producers.".

(b) Conforming Amendments.–

(1) Reinsurance.–Section 508(h) of such Act (7 U.S.C. 1508(h)) is amended by striking the fifth sentence and inserting the following new sentence: "The Corporation shall also pay operating and administrative costs to insurers of policies on which the Corporation provides reinsurance in an amount determined by the Corporation.".

(2) Area yield plan.–Section 508 of such Act (7 U.S.C. 1508) is amended by adding at the end the following new subsection:

"(n) Area Yield Plan.–

"(1) In general.–Notwithstanding any other provision of this title, the Corporation may offer, only as an option to individual crop insurance coverage available under this Act, a crop insurance plan based on an area yield that allows an insured producer to qualify for an indemnity if a loss has occurred in an area, as specified by the Corporation, in which the farm of the producer is located.

"(2) Level of coverage.–Under a plan offered under paragraph (1), an insured producer shall be allowed to select the level of production at which an indemnity will be paid consistent with terms and conditions established by the Corporation.".

(3) Yield coverage.–Section 508A of such Act (7 U.S.C. 1508a) is amended–

(A) in subsection (a)(1), by striking "may" and inserting "shall"; and

(B) in subsection (b)–

(i) in paragraph (1)(A)–
(I) by striking "A crop insurance contract" and all that follows through "producer–" and inserting "Under regulations issued by the Corporation, a crop insurance contract offered under this title to an eligible insured producer of a commodity with respect to which the Corporation provides crop insurance ***25** coverage shall make available to the producer either–";
(II) by striking "or" at the end of clause (i);
(III) in clause (ii)–
(aa) by striking "5" and inserting "4 building to 10"; and
(bb) by striking the period at the end and inserting "; or"; and
(IV) by adding at the end the following new clause:
"(iii) yield coverage based on–
"(I) not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual experience), as specified in regulations issued by the Corporation based on production history requirements; or
"(II) the area yield under section 508(n) for the crop established under the program for the commodity involved.";
(ii) in paragraph (1)(B)–
(I) by striking "two" and inserting "3"; and
(II) by inserting after "subparagraph (A)" the following: ", where available (as determined by the Corporation),";
(iii) in paragraph (2)–
(I) by striking "5" and inserting "4 building to 10"; and
(II) by inserting after "previous crops," the following: "not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual experience), or the area yield,"; and
(iv) in paragraph (3)(A)(i), by inserting after "farm program yield" the following: ", not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual experience), as specified in regulations issued by the Corporation based on production history requirements, or the area yield under section 508(n), whichever is applicable,".

(c) Effective Date.–

(1) In general.–Except as provided in paragraph (2), this section and the amendments made by this section shall become effective on October 1, 1993.

(2) Regulations.–Not later than 30 days after the date of enactment of this Act, the Secretary of Agriculture shall publish, for public comment, proposed regulations to implement the amendments made by this section.

TITLE II–ARMED SERVICES PROVISIONS

SEC. 2001. LIMITATION ON COST-OF-LIVING ADJUSTMENTS FOR MILITARY RETIREES.

Section 1401a(b) of title 10, United States Code, is amended–

***26** (1) in paragraph (2), by striking out "The Secretary" and inserting in lieu thereof "Except as provided in paragraph (6), the Secretary"; and

(2) by adding at the end the following new paragraph:

"(6) Special rules for paragraph (2) for fiscal years 1994 through 1998.–

"(A) Fiscal year 1994.–In the case of an increase in the retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

"(B) Fiscal years 1995 through 1998.–In the case of an increase in retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

"(C) Inapplicability to disability retirees.–Subparagraphs (A) and (B) do not apply with respect to the retired pay of a member retired under chapter 61 of this title.".

TITLE III–BANKING AND HOUSING PROVISIONS

SEC. 3001. NATIONAL DEPOSITOR PREFERENCE.

(a) In General.–Section 11(d)(11) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(11)) is amended to read as follows:

"(11) Depositor preference.–

"(A) In general.–Subject to section 5(e)(2)(C), amounts realized from the liquidation or other resolution of any insured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

"(i) Administrative expenses of the receiver.
"(ii) Any deposit liability of the institution.
"(iii) Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)).
"(iv) Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)).
"(v) Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

"(B) Effect on state law.–

***27** "(i) In general.–The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.

"(ii) Procedure for determination of inconsistency.–Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.

"(iii) Judicial review.–The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5, United States Code.

"(C) Accounting report.–Any distribution by the Corporation in connection with any claim described in subparagraph (A)(v) shall be accompanied by the accounting report required under paragraph (15)(B).".

(b) Technical and Conforming Amendments.–

(1) Section 11(c)(13) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(13)) is amended–

(A) in subparagraph (A), by striking "subject to subparagraph (B),";

(B) by inserting "and" after the semicolon at the end of subparagraph (A);

(C) by striking subparagraph (B); and

(D) by redesignating subparagraph (C) as subparagraph (B).

(2) Section 11(g)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1921(g)(4)) is amended by striking "If the Corporation" and inserting "Subject to subsection (d)(11), if the Corporation".

(c) Effective Date.–The amendments made by this section shall apply with respect to insured depository institutions for which a receiver is appointed after the date of the enactment of this Act.

SEC. 3002. TRANSFER OF FEDERAL RESERVE SURPLUSES.

(a) In General.–The 1st undesignated paragraph of section 7 of the Federal Reserve Act (12 U.S.C. 289) is amended to read as follows:

"(a) Dividends and Surplus Funds of Reserve Banks.–

"(1) Stockholder dividends.–

"(A) In general.–After all necessary expenses of a Federal reserve bank have been paid or provided for, the stockholders of the bank shall be entitled to receive an annual dividend of 6 percent on paid-in capital stock.

"(B) Dividend cumulative.–The entitlement to dividends under subparagraph shall be cumulative.

"(2) Deposit of net earnings in surplus fund.–That portion of net earnings of each Federal reserve bank which remains after dividend claims under subparagraph (A) have been fully met shall be deposited in the surplus fund of the bank.

***28** "(3) Payment to treasury.–During fiscal years 1997 and 1998, any amount in the surplus fund of any Federal reserve bank in excess of the amount equal to 3 percent of the total paid-in capital and surplus of the member banks of such bank shall be transferred to the Board for transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury.".

(b) Additional Transfers for Fiscal Years 1997 and 1998.–

(1) In general.–In addition to the amounts required to be transferred from the surplus funds of the Federal reserve banks pursuant to section 7(a)(3) of the Federal Reserve Act, the Federal reserve banks shall transfer from such surplus funds to the Board of Governors of the Federal Reserve System for transfer to the Secretary of the Treasury for deposit in the

general fund of the Treasury, a total amount of $106,000,000 in fiscal year 1997 and a total amount of $107,000,000 in fiscal year 1998.

(2) Allocation by fed.–Of the total amount required to be paid by the Federal reserve banks under paragraph (1) for fiscal year 1997 or 1998, the Board of Governors of the Federal Reserve System shall determine the amount each such bank shall pay in such fiscal year.

(3) Replenishment of surplus fund prohibited.–No Federal reserve bank may replenish such bank's surplus fund by the amount of any transfer by such bank under paragraph (1) during fiscal years 1997 and 1998.

(c) Technical and Conforming Amendments.–

(1) The penultimate undesignated paragraph of section 7 of the Federal Reserve Act (12 U.S.C. 290) is amended by striking "The net earnings derived" and inserting "(b) Use of Earnings Transferred to the Treasury.–The net earnings derived".

(2) The last undesignated paragraph of section 7 of the Federal Reserve Act (12 U.S.C. 531) is amended by striking "Federal reserve banks" and inserting "(c) Exemption From Taxation.–Federal reserve banks".

SEC. 3003. USE OF RETURN DATA FOR INCOME VERIFICATION UNDER CERTAIN HOUSING ASSISTANCE PROGRAMS.

Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544) is amended as follows:

(1) Definition.–In subsection (a), by adding at the end the following:

"(4) Program of the department of housing and urban development.–The term 'program of the Department of Housing and Urban Development' includes Indian housing programs assisted under title II of the United States Housing Act of 1937.".

(2) Consent forms.–In subsection (b)–

(A) in paragraph (1), by striking "and" at the end;

(B) in paragraph (2), by striking the period at the end and inserting "; and";

(C) by inserting after paragraph (2) the following new paragraph:

"(3) sign a consent form approved by the Secretary authorizing the Secretary to request the Commissioner of Social Security and the Secretary of the Treasury to release information ***29** pursuant to section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 with respect to such applicant or participant for the sole purpose of the Secretary verifying income information pertinent to the applicant's or participant's eligibility or level of benefits."; and

(D) in the last sentence, by striking "This" and inserting the following: "Except as provided in this subsection, this".

(3) Applicant, participant, and public housing agency protections.–In subsection (c)(2)–

(A) in subparagraph (A)–

(i) in the matter preceding clause (i)–
(I) by inserting after "compensation law" the following: "or pursuant to section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 from the Commissioner of Social Security or the Secretary of the Treasury"; and
(II) by inserting "(in the case of information obtained pursuant to such section 303(i))" before "representatives"; and
(ii) in clause (ii), by inserting "or public housing agency" after "owner" each place it appears; and

(B) in subparagraph (B), by inserting after "wages" each place it appears the following: ", other earnings or income,".

(4) Penalty.–In subsection (c)(3)–

(A) in subparagraph (A), by inserting "or section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 without consent pursuant to subsection (b) of this section or" after "Social Security Act"; and

(B) in the first sentence of subparagraph (B)–

(i) by striking clause (i) and inserting the following: "(i) a negligent or knowing disclosure of information referred to in this section, section 303(i) of the Social Security Act, or section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), such section 6103(l)(7)(D)(ix), or any regulation implementing this section, such section 303(i), or such section 6103(l)(7)(D)(ix), or for which consent, pursuant to subsection (b) of this section, has not been granted, or"; and
(ii) in clause (ii), by inserting "such section 6103(l)(7)(D)(ix)," after "303(i),".
(5) Conforming amendment.–The heading of subsection (c) of section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 is amended by striking "State Employment".

SEC. 3004. GNMA REMIC GUARANTEE FEES.

Section 306(g)(3) of the National Housing Act (12 U.S.C. 1721(g)(3)) is amended by adding at the end the following new subparagraph:

***30** "(E)(i) Notwithstanding subparagraphs (A) through (D), fees charged for the guarantee of, or commitment to guarantee, multiclass securities backed by a trust or pool of securities or notes guaranteed by the Association under this subsection, and other related fees shall be charged by the Association in an amount the Association deems appropriate. The Association shall take such action as may be necessary to reasonably assure that such portion of the benefit, resulting from the Association's multiclass securities program, as the Association determines is appropriate accrues to mortgagors who execute eligible mortgages after the date of the enactment of this subparagraph.

"(ii) The Association shall provide for the initial implementation of the program for which fees are charged under the first sentence of clause (i) by notice published in the Federal Register. The notice shall be effective upon publication and shall provide an opportunity for public comment. Not later than 12 months after publication of the notice, the Association shall issue regulations for such program based on the notice, comments received, and the experience of the Association in carrying out the program during such period.

"(iii) The Association shall consult with persons or entities in such manner as the Association deems appropriate to ensure the efficient commencement and operation of the multiclass securities program.

"(iv) No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this clause after the effective date of this subparagraph) shall preclude or limit the exercise by the Association of its power to contract with persons or entities, and its rights to enforce such contracts, for the purpose of ensuring the efficient commencement and continued operation of the multiclass securities program.".

SEC. 3005. MUTUAL MORTGAGE INSURANCE FUND PREMIUMS.

To improve the actuarial soundness of the Mutual Mortgage Insurance Fund under the National Housing Act, the Secretary of Housing and Urban Development shall increase the rate at which the Secretary earns the single premium payment collected at the time of insurance of a mortgage that is an obligation of such Fund (with respect to the rate in effect on the date of the enactment of this Act). In establishing such increased rate, the Secretary shall consider any current audit findings and reserve analyses and information regarding the expected average duration of mortgages that are obligations of such Fund and may consider any other information that the Secretary determines to be appropriate.

TITLE IV–STUDENT LOAN AND ERISA PROVISIONS

SEC. 4001. TABLE OF CONTENTS.

The table of contents for this title is as follows:

Subtitle B–Additional Savings From The Student Loan Program

***31** Subtitle A–Direct Student Loan Provisions

SEC. 4011. SHORT ITLE; REFERENCES.

(a) Short Title.–This subtitle may be cited as the "Student Loan Reform Act of 1993".

(b) References.–References in this subtitle and subtitles B and C to "the Act" are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

CHAPTER 1–FEDERAL DIRECT STUDENT LOAN PROGRAM

SEC. 4021. FEDERAL DIRECT STUDENT LOAN PROGRAM.

Part D of title IV (20 U.S.C. 1087a) is amended to read as follows:

"PART D–FEDERAL DIRECT STUDENT LOAN PROGRAM

"SEC. 451. PROGRAM AUTHORITY.

There are hereby made available, in accordance with the provisions of this part, such sums as may be necessary to make loans to all eligible students (and the eligible parents of such students) in attendance ***32** at participating institutions of higher education selected by the Secretary, to enable such students to pursue their courses of study at such institutions

during the period beginning July 1, 1994. Such loans shall be made by participating institutions, or consortia thereof, that have agreements with the Secretary to originate loans, or by alternative originators designated by the Secretary to make loans for students in attendance at participating institutions (and their parents).

"SEC. 452. FUNDS FOR ORIGINATION OF DIRECT STUDENT LOANS.

"(a) In General.–The Secretary shall provide, on the basis of the need and the eligibility of students at each participating institution, and parents of such students, for such loans, funds for student and parent loans under this part–

"(1) directly to an institution of higher education that has an agreement with the Secretary under section 454(a) to participate in the direct student loan programs under this part and that also has an agreement with the Secretary under section 454(b) to originate loans under this part; or

"(2) through an alternative originator designated by the Secretary to students (and parents of students) attending institutions of higher education that have an agreement with the Secretary under section 454(a) but that do not have an agreement with the Secretary under section 454(b).

"(b) Fees for Origination Services.–

"(1) Fees for institutions.–The Secretary shall pay fees to institutions of higher education (or a consortium of such institutions) with agreements under section 454(b), in an amount established by the Secretary, to assist in meeting the costs of loan origination. Such fees–

"(A) shall be paid by the Secretary based on all the loans made under this part to a particular borrower in the same academic year;

"(B) shall be subject to a sliding scale that decreases the per borrower amount of such fees as the number of borrowers increases; and

"(C)(i) for academic year 1994–1995, shall not exceed a program-wide average of $10 per borrower for all the loans made under this part to such borrower in the same academic year; and

"(ii) for succeeding academic years, shall not exceed such average fee as the Secretary shall establish pursuant to regulations.

"(2) Fees for alternative originators.–The Secretary shall pay fees for loan origination services to alternative originators of loans made under this part in an amount established by the Secretary in accordance with the terms of the contract described in section 456(b) between the Secretary and each such alternative originator.

"(c) No Entitlement To Participate or Originate.–No institution of higher education shall have a right to participate in the programs authorized by this part, to originate loans, or to perform any program function under this part. Nothing in this subsection shall be construed so as to limit the entitlement of an eligible student ***33** attending a participating institution (or the eligible parent of such student) to borrow under this part.

"(d) Delivery of Loan Funds.–Loan funds shall be paid and delivered to an institution by the Secretary prior to the beginning of the payment period established by the Secretary in a manner that is consistent with payment and delivery of basic grants under subpart 1 of part A of this title.

"SEC. 453. SELECTION OF INSTITUTIONS FOR PARTICIPATION AND ORIGINATION.

"(a) Phase-In of Program.–

"(1) General authority.–The Secretary shall enter into agreements pursuant to section 454(a) with institutions of higher

education to participate in the direct student loan program under this part, and agreements pursuant to section 454(b) with institutions of higher education, or consortia thereof, to originate loans in such program, for academic years beginning on or after July 1, 1994. Alternative origination services, through which an entity other than the participating institution at which the student is in attendance originates the loan, shall be provided by the Secretary, through 1 or more contracts under section 456(b) or such other means as the Secretary may provide, for students attending participating institutions that do not originate direct student loans under this part. Such agreements for the academic year 1994–1995 shall, to the extent feasible, be entered into not later than January 1, 1994.

"(2) Transition provisions.–In order to ensure an expeditious but orderly transition from the loan programs under part B of this title to the direct student loan program under this part, the Secretary shall, in the exercise of the Secretary's discretion, determine the number of institutions with which the Secretary shall enter into agreements under subsections (a) and (b) of section 454 for any academic year, except that the Secretary shall exercise such discretion so as to achieve the following goals:

"(A) for academic year 1994–1995, loans made under this part shall represent 5 percent of the new student loan volume for such year;

"(B) for academic year 1995–1996, loans made under this part shall represent 40 percent of the new student loan volume for such year;

"(C) for academic years 1996–1997 and 1997–1998, loans made under this part shall represent 50 percent of the new student loan volume for such years; and

"(D) for the academic year that begins in fiscal year 1998, loans made under this part shall represent 60 percent of the new student loan volume for such year.

"(3) Exception.–The Secretary may exceed the percentage goals described in subparagraphs (C) or (D) of paragraph (2) if the Secretary determines that a higher percentage is warranted by the number of institutions of higher education that desire to participate in the program under this part and that meet the eligibility requirements for such participation.

"(4) New student loan volume.–For the purpose of this subsection, the term 'new student loan volume' means the estimated ***34** sum of all loans (other than consolidation loans) that will be made, insured or guaranteed under this part and part B in the year for which the determination is made. The Secretary shall base the estimate described in the preceding sentence on the most recent program data available.

"(b) Selection Criteria.–

"(1) Application.–Each institution of higher education desiring to participate in the direct student loan program under this part shall submit an application satisfactory to the Secretary containing such information and assurances as the Secretary may require.

"(2) Selection procedure.–The Secretary shall select institutions for participation in the direct student loan program under this part, and shall enter into agreements with such institutions under section 454(a), from among those institutions that submit the applications described in paragraph (1), and meet such other eligibility requirements as the Secretary shall prescribe, by, to the extent possible–

"(A)(i) categorizing such institutions according to anticipated loan volume, length of academic program, control of the institution, highest degree offered, size of student enrollment, geographic location, annual loan volume, and default experience; and

"(ii) beginning in academic year 1995–1996 selecting institutions that are reasonably representative of each of the categories described pursuant to clause (i); and

"(B) if the Secretary determines it necessary to carry out the purposes of this part, selecting additional institutions.

"(c) Selection Criteria for Origination.–

"(1) In general.–The Secretary may enter into a supplemental agreement with an institution (or a consortium of such institutions) that–

"(A) has an agreement under subsection 454(a);

"(B) desires to originate loans under this part; and

"(C) meets the criteria described in paragraph (2).

"(2) Transition selection criteria.–For academic year 1994–1995, the Secretary may approve an institution to originate loans only if such institution–

"(A) made loans under part E of this title in academic year 1993–1994 and did not exceed the applicable maximum default rate under section 462(g) for the most recent fiscal year for which data are available;

"(B) is not on the reimbursement system of payment for any of the programs under subpart 1 or 3 of part A, part C, or part E of this title;

"(C) is not overdue on program or financial reports or audits required under this title;

"(D) is not subject to an emergency action, or a limitation, suspension, or termination under section 428(b)(1)(T), 432(h), or 487(c);

"(E) in the opinion of the Secretary, has not had significant deficiencies identified by a State postsecondary review entity under subpart 1 of part H of this title;

***35** "(F) in the opinion of the Secretary, has not had severe performance deficiencies for any of the programs under this title, including such deficiencies demonstrated by audits or program reviews submitted or conducted during the 5 calendar years immediately preceding the date of application;

"(G) provides an assurance that such institution has no delinquent outstanding debts to the Federal Government, unless such debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government, or the Secretary in the Secretary's discretion determines that the existence or amount of such debts has not been finally determined by the cognizant Federal agency; and

"(H) meets such other criteria as the Secretary may establish to protect the financial interest of the United States and to promote the purposes of this part.

"(3) Regulations governing approval after transition.–For academic year 1995–1996 and subsequent academic years, the Secretary shall promulgate and publish in the Federal Register regulations governing the approval of institutions to originate loans under this part in accordance with section 457(a)(2).

"(d) Eligible Institutions.–The Secretary may not select an institution of higher education for participation under this section unless such institution is an eligible institution under section 435(a).

"(e) Consortia.–Subject to such requirements as the Secretary may prescribe, eligible institutions of higher education (as determined under subsection (d)) with agreements under section 454(a) may apply to the Secretary as consortia to originate loans under this part for students in attendance at such institutions. Each such institution shall be required to meet the requirements of subsection (c) with respect to loan origination.

"SEC. 454. AGREEMENTS WITH INSTITUTIONS.

"(a) Participation Agreements.–An agreement with any institution of higher education for participation in the direct student loan program under this part shall–

"(1) provide for the establishment and maintenance of a direct student loan program at the institution under which the institution will–

"(A) identify eligible students who seek student financial assistance at such institution in accordance with section 484;

"(B) estimate the need of each such student as required by part F of this title for an academic year, except that, any loan obtained by a student under this part with the same terms as loans made under section 428H (except as otherwise provided in this part), or a loan obtained by a parent under this part with the same terms as loans made under section 428B (except as otherwise provided in this part), or obtained under any State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year;

***36** "(C) provide a statement that certifies the eligibility of any student to receive a loan under this part that is not in excess of the annual or aggregate limit applicable to such loan, except that the institution may, in exceptional circumstances identified by the Secretary, refuse to certify a statement that permits a student to receive a loan under this part, or certify a loan amount that is less than the student's determination of need (as determined under part F of this title), if the reason for such action is documented and provided in written form to such student;

"(D) set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G; and

"(E) provide timely and accurate information–

"(i) concerning the status of student borrowers (and students on whose behalf parents borrow under this part) while such students are in attendance at the institution and concerning any new information of which the institution becomes aware for such students (or their parents) after such borrowers leave the institution, to the Secretary for the servicing and collecting of loans made under this part; and
"(ii) if the institution does not have an agreement with the Secretary under subsection (b), concerning student eligibility and need, as determined under subparagraphs (A) and (B), to the Secretary as needed for the alternative origination of loans to eligible students and parents in accordance with this part;

"(2) provide assurances that the institution will comply with requirements established by the Secretary relating to student loan information with respect to loans made under this part;

"(3) provide that the institution accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

"(4) provide that students at the institution and their parents (with respect to such students) will be eligible to participate in the programs under part B of this title at the discretion of the Secretary for the period during which such institution participates in the direct student loan program under this part, except that a student or parent may not receive loans under both this part and part B for the same period of enrollment;

"(5) provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives;

"(6) provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan; and

***37** "(7) include such other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.

"(b) Origination.–An agreement with any institution of higher education, or consortia thereof, for the origination of loans under this part shall–

"(1) supplement the agreement entered into in accordance with subsection (a);

"(2) include provisions established by the Secretary that are similar to the participation agreement provisions described in paragraphs (1)(E)(ii), (2), (3), (4), (5), (6), and (7) of subsection (a), as modified to relate to the origination of loans by the institution or consortium;

"(3) provide that the institution or consortium will originate loans to eligible students and parents in accordance with this part; and

"(4) provide that the note or evidence of obligation on the loan shall be the property of the Secretary.

"(c) Withdrawal and Termination Procedures.–The Secretary shall establish procedures by which institutions or consortia may withdraw or be terminated from the program under this part.

"SEC. 455. TERMS AND CONDITIONS OF LOANS.

"(a) In General.–

"(1) Parallel terms, conditions, benefits, and amounts.–Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers under sections 428, 428B, and 428H of this title.

"(2) Designation of loans.–Loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under–

"(A) section 428 shall be known as 'Federal Direct Stafford Loans';

"(B) section 428B shall be known as 'Federal Direct PLUS Loans'; and

"(C) section 428H shall be known as 'Federal Direct Unsubsidized Stafford Loans'.

"(b) Interest Rate.–

"(1) Rates for fdsl and fdusl.–For Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

"(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

"(B) 3.1 percent,

except that such rate shall not exceed 8.25 percent.

"(2) In school and grace period rules.–(A) Notwithstanding the provisions of paragraph (1), but subject to paragraph (3), with respect to any Federal Direct Stafford Loan or ***38** Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for interest which accrues–

"(i) prior to the beginning of the repayment period of the loan; or

"(ii) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 428(b)(1)(M) or 427(a)(2)(C),

shall not exceed the rate determined under subparagraph (B).

"(B) For the purpose of subparagraph (A), the rate determined under this subparagraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

"(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

"(ii) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

"(3) Out-year rule.–Notwithstanding paragraphs (1) and (2), for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

"(A) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

"(B) 1.0 percent,

except that such rate shall not exceed 8.25 percent.

"(4) Rates for fdplus.–(A) For Federal Direct PLUS Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

"(i) the bond equivalent rate of 52-week Treasury bills auctioned at final auction held prior to such June 1; plus

"(ii) 3.1 percent,

except that such rate shall not exceed 9 percent.

"(B) For Federal Direct PLUS loans made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

"(i) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

"(ii) 2.1 percent,

except that such rate shall not exceed 9 percent.

"(5) Publication.–The Secretary shall determine the applicable rates of interest under this subsection after consultation with the Secretary of Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(c) Loan Fee.–The Secretary shall charge the borrower of a loan made under this part an origination fee of 4.0 percent of the principal amount of loan.

"(d) Repayment Plans.–

***39** "(1) Design and selection.–Consistent with criteria established by the Secretary, the Secretary shall offer a borrower of a loan made under this part a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part. The borrower may choose–

"(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, consistent with subsection (a)(1) of this section;

"(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L);

"(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over a fixed or extended period of time, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(D) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan.

"(2) Selection by secretary.–If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the Secretary may provide the borrower with a repayment plan described in subparagraph (A), (B), or (C) of paragraph (1).

"(3) Changes in selections.–The borrower of a loan made under this part may change the borrower's selection of a repayment plan under paragraph (1), or the Secretary's selection of a plan for the borrower under paragraph (2), as the case may be, under such terms and conditions as may be established by the Secretary.

"(4) Alternative repayment plans.–The Secretary may provide, on a case by case basis, an alternative repayment plan to a borrower of a loan made under this part who demonstrates to the satisfaction of the Secretary that the terms and conditions of the repayment plans available under paragraph (1) are not adequate to accommodate the borrower's exceptional circumstances. In designing such alternative repayment plans, the Secretary shall ensure that such plans do not exceed the cost to the Federal Government, as determined on the basis of the present value of future payments by such borrowers, of loans made using the plans available under paragraph (1).

"(5) Repayment after default.–The Secretary may require any borrower who has defaulted on a loan made under this part to–

***40** "(A) pay all reasonable collection costs associated with such loan; and

"(B) repay the loan pursuant to an income contingent repayment plan.

"(e) Income Contingent Repayment.–

"(1) Information and procedures.–The Secretary may obtain such information as is reasonably necessary regarding the income of a borrower (and the borrower's spouse, if applicable) of a loan made under this part that is, or may be, repaid pursuant to income contingent repayment, for the purpose of determining the annual repayment obligation of the borrower. Returns and return information (as defined in section 6103 of the Internal Revenue Code of 1986) may be obtained under the preceding sentence only to the extent authorized by section 6103(l)(13) of such Code. The Secretary shall establish procedures for determining the borrower's repayment obligation on that loan for such year, and such other procedures as are necessary to implement effectively income contingent repayment.

"(2) Repayment based on adjusted gross income.–A repayment schedule for a loan made under this part and repaid pursuant to income contingent repayment shall be based on the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the adjusted gross income of the borrower and the borrower's spouse.

"(3) Additional documents.–A borrower who chooses, or is required, to repay a loan made under this part pursuant to income contingent repayment, and for whom adjusted gross income is unavailable or does not reasonably reflect the borrower's current income, shall provide to the Secretary other documentation of income satisfactory to the Secretary, which documentation the Secretary may use to determine an appropriate repayment schedule.

"(4) Repayment schedules.–Income contingent repayment schedules shall be established by regulations promulgated by the Secretary and shall require payments that vary in relation to the appropriate portion of the annual income of the borrower (and the borrower's spouse, if applicable) as determined by the Secretary.

"(5) Calculation of balance due.–The balance due on a loan made under this part that is repaid pursuant to income contingent repayment shall equal the unpaid principal amount of the loan, any accrued interest, and any fees, such as late charges, assessed on such loan. The Secretary may promulgate regulations limiting the amount of interest that may be capitalized on such loan, and the timing of any such capitalization.

"(6) Notification to borrowers.–The Secretary shall establish procedures under which a borrower of a loan made under this part who chooses or is required to repay such loan pursuant to income contingent repayment is notified of the terms and conditions of such plan, including notification of such borrower–

***41** "(A) that the Internal Revenue Service will disclose to the Secretary tax return information as authorized under section 6103(l)(13) of the Internal Revenue Code of 1986; and

"(B) that if a borrower considers that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment in the borrower's loan repayment as determined using the information described in subparagraph (A), or the alternative documentation described in paragraph (3), the borrower may contact the Secretary, who shall determine whether such adjustment is appropriate, in accordance with criteria established by the Secretary.

"(f) Deferment.–

"(1) Effect on principal and interest.–A borrower of a loan made under this part who meets the requirements described in paragraph (2) shall be eligible for a deferment, during which periodic installments of principal need not be paid, and interest–

"(A) shall not accrue, in the case of a–

"(i) Federal Direct Stafford Loan; or
"(ii) a Federal Direct Consolidation Loan that consolidated only Federal Direct Stafford Loans, or a combination of such loans and Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; or

"(B) shall accrue and be capitalized or paid by the borrower, in the case of a Federal Direct PLUS Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan not described in subparagraph (A)(ii).

"(2) Eligibility.–A borrower of a loan made under this part shall be eligible for a deferment during any period–

"(A) during which the borrower–

"(i) is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible institution (as such term is defined in section 435(a)) the borrower is attending; or
"(ii) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary,

except that no borrower shall be eligible for a deferment under this subparagraph, or a loan made under this part (other than a Federal Direct PLUS Loan or a Federal Direct Consolidation Loan), while serving in a medical internship or residency program;

"(B) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment;

"(C) not in excess of 3 years during which the Secretary determines, in accordance with regulations prescribed under section 435(o), that the borrower has experienced or will experience an economic hardship.

***42** "(g) Federal Direct Consolidation Loans.–A borrower of a loan made under this part may consolidate such loan with the loans described in section 428C(a)(4) only under such terms and conditions as the Secretary shall establish pursuant to section 457(a)(1) or regulations promulgated under this part. Loans made under this subsection shall be known as 'Federal Direct Consolidation Loans'.

"(h) Borrower Defenses.–Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations (except as authorized under section 457(a)(1)) which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover from the Secretary, in any action arising from or relating to a loan made under this part, an amount in excess of the amount such borrower has repaid on such loan.

"(i) Loan Application and Promissory Note.–The common financial reporting form required in section 483(a)(1) shall constitute the application for loans made under this part (other than a Federal Direct PLUS loan). The Secretary shall develop, print, and distribute to participating institutions a standard promissory note and loan disclosure form.

"(j) Loan Disbursement.–

"(1) In general.–Proceeds of loans to students under this part shall be applied to the student's account for tuition and fees, and, in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence shall be delivered to the borrower by check or other means that is payable to and requires the endorsement or other certification by such borrower.

"(2) Payment periods.–The Secretary shall establish periods for the payments described in paragraph (1) in a manner consistent with payment of basic grants under subpart 1 of part A of this title.

"(k) Fiscal Control and Fund Accountability.–

"(1) In general.–(A) An institution shall maintain financial records in a manner consistent with records maintained for other programs under this title.

"(B) Except as otherwise required by regulations of the Secretary, or in a notice under section 457(a)(1), an institution may maintain loan funds under this part in the same account as other Federal student financial assistance.

"(2) Payments and refunds.–Payments and refunds shall be reconciled in a manner consistent with the manner set forth for the submission of a payment summary report required of institutions participating in the program under subpart 1 of part A, except that nothing in this paragraph shall prevent such reconciliations on a monthly basis.

"(3) Transaction histories.–All transaction histories under this part shall be maintained using the same system designated by the Secretary for the provision of basic grants under subpart 1 of part A of this title.

"SEC. 456. CONTRACTS.

"(a) Contracts for Supplies and Services.–

***43** "(1) In general.–The Secretary shall, to the extent practicable, award contracts for origination, servicing, and collection described in subsection (b). In awarding such contracts, the Secretary shall ensure that such services and supplies are provided at competitive prices.

"(2) Entities.–The entities with which the Secretary may enter into contracts shall include only entities which the Secretary determines are qualified to provide such services and supplies and will comply with the procedures applicable to the award of such contracts. In the case of awarding contracts for the origination, servicing, and collection of loans under this part, the

Secretary shall enter into contracts only with entities that have extensive and relevant experience and demonstrated effectiveness. The entities with which the Secretary may enter into such contracts shall include, where practicable, agencies with agreements with the Secretary under sections 428(b) and (c), if such agencies meet the qualifications as determined by the Secretary under this subsection and if those agencies have such experience and demonstrated effectiveness. In awarding contracts to such State agencies, the Secretary shall, to the extent practicable and consistent with the purposes of this part, give special consideration to State agencies with a history of high quality performance to perform services for institutions of higher education within their State.

(3) Rule of construction.–Nothing in this section shall be construed as a limitation of the authority of any State agency to enter into an agreement for the purposes of this section as a member of a consortium of State agencies.

"(b) Contracts for Origination, Servicing, and Data Systems.–The Secretary may enter into contracts for–

"(1) the alternative origination of loans to students attending institutions of higher education with agreements to participate in the program under this part (or their parents), if such institutions do not have agreements with the Secretary under section 454(b);

"(2) the servicing and collection of loans made under this part;

"(3) the establishment and operation of 1 or more data systems for the maintenance of records on all loans made under this part;

"(4) services to assist in the orderly transition from the loan programs under part B to the direct student loan program under this part; and

"(5) such other aspects of the direct student loan program as the Secretary determines are necessary to ensure the successful operation of the program.

"SEC. 457. REGULATORY ACTIVITIES.

"(a) Notice in Lieu of Regulations for First Year of Program.–

"(1) Notice in lieu of regulations for first year of program.–The Secretary shall publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this part, the Secretary, in consultation with members of the higher education community, determines are ***44** reasonable and necessary to the successful implementation of the first year of the direct student loan program authorized by this part. Section 431 of the General Education Provisions Act shall not apply to the publication of such standards, criteria, and procedures.

"(2) Negotiated rulemaking.–Beginning with academic year 1995–1996, all standards, criteria, procedures, and regulations implementing this part as amended by the Student Loan Reform Act of 1993 shall, to the extent practicable, be subject to negotiated rulemaking, including all such standards, criteria, procedures, and regulations promulgated from the date of enactment of such Act.

"(b) Closing Date for Applications From Institutions.–The Secretary shall establish a date not later than October 1, 1993, as the closing date for receiving applications from institutions of higher education desiring to participate in the first year of the direct loan program under this part.

"(c) Publication of List of Participating Institutions.–Not later than January 1, 1994, the Secretary shall publish in the Federal Register a list of the institutions of higher education selected to participate in the first year of the direct loan program under this part.

"SEC. 458. FUNDS FOR ADMINISTRATIVE EXPENSES.

"(a) In General.–Each fiscal year, there shall be available to the Secretary of Education from funds available pursuant to section 422(g) and from funds not otherwise appropriated, funds to be obligated for administrative costs under this part, including the costs of the transition from the loan programs under part B to the direct student loan programs under this part (including the costs of annually assessing the program under this part and the progress of the transition) and transition support (including administrative costs) for the expenses of guaranty agencies in servicing outstanding loans in their portfolios and in guaranteeing new loans, not to exceed (from such funds not otherwise appropriated) $260,000,000 in fiscal year 1994, $345,000,000 in fiscal year 1995, $550,000,000 in fiscal year 1996, $595,000,000 in fiscal year 1997, and $750,000,000 in fiscal year 1998. If in any fiscal year the Secretary determines that additional funds for administrative expenses are needed as a result of such transition or the expansion of the direct student loan programs under this part, the Secretary is authorized to use funds available under this section for a subsequent fiscal year for such expenses, except that the total expenditures by the Secretary (from such funds not otherwise appropriated) shall not exceed $2,500,000,000 in fiscal years 1994 through 1998. The Secretary is also authorized to carry over funds available under this section to a subsequent fiscal year.

"(b) Availability.–Funds made available under subsection (a) shall remain available until expended.

"(c) Budget Justification.–No funds may be expended under this section unless the Secretary includes in the Department of Education's annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year, and the ***45** projection of activities and costs for each remaining year for which administrative expenses under this section are made available.

"(d) Notification.–In the event the Secretary finds it necessary to use the authority provided to the Secretary under subsection (a) to draw funds for administrative expenses from a future year's funds, no funds may be expended under this section unless the Secretary immediately notifies the Committees on Appropriations of the Senate and of the House of Representatives, and the Labor and Human Resources Committee of the Senate and the Education and Labor Committee of the House of Representatives, of such action and explain the reasons for such action.".

CHAPTER 2–CONFORMING AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

SEC. 4041. PRESERVING LOAN ACCESS.

(a) Advances to Guaranty Agencies for Lender-of-Last-Resort Services.–

(1) Amendment.–Section 428(j) of the Act (20 U.S.C. 1078(j)) is amended by striking paragraph (3) and inserting the following:

"(3) Advances to guaranty agencies for lender-of-last-resort services during transition to direct lending.–(A) In order to ensure the availability of loan capital during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title, the Secretary is authorized to provide a guaranty agency with additional advance funds in accordance with section 422(c)(7), with such restrictions on the use of such funds as are determined appropriate by the Secretary, in order to ensure that the guaranty agency will make loans as the lender-of-last-resort. Such agency shall make such loans in accordance with this subsection and the requirements of the Secretary.

"(B) Notwithstanding any other provision in this part, a guaranty agency serving as a lender-of-last-resort under this paragraph shall be paid a fee, established by the Secretary, for making such loans in lieu of interest and special allowance subsidies, and shall be required to assign such loans to the Secretary on demand. Upon such assignment, the portion of the advance represented by the loans assigned shall be considered repaid by such guaranty agency.".

(2) Conforming amendments.–

(A) Advances to guarantee agencies.–Section 422(c)(7) of the Act (20 U.S.C. 1072(c)(7)) is amended by striking all

beginning with "to a guaranty agency" through the period and inserting "to a guaranty agency–

"(A) in accordance with section 428(j), in order to ensure that the guaranty agency shall make loans as the lender-of-last-resort during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title; or

"(B) if the Secretary is seeking to terminate the guaranty agency's agreement, or assuming the guaranty agency's ***46** functions, in accordance with section 428(c)(10)(F)(v), in order to assist the agency in meeting its immediate cash needs, ensure the uninterrupted payment of claims, or ensure that the guaranty agency shall make loans as described in subparagraph (A);".

(B) Rules and operating procedures.–Section 428(j)(2) of the Act (20 U.S.C. 1078(j)(2)) is amended–

(i) in subparagraph (A), by inserting before the semicolon at the end the following: "and ensure a response within 60 days after the student's original complete application is filed under this subsection";
(ii) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively; and
(iii) by inserting after subparagraph (A) the following new subparagraph:

"(B) consistent with standards established by the Secretary, students applying for loans under this subsection shall not be subject to additional eligibility requirements or requests for additional information beyond what is required under this title in order to receive a loan under this part from an eligible lender, nor be required to receive more than two rejections from eligible lenders in order to obtain a loan under this subsection;".

(b) Lender Referral Services.–Section 428(e) of the Act (20 U.S.C. 1078(e)) is amended–

(1) in paragraph (1)–

(A) by amending the paragraph heading to read as follows: "In general; agreements with guaranty agencies.–";

(B) by inserting the subparagraph designation "(A)" immediately before "The Secretary";

(C) by striking "in any State" and inserting "with which the Secretary has an agreement under subparagraph (B)"; and

(D) by adding at the end the following new subparagraph:

"(B)(i) The Secretary may enter into agreements with guaranty agencies that meet standards established by the Secretary to provide lender referral services in geographic areas specified by the Secretary. Such guaranty agencies shall be paid in accordance with paragraph (3) for such services.

"(ii) The Secretary shall publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this part and part D of this title, the Secretary determines are reasonable and necessary to provide lender referral services under this subsection and ensure loan access to student and parent borrowers during the transition from the loan programs under this part to the direct student loan programs under part D of this title. Section 431 of the General Education Provisions Act shall not apply to the publication of such standards, criteria, and procedures.";

(2) in paragraph (2)–

***47** (A) in the matter preceding subparagraph (A), by striking "in a State" and inserting "with which the Secretary has an agreement under paragraph (1)(B)";

(B) by amending subparagraph (A) to read as follows:

"(A)(i) such student is either a resident of, or is accepted for enrollment in, or is attending, an eligible institution located in a geographic area for which the Secretary (I) determines that loans are not available to all eligible students, and (II) has entered into an agreement with a guaranty agency under paragraph (1)(B) to provide lender referral services; and";

(3) in paragraph (3), by striking "The" and inserting "From funds available for costs of transition under section 458 of the Act, the"; and

(4) by striking paragraph (5).

(c) Lender-of-Last-Resort Functions of Student Loan Marketing Association.–Subsection (q) of section 439 of the Act (20 U.S.C. 1087–2(q)) is amended to read as follows:

"(q) Lender of Last Resort.–

"(1) Action at request of secretary.–(A) Whenever the Secretary determines that eligible borrowers are seeking and are unable to obtain loans under this part, the Association or its designated agent shall, not later than 90 days after the date of enactment of the Student Loan Reform Act of 1993, begin making loans to such eligible borrowers in accordance with this subsection at the request of the Secretary. The Secretary may request that the Association make loans to borrowers within a geographic area or for the benefit of students attending institutions of higher education that certify, in accordance with standards established by the Secretary, that their students are seeking and unable to obtain loans.

"(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1) or by a guaranty agency under paragraph (2)(A) of this subsection.

"(2) Issuance and coverage of loans.–(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the guaranty agency in a State, or an eligible lender in a State described in section 435(d)(1)(D), determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, the Association or its designated agent shall begin making such loans to borrowers in such State or within an area of such State in accordance with this subsection at the request of the Secretary.

"(B) Loans made pursuant to this subsection shall be insurable by the agency identified in subparagraph (A) having an agreement pursuant to section 428(b). For loans insured by such agency, the agency shall provide the Association with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent ***48** loan made by the Association to be in violation of any provision under this part.

"(3) Termination of lending.–The Association or its designated agent shall cease making loans under this subsection at such time as the Secretary determines that the conditions which caused the implementation of this subsection have ceased to exist.".

SEC. 4042. GUARANTY AGENCY RESERVES.

Section 422 of the Act (20 U.S.C. 1072) is amended by adding at the end the following new subsection:

"(g) Preservation and Recovery of Guaranty Agency Reserves.–

"(1) Authority to recover funds.–Notwithstanding any other provision of law, the reserve funds of the guaranty agencies, and any assets purchased with such reserve funds, regardless of who holds or controls the reserves or assets, shall be considered to be the property of the United States to be used in the operation of the program authorized by this part or the program authorized by part D of this title. However, the Secretary may not require the return of all reserve funds of a guaranty agency to the Secretary unless the Secretary determines that such return is in the best interest of the operation of the program authorized by this part or the program authorized by part D of this title, or to ensure the proper maintenance of such agency's funds or assets or the orderly termination of the guaranty agency's operations and the liquidation of its assets. The reserves shall be maintained by each guaranty agency to pay program expenses and contingent liabilities, as authorized by the Secretary, except that–

"(A) the Secretary may direct a guaranty agency to return to the Secretary a portion of its reserve fund which the Secretary determines is unnecessary to pay the program expenses and contingent liabilities of the guaranty agency;

"(B) the Secretary may direct the guaranty agency to require the return, to the guaranty agency or to the Secretary, of any reserve funds or assets held by, or under the control of, any other entity, which the Secretary determines are necessary to pay the program expenses and contingent liabilities of the guaranty agency, or which are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets;

"(C) the Secretary may direct a guaranty agency, or such agency's officers or directors, to cease any activities involving expenditure, use or transfer of the guaranty agency's reserve funds or assets which the Secretary determines is a misapplication, misuse, or improper expenditure of such funds or assets; and

"(D) any such determination under subparagraph (A) or (B) shall be based on standards prescribed by regulations that are developed through negotiated rulemaking and that include procedures for administrative due process.

"(2) Termination provisions in contracts.–(A) To ensure that the funds and assets of the guaranty agency are preserved, any contract with respect to the administration of a ***49** guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after the date of enactment of this subsection shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section.

"(B) The Secretary may direct a guaranty agency to suspend or cease activities under any contract entered into by or on behalf of such agency after January 1, 1993, if the Secretary determines that the misuse or improper expenditure of such guaranty agency's funds or assets or such contract provides unnecessary or improper benefits to such agency's officers or directors.

"(3) Penalties.–Violation of any direction issued by the Secretary under this subsection may be subject to the penalties described in section 490 of this Act.

"(4) Availability of funds.–Any funds that are returned or otherwise recovered by the Secretary pursuant to this subsection shall be available for expenditure for expenses pursuant to section 458 of this Act.".

SEC. 4043. TERMS OF LOANS.

(a) Amendment.–Section 428 of the Act (20 U.S.C. 1078) is amended–

(1) in subsection (b)(1)(D), by striking "be subject to" through the semicolon and inserting "be subject to income contingent repayment in accordance with subsection (m);"; and

(2) in subsection (m)–

(A) by amending paragraph (1) to read as follows:

"(1) Authority of secretary to require.–The Secretary shall require at least 10 percent of the borrowers who have defaulted on loans made under this part that are assigned to the Secretary under subsection (c)(8) to repay those loans under an income contingent repayment plan, the terms and conditions of which shall be established by the Secretary and the same as, or similar to, an income contingent repayment plan established for purposes of part D of this title."; and

(B) by striking paragraphs (2), (3), and (4) and inserting the following new paragraph:

"(2) Loans for which income contingent repayment may be required.–A loan made under this part may be required to be repaid under this subsection if the note or other evidence of the loan has been assigned to the Secretary pursuant to

subsection (c)(8).".

(b) Effective Date.–The amendments made by this section shall take effect on July 1, 1994.

SEC. 4044. ASSIGNMENT OF LOANS.

Section 428(c)(8) of the Act (20 U.S.C. 1078(c)(8)) is amended–

(1) in the first sentence, by inserting the subparagraph designation "(A)" before "If the";

***50** (2) by striking the second and third sentences; and

(3) by adding at the end the following new subparagraph:

"(B) An orderly transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title shall be deemed to be in the Federal fiscal interest, and a guaranty agency shall promptly assign loans to the Secretary under this paragraph upon the Secretary's request.".

SEC. 4045. TERMINATION OF GUARANTY AGENCY AGREEMENTS; ASSUMPTION OF GUARANTY AGENCY FUNCTIONS BY THE SECRETARY.

Section 428(c)(10) of the Act is amended–

(1) in subparagraph (C), by inserting ", as appropriate," after "the Secretary shall require";

(2) in subparagraph (D)–

(A) by inserting the clause designation "(i)" before "Each";

(B) by striking "Each" and inserting "If the Secretary is not seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a";

(C) by adding at the end the following new clause:

"(ii) If the Secretary is seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a management plan described in subparagraph (C) shall include the means by which the Secretary and the guaranty agency shall work together to ensure the orderly termination of the operations, and liquidation of the assets, of the guaranty agency.";

(3) in subparagraph (E)–

(A) in clause (ii), by striking "or" after the semicolon;

(B) in clause (iii), by striking the period and inserting a semicolon; and

(C) by adding at the end the following new clauses:

"(iv) the Secretary determines that such action is necessary to protect the Federal fiscal interest;

"(v) the Secretary determines that such action is necessary to ensure the continued availability of loans to student or parent borrowers; or

"(vi) the Secretary determines that such action is necessary to ensure an orderly transition from the loan programs under

this part to the direct student loan programs under part D of this title.";

(4) in subparagraph (F)–

(A) in the matter preceding clause (i), by striking "Except as provided in subparagraph (G), if" and inserting "If";

(B) by amending clause (v) to read as follows:

"(v) provide the guaranty agency with additional advance funds in accordance with section 422(c)(7), with such restrictions on the use of such funds as is determined appropriate by the Secretary, in order to–

"(I) meet the immediate cash needs of the guaranty agency;
***51** "(II) ensure the uninterrupted payment of claims; or
"(III) ensure that the guaranty agency will make loans as the lender-of-last-resort, in accordance with subsection (j);";
(C) in clause (vi)–

(i) by striking "and to avoid" and inserting "to avoid";
(ii) by striking the period and inserting a comma and "and to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part D of this title."; and
(iii) by redesignating such clause as clause (vii); and
(D) by inserting after clause (v) the following new clause:

"(vi) use all funds and assets of the guaranty agency to assist in the activities undertaken in accordance with this subparagraph and take appropriate action to require the return, to the guaranty agency or the Secretary, of any funds or assets provided by the guaranty agency, under contract or otherwise, to any person or organization; or";

(5) by striking subparagraph (G);

(6) by redesignating subparagraphs (H), (I), and (J) as subparagraphs (I), (J), and (K), respectively;

(7) by inserting after subparagraph (F) the following new subparagraphs:

"(G) Notwithstanding any other provision of Federal or State law, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement under subparagraph (E), or has assumed a guaranty agency's functions under subparagraph (F)–

"(i) no State court may issue any order affecting the Secretary's actions with respect to such guaranty agency;

"(ii) any contract with respect to the administration of a guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after the date of enactment of this subparagraph shall provide that the contract is terminable by the Secretary upon 30 days' notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section; and

"(iii) no provision of State law shall apply to the actions of the Secretary in terminating the operations of a guaranty agency.

"(H) Notwithstanding any other provision of law, the Secretary's liability for any outstanding liabilities of a guaranty agency (other than outstanding student loan guarantees under this part), the functions of which the Secretary has assumed, shall not exceed the fair market value of the reserves of the ***52** guaranty agency, minus any necessary liquidation or other administrative costs."; and

(8) in subparagraph (K) (as redesignated by paragraph (5)), by striking all beginning with "system, together" through the

period and inserting "system and the progress of the transition from the loan programs under this part to the direct student loan programs under part D of this title.".

SEC. 4046. CONSOLIDATION LOANS.

(a) Cost Savings From Consolidation Loans.–Section 428C of the Act (20 U.S.C. 1078–3) is amended–

(1) in subsection (a) by amending paragraph (3)(A) to read as follows:

"(3) Definition of eligible borrowers.–(A) For the purpose of this section, the term 'eligible borrower' means a borrower who, at the time of application for a consolidation loan, is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower who will reenter repayment through loan consolidation.";

(2) in subsection (b)–

(A) in paragraph (1)–

(i) in subparagraph (A)(ii), by inserting "with income-sensitive repayment terms" after "obtain a consolidation loan";
(ii) by redesignating subparagraph (E) as subparagraph (F); and
(iii) by inserting after subparagraph (D) the following new subparagraph:
"(E) that the lender shall offer an income-sensitive repayment schedule, established by the lender in accordance with the regulations promulgated by the Secretary, to the borrower of any consolidation loan made by the lender on or after July 1, 1994; and";

(B) in paragraph (4), by amending subparagraph (C) to read as follows:

"(C)(i) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid in accordance with clause (ii), during any period for which the borrower would be eligible for a deferral under section 428(b)(1)(M), and that any such period shall not be included in determining the repayment schedule pursuant to subsection (c)(2) of this section; and

"(ii) provides that interest shall accrue and be paid–

"(I) by the Secretary, in the case of a consolidation loan that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 428: or
"(II) by the borrower, or capitalized, in the case of a consolidation loan other than a loan described in subclause (I);"; and
(C) by adding at the end the following new paragraph:

"(5) Direct loans.–In the event that a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the ***53** borrower from such a lender, the Secretary shall offer any such borrower who applies for it, a direct consolidation loan. Such direct consolidation loan shall, as requested by the borrower, be repaid either pursuant to income contingent repayment under part D of this title or pursuant to any other repayment provision under this section. The Secretary shall not offer such loans if, in the Secretary's judgment, the Department of Education does not have the necessary origination and servicing arrangements in place for such loans."; and

(3) in subsection (c)–

(A) in paragraph (1), by amending subparagraphs (B) and (C) to read as follows:

"(B) A consolidation loan made before July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the greater of–

"(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent; or

"(ii) 9 percent.

"(C) A consolidation loan made on or after July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.";

(B) in paragraph (2)–

(i) in subparagraph (A)–
(I) in the matter preceding clause (i), by striking "income sensitive repayment schedules. Such repayment terms" and inserting "income sensitive repayment schedules, established by the lender in accordance with the regulations of the Secretary. Except as required by such income sensitive repayment schedules, or by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5), such repayment terms";
(II) by redesignating clauses (i), (ii), (iii), (iv), and (v) as clauses (ii), (iii), (iv), (v), and (vi), respectively; and
(III) by inserting before clause (ii) (as redesignated by subclause (II)) the following new clause:
"(i) is less than $7,500, then such consolidation loan shall be repaid in not more than 10 years;";

(ii) by striking subparagraph (B); and
(iii) by redesignating subparagraph (C) as subparagraph (B); and
(C) in paragraph (3)(B), by inserting "except as required by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5)," before "the lender".

(b) Cohort Default Rate Conforming Amendments.–

(1) Amendments to definition.–Section 435(m)(1) of the Act (20 U.S.C. 1085) is amended–

***54** (A) in subparagraph (A), by inserting "(or on the portion of a loan made under section 428C that is used to repay any such loans)" immediately after "on such loans";

(B) in subparagraph (C), by inserting "(or on the portion of a loan made under section 428C that is used to repay any such loans)" immediately after "on such loans"; and

(C) in subparagraph (D)–

(i) by inserting "(or the portion of a loan made under section 428C that is used to repay a loan made under such section)" after "section 428A" the first place it appears; and
(ii) by inserting "(or a loan made under section 428C a portion of which is used to repay a loan made under such section)" after "section 428A" the second place it appears.
(2) Conforming amendment.–Section 428C(a)(3)(B)(ii) of the Act (20 U.S.C. 1078–3 (a)(3)(B)(ii)) is amended by striking the second sentence.

(c) Effective Date.–The amendments made by this section shall take effect on July 1, 1994, except that the amendments made by subsection (a)(2)(B) shall take effect upon enactment.

SEC. 4047. CONSOLIDATION OF PROGRAMS.

(a) In General.–Section 428H of the Act (20 U.S.C. 1078–9) is amended–

(1) in the matter preceding paragraph (1) of subsection (b), by inserting "(including graduate and professional students as defined in regulations promulgated by the Secretary)" after "484";

(2) by amending subsection (d) to read as follows:

"(d) Loan Limits.–

"(1) In general.–Except as provided in paragraphs (2) and (3), the annual and aggregate limits for loans under this section shall be the same as those established under section 428(b)(1), less any amount received by such student pursuant to the subsidized loan program established under section 428.

"(2) Annual limits for independent, graduate, and professional students.–The maximum annual amount of loans under this section an independent student (or a student whose parents are unable to borrow under section 428B or the Federal Direct PLUS Loan Program) may borrow in any academic year or its equivalent or in any period of 7 consecutive months, whichever is longer, shall be the amount determined under paragraph (1), plus–

"(A) in the case of such a student attending an eligible institution who has not completed such student's first 2 years of undergraduate study–

"(i) $4,000, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 481);
"(ii) $2,500, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and
***55** "(iii) $1,500, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year;

"(B) in the case of such a student attending an eligible institution who has completed the first 2 years of undergraduate study but who has not completed the remainder of a program of undergraduate study–

"(i) $5,000, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 481);
"(ii) $3,325, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and
"(iii) $1,675, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year; and

"(C) in the case of such a student who is a graduate or professional student attending an eligible institution, $10,000.

"(3) Aggregate limits for independent, graduate, and professional students.–The maximum aggregate amount of loans under this section a student described in paragraph (2) may borrow shall be the amount described in paragraph (1), adjusted to reflect the increased annual limits described in paragraph (2), as prescribed by the Secretary by regulation."; and

(3) in subsection (e), by adding at the end the following new paragraphs:

"(5) Amortization.–The amount of the periodic payment and the repayment schedule for any loan made pursuant to this section shall be established by assuming an interest rate equal to the applicable rate of interest at the time the repayment of the principal amount of the loan commences. At the option of the lender, the note or other written evidence of the loan may require that–

"(A) the amount of the periodic payment will be adjusted annually; or

"(B) the period of repayment of principal will be lengthened or shortened,

in order to reflect adjustments in interest rates occurring as a consequence of section 427A(c)(4).

"(6) Repayment period.–For purposes of calculating the 10-year repayment period under section 428(b)(1)(D), such period shall commence at the time the first payment of principal is due from the borrower.".

(b) Repeal.–Section 428A of the Act is repealed.

(c) Terms, Conditions and Benefits.–Notwithstanding the amendments made by this section, with respect to loans provided

under sections 428A and 428H of the Act (as such sections existed on the date preceding the date of enactment of this Act) the terms, conditions and benefits applicable to such loans under such sections shall continue to apply to such loans after the date of enactment of this Act.

***56** (d) Effective Date.–Except as otherwise provided herein, the amendments made by this section shall take effect on July 1, 1994.

Subtitle B–Additional Savings From the Student Loan Programs

SEC. 4101. REDUCTION OF BORROWER INTEREST RATES.

Section 427A of the Act (20 U.S.C. 1077a) is amended–

(1) in subsection (c)(4), by adding at the end the following new subparagraph:

"(E) Notwithstanding subparagraphs (A) and (D) for any loan made pursuant to section 428B for which the first disbursement is made on or after July 1, 1994–

"(i) subparagraph (B) shall be applied by substituting "3.1" for "3.25"; and

"(ii) the interest rate shall not exceed 9 percent.";

(2) by redesignating subsections (f), (g) and (h) as subsections (i), (j), and (k) respectively;

(3) by adding after subsection (e) the following new subsections:

"(f) Interest Rates for New Loans After July 1, 1994.–

"(1) In general.–Notwithstanding subsections (a), (b), (d), and (e) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 428B or 428C) for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

"(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

"(B) 3.10 percent,

except that such rate shall not exceed 8.25 percent.

"(2) Consultation.–The Secretary shall determine the applicable rate of interest under paragraph (1) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(g) In School and Grace Period Rules.–

"(1) General rule.–Notwithstanding the provisions of subsection (f), but subject to subsection (h), with respect to any loan under section 428 or 428H of this part for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for interest which accrues–

"(A) prior to the beginning of the repayment period of the loan; or

"(B) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 428(b)(1)(M) or 427(a)(2)(C),

shall not exceed the rate determined under paragraph (2).

***57** "(2) Rate determination.–For purposes of paragraph (1), the rate determined under this paragraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

"(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

"(B) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

"(3) Consultation.–The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(h) Interest Rates for New Loans After July 1, 1998.–

"(1) In general.–Notwithstanding subsections (a), (b), (d), (e), (f), and (g) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to sections 428B and 428C) for which the first disbursement is made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to–

"(A) the bond equivalent rate of the securities with a comparable maturity as established by the Secretary; plus

"(B) 1.0 percent,

except that such rate shall not exceed 8.25 percent.

"(2) Interest rates for new plus loans after july 1, 1998.–Notwithstanding subsections (a), (b), (d), (e), (f), and (g), with respect to any loan made under section 428B for which the first disbursement is made on or after July 1, 1998, paragraph (1) shall be applied–

"(A) by substituting '2.1 percent' for '1.0 percent' in subparagraph (B); and

"(B) by substituting '9.0 percent' for '8.25 percent' in the matter following such subparagraph.

"(3) Consultation.–The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.".

SEC. 4102. REDUCTION IN LOAN FEES PAID BY STUDENTS.

(a) Origination Fees.–Section 438 of the Act (20 U.S.C. 1087–1) is amended–

(1) in the heading of subsection (c) by inserting "From Students" after "Origination Fees"; and

(2) in subsection (c)–

(A) in paragraph (2)–

(i) by striking "428A, 428B, 428C," and inserting "428C"; and
(ii) by striking "5 percent" and inserting "3.0 percent"; and

(B) in paragraph (6), by striking "5 percent" and inserting "3.0 percent".

***58** (b) Origination Fee; Insurance Premium for Unsubsidized Loans.–Section 428H of the Act (20 U.S.C. 1078–8) is amended–

(1) in subsection (f)–

(A) in the subsection heading, by striking "Insurance Premium" and inserting "Origination Fee";

(B) in the heading of paragraph (1), by striking "insurance premium";

(C) in paragraph (1)–

(i) by striking "a combined origination fee and insurance premium in the amount of 6.5 percent" and inserting "an origination fee in the amount of 3.0 percent"; and
(ii) by striking the second sentence;
(D) in paragraph (2), by striking "combined fee and premium" and inserting "origination fee";

(E) in paragraph (3), by striking "combined origination fee and insurance premium" and inserting "origination fee";

(F) in paragraph (4)–

(i) in the heading, by striking "insurance premium" and inserting "origination fee";
(ii) by striking "combined origination fee and insurance premiums" and inserting "origination fees"; and
(iii) by striking "and premiums to pay" and inserting "to pay"; and
(G) in paragraph (5)–

(i) in the heading, by inserting "origination fee and" before "insurance"; and
(ii) in the second sentence–
(I) by striking "6.5 percent insurance premium" and inserting "combined origination fee under this subsection and the insurance premium under subsection (h)"; and
(II) by inserting "origination fee and" before "insurance"; and
(2) by adding at the end the following new subsection:

"(l) Insurance Premium.–Each State or nonprofit private institution or organization having an agreement with the Secretary under section 428(b)(1) may charge a borrower under this section an insurance premium equal to not more than 1.0 percent of the principal amount of the loan, if such premium will not be used for incentive payments to lenders."

(c) Insurance Premium.–Section 428(b)(1)(H) of the Act (20 U.S.C. 1078(b)(1)(H)) is amended by striking "3 percent" and inserting "1.0 percent".

(d) Effective Date.–The amendments made by this section shall take effect on July 1, 1994.

SEC. 4103. LOAN FEES FROM LENDERS.

Section 438 of the Act (20 U.S.C 1087–1) is further amended–

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection:

"(d) Loan Fees From Lenders.–

***59** "(1) Deduction from interest and special allowance subsidies.–Notwithstanding subsection (b), the Secretary shall reduce the total amount of interest and special allowance payable under section 428(a)(3)(A) and subsection (b) of this

section, respectively, to any holder of a loan by a loan fee in an amount determined in accordance with paragraph (2) of this subsection. If the total amount of interest and special allowance payable under section 428(a)(3)(A) and subsection (b) of this section, respectively, is less than the amount of such loan fee, then the Secretary shall deduct such excess amount from subsequent quarters' payments until the total amount has been deducted.

"(2) Amount of loan fees.–With respect to any loan under this part for which the first disbursement was made on or after October 1, 1993, the amount of the loan fee which shall be deducted under paragraph (1) shall be equal to 0.50 percent of the principal amount of the loan.

"(3) Distribution of loan fees.–The Secretary shall deposit all fees collected pursuant to paragraph (3) into the insurance fund established in section 431.".

SEC. 4104. OFFSET FEE.

Subsection (h) of section 439 of the Act (20 U.S.C. 1087–2(h)) is amended by adding at the end the following new paragraph:

"(7) Offset fee.–(A) The Association shall pay to the Secretary, on a monthly basis, an offset fee calculated on an annual basis in an amount equal to 0.30 percent of the principal amount of each loan made, insured or guaranteed under this part that the Association holds (except for loans made pursuant to sections 428C, 439(o), or 439(q)) and that was acquired on or after the date of enactment of this paragraph.

"(B) If the Secretary determines that the Association has substantially failed to comply with subsection (q), subparagraph (A) shall be applied by substituting '1.0 percent' for '0.3 percent'.

"(C) The Secretary shall deposit all fees collected pursuant to this paragraph into the insurance fund established in section 431.".

SEC. 4105. ELIMINATION OF TAX EXEMPT FLOOR.

Section 438(b)(2)(B) of the Act (20 U.S.C. 1087–1(b)(2)(B)) is amended by adding at the end the following new clause:

"(iv) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance for holders of loans which are financed with funds obtained by the holder from the issuance of obligations originally issued on or after October 1, 1993, the income from which is excluded from gross income under the Internal Revenue Code of 1986, shall be the quarterly rate of the special allowance established under subparagraph (A), (E), or (F), as the case may be. Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interest or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds.".

***60** SEC. 4106. REDUCTION IN INTEREST RATE FOR CONSOLIDATION LOANS; REBATE FEE.

(a) Amendment.–Section 428C of the Act (20 U.S.C. 1078–3) is amended by adding at the end the following new subsection:

"(f) Interest Payment Rebate Fee.–

"(1) In general.–For any month beginning on or after October 1, 1993, each holder of a consolidation loan under this section for which the first disbursement was made on or after October 1, 1993, shall pay to the Secretary, on a monthly basis and in such manner as the Secretary shall prescribe, a rebate fee calculated on an annual basis equal to 1.05 percent of the principal plus accrued unpaid interest on such loan.

"(2) Deposit.–The Secretary shall deposit all fees collected pursuant to subsection (a) into the insurance fund established in section 431.".

(b) Enforcement.–Subsection (d) of section 435 of the Act (20 U.S.C. 1085(d)) is amended–

(1) in the matter preceding subparagraph (A) of paragraph (1), by striking "(5)" and inserting "(6)"; and

(2) by adding at the end the following new paragraph:

"(6) Rebate fee requirement.–To be an eligible lender under this part, an eligible lender shall pay rebate fees in accordance with section 428C(f).".

SEC. 4107. REINSURANCE FEES AND ADMINISTRATIVE COST ALLOWANCE.

(a) Reinsurance Fees.–Section 428(c) of the Act (20 U.S.C. 1078(c)) is amended–

(1) by striking paragraph (9); and

(2) by redesignating paragraph (10) as paragraph (9).

(b) Administrative Cost Allowance.–Section 428(f)(1) of the Act (20 U.S.C. 1078(f)(1)) is amended–

(1) in subparagraph (A), by striking "The Secretary" and inserting "For a fiscal year prior to fiscal year 1994, the Secretary"; and

(2) in subparagraph (B), by inserting "prior to fiscal year 1994" after "any fiscal year".

(c) Effective Date.–The amendments made by this section shall take effect on October 1, 1993.

SEC. 4108. RISK SHARING.

(a) Guaranty Agency Reinsurance Percentage.–Section 428(c)(1) of the Act (20 U.S.C. 1078(c)(1)) is amended–

(1) in the fourth sentence of subparagraph (A), by striking "100 percent" and inserting "98 percent";

(2) in subparagraph (B)(i), by striking "90 percent" and inserting "88 percent";

(3) in subparagraph (B)(ii), by striking "80 percent" and inserting "78 percent"; and

(4) by adding at the end the following new subparagraphs:

"(E) Notwithstanding any other provisions of this section, in the case of a loan made pursuant to a lender-of-last-resort program, the Secretary shall apply the provisions of–

"(i) the fourth sentence of subparagraph (A) by substituting '100 percent' for '98 percent';

***61** "(ii) subparagraph (B)(i) by substituting '100 percent' for '88 percent'; and

"(iii) subparagraph (B)(ii) by substituting '100 percent' for '78 percent'.

"(F) Notwithstanding any other provisions of this section, in the case of an outstanding loan transferred to a guaranty agency from another guaranty agency pursuant to a plan approved by the Secretary in response to the insolvency of the latter such guarantee agency, the Secretary shall apply the provision of–

"(i) the fourth sentence of subparagraph (A) by substituting '100 percent' for '98 percent';

"(ii) subparagraph (B)(i) by substituting '90 percent' for '88 percent'; and

"(iii) subparagraph (B)(ii) by substituting '80 percent' for '78 percent'.".

(b) Risk Sharing by the Loan Holders.–Section 428(b)(1)(G) of the Act (20 U.S.C. 1078(b)(1)(G)) is amended–

(1) by striking "100 percent" and inserting "98 percent"; and

(2) by adding before the semicolon at the end the following: ", except that such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to section 428(j) or 439(q)".

(c) Effective Date.–The amendments made by this section shall apply to any loan for which the first disbursement is made on or after October 1, 1993.

SEC. 4109. PLUS LOAN DISBURSEMENTS.

(a) Multiple Disbursement Required.–The matter preceding paragraph (1) of section 428B(c) of the Act (20 U.S.C. 1078–2(c)) is amended by inserting "shall be disbursed in accordance with the requirements of section 428G and" after "under this section".

(b) Conforming Amendments.–Section 428G(e) of the Act (20 U.S.C. 1078–7(e) is amended–

(1) in the subsection heading, by striking "PLUS, Consolidation," and inserting "Consolidation"; and

(2) by striking "section 428B or 428C" and inserting "section 428C".

(c) Effective Date.–The amendments made by this section shall be effective with respect to loans for which the first disbursement is made on or after October 1, 1993.

SEC. 4110. SECRETARY'S EQUITABLE SHARE.

(a) Amendment.–Section 428(c)(6)(A)(ii) of the Act (20 U.S.C. 1078(c)(6)(A)(ii)) is amended by striking "30 percent" and inserting "27 percent".

(b) Effective Date.–The amendment made by subsection (a) shall take effect on October 1, 1993.

SEC. 4111. REDUCTION IN THE SPECIAL ALLOWANCE PAYMENT.

Paragraph (2) of section 438(b) of the Act (20 U.S.C. 1087–1(b)(2)) is amended–

(1) in subparagraph (A)–

(A) by striking "and (D)" and inserting "(D), (E), and (F)"; and

***62** (B) by striking "427A(e)" and inserting "427A(f)"; and

(2) by adding at the end the following new subparagraphs:

"(E) In the case of any loan for which the applicable rate of interest is described in section 427A(g)(2), subparagraph

(A)(iii) shall be applied by substituting '2.5 percent' for '3.10 percent'.

"(F) Subject to paragraph (4), the special allowance paid pursuant to this subsection on loans for which the applicable rate of interest is determined under section 427A(h) shall be computed (i) by determining the applicable bond equivalent rate of the security with a comparable maturity, as established by the Secretary, (ii) by subtracting the applicable interest rates on such loans from such applicable bond equivalent rate, (iii) by adding 1.0 percent to the resultant percent, and (iv) by dividing the resultant percent by 4. If such computation produces a number less than zero, such loans shall be subject to section 427A(f).".

SEC. 4112. SUPPLEMENTAL PRECLAIMS ASSISTANCE.

(a) Amendment.–Section 428(l)(2) of the Act (20 U.S.C. 1078(l)(2)) is amended by striking the second sentence and inserting the following: "For each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender on or before the 150th day after the loan becomes 120 days delinquent, such payment shall be equal to one percent of the total of the unpaid principle and the accrued unpaid interest of the loan.".

(b) Effective Date.–The amendment made by this section shall take effect on October 1, 1993.

Subtitle C–Cost Sharing by States

SEC. 4201. COST SHARING BY STATES.

(a) Amendment.–Section 428 of the Act (20 U.S.C. 1078) is amended by adding at the end the following new subsection:

"(n) State Share of Default Costs.–

"(1) In general.–In the case of any State in which there are located any institutions of higher education that have a cohort default rate that exceeds 20 percent, such State shall pay to the Secretary an amount equal to–

"(A) the new loan volume attributable to all institutions in the State for the current fiscal year; multiplied by

"(B) the percentage specified in paragraph (2); multiplied by

"(C) the quotient of–

"(i) the sum of the amounts calculated under paragraph (3) for each such institution in the State; divided by

"(ii) the total amount of loan volume attributable to current and former students of institutions located in that State entering repayment in the period used to calculate the cohort default rate.

"(2) Percentage.–For purposes of paragraph (1)(B), the percentage used shall be–

***63** "(A) 12.5 percent for fiscal year 1995;

"(B) 20 percent for fiscal year 1996; and

"(C) 50 percent for fiscal year 1997 and succeeding fiscal years.

"(3) Calculation.–For purposes of paragraph (1)(C)(i), the amount shall be determined by calculating for each institution the amount by which–

"(A) the amount of the loans received for attendance by such institution's current and former students who (i) enter repayment during the fiscal year used for the calculation of the cohort default rate, and (ii) default before the end of the following fiscal year; exceeds

"(B) 20 percent of the loans received for attendance by all the current and former students who enter repayment during the fiscal year used for the calculation of the cohort default rate.

"(4) Fee.–A State may charge a fee to an institution of higher education that participates in the program under this part and is located in that State according to a fee structure, approved by the Secretary, that is based on the institution's cohort default rate and the State's risk of loss under this subsection. Such fee structure shall include a process by which an institution with a high cohort default rate is exempt from any fees under this paragraph if such institution demonstrates to the satisfaction of the State that exceptional mitigating circumstances, as determined by the State and approved by the Secretary, contributed to its cohort default rate.".

(b) Effective Date.–The amendment made by this section shall take effect on October 1, 1994.

Subtitle D–Group Health Plans

SEC. 4301. STANDARDS FOR GROUP HEALTH PLAN COVERAGE.

(a) In General.–Part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.) is amended by adding at the end the following new section:

"ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

"Sec. 609. (a) Group Health Plan Coverage Pursuant to Medical Child Support Orders.–

"(1) In general.–Each group health plan shall provide benefits in accordance with the applicable requirements of any qualified medical child support order.

"(2) Definitions.–For purposes of this subsection–

"(A) Qualified medical child support order.–The term 'qualified medical child support order' means a medical child support order–

"(i) which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits for which a participant or beneficiary is eligible under a group health plan, and

***64** "(ii) with respect to which the requirements of paragraphs (3) and (4) are met.

"(B) Medical child support order.–The term 'medical child support order' means any judgment, decree, or order (including approval of a settlement agreement) issued by a court of competent jurisdiction which–

"(i) provides for child support with respect to a child of a participant under a group health plan or provides for health benefit coverage to such a child, is made pursuant to a State domestic relations law (including a community property law), and relates to benefits under such plan, or

"(ii) enforces a law relating to medical child support described in section 1908 of the Social Security Act (as added by section 13822 of the Omnibus Budget Reconciliation Act of 1993) with respect to a group health plan.

"(C) Alternate recipient.–The term 'alternate recipient' means any child of a participant who is recognized under a medical child support order as having a right to enrollment under a group health plan with respect to such participant.

"(3) Information to be included in qualified order.–A medical child support order meets the requirements of this paragraph only if such order clearly specifies–

"(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate recipient covered by the order,

"(B) a reasonable description of the type of coverage to be provided by the plan to each such alternate recipient, or the manner in which such type of coverage is to be determined,

"(C) the period to which such order applies, and

"(D) each plan to which such order applies.

"(4) Restriction on new types or forms of benefits.–A medical child support order meets the requirements of this paragraph only if such order does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, except to the extent necessary to meet the requirements of a law relating to medical child support described in section 1908 of the Social Security Act (as added by section 13822 of the Omnibus Budget Reconciliation Act of 1993).

"(5) Procedural requirements.–

"(A) Timely notifications and determinations.–In the case of any medical child support order received by a group health plan–

"(i) the plan administrator shall promptly notify the participant and each alternate recipient of the receipt of such order and the plan's procedures for determining whether medical child support orders are qualified medical child support orders, and

"(ii) within a reasonable period after receipt of such order, the plan administrator shall determine ***65** whether such order is a qualified medical child support order and notify the participant and each alternate recipient of such determination.

"(B) Establishment of procedures for determining qualified status of orders.–Each group health plan shall establish reasonable procedures to determine whether medical child support orders are qualified medical child support orders and to administer the provision of benefits under such qualified orders. Such procedures–

"(i) shall be in writing,

"(ii) shall provide for the notification of each person specified in a medical child support order as eligible to receive benefits under the plan (at the address included in the medical child support order) of such procedures promptly upon receipt by the plan of the medical child support order, and

"(iii) shall permit an alternate recipient to designate a representative for receipt of copies of notices that are sent to the alternate recipient with respect to a medical child support order.

"(6) Actions taken by fiduciaries.–If a plan fiduciary acts in accordance with part 4 of this subtitle in treating a medical child support order as being (or not being) a qualified medical child support order, then the plan's obligation to the participant and each alternate recipient shall be discharged to the extent of any payment made pursuant to such act of the fiduciary.

"(7) Treatment of alternate recipients.–

"(A) Treatment as beneficiary generally.–A person who is an alternate recipient under a qualified medical child support order shall be considered a beneficiary under the plan for purposes of any provision of this Act.

"(B) Treatment as participant for purposes of reporting and disclosure requirements.–A person who is an alternate recipient under any medical child support order shall be considered a participant under the plan for purposes of the reporting and disclosure requirements of part 1.

"(8) Direct provision of benefits provided to alternate recipients.–Any payment for benefits made by a group health plan pursuant to a medical child support order in reimbursement for expenses paid by an alternate recipient or an alternate recipient's custodial parent or legal guardian shall be made to the alternate recipient or the alternate recipient's custodial parent or legal guardian.

"(b) Rights of States with Respect to Group Health Plans Where Participants or Beneficiaries Thereunder Are Eligible for Medicaid Benefits.–

"(1) Compliance by plans with assignment of rights.–A group health plan shall provide that payment for benefits with respect to a participant under the plan will be made in accordance with any assignment of rights made by or on behalf of such participant or a beneficiary of the participant as required by a State plan for medical assistance approved under ***66** title XIX of the Social Security Act pursuant to section 1912(a)(1)(A) of such Act (as in effect on the date of the enactment of the Omnibus Budget Reconciliation Act of 1993).

"(2) Enrollment and provision of benefits without regard to medicaid eligibility.–A group health plan shall provide that, in enrolling an individual as a participant or beneficiary or in determining or making any payments for benefits of an individual as a participant or beneficiary, the fact that the individual is eligible for or is provided medical assistance under a State plan for medical assistance approved under title XIX of the Social Security Act will not be taken into account.

"(3) Acquisition by states of rights of third parties.–A group health plan shall provide that, to the extent that payment has been made under a State plan for medical assistance approved under title XIX of the Social Security Act in any case in which a group health plan has a legal liability to make payment for items or services constituting such assistance, payment for benefits under the plan will be made in accordance with any State law which provides that the State has acquired the rights with respect to a participant to such payment for such items or services.

"(c) Group Health Plan Coverage of Dependent Children in Cases of Adoption.–

"(1) Coverage effective upon placement for adoption.–In any case in which a group health plan provides coverage for dependent children of participants or beneficiaries, such plan shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply in the case of dependent children who are natural children of participants or beneficiaries under the plan, irrespective of whether the adoption has become final.

"(2) Restrictions based on preexisting conditions at time of placement for adoption prohibited.–A group health plan may not restrict coverage under the plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of such child at the time that such child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

"(3) Definitions.–For purposes of this subsection–

"(A) Child.–The term 'child' means, in connection with any adoption, or placement for adoption, of the child, an individual who has not attained age 18 as of the date of such adoption or placement for adoption.

"(B) Placement for adoption.–The term 'placement', or being 'placed', for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

***67** "(d) Continued Coverage of Costs of a Pediatric Vaccine under Group Health Plans.–A group health plan may not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act as amended by section 13830 of the Omnibus Budget Reconciliation Act of 1993) below the coverage it provided as of May 1, 1993.

"(e) Regulations.–Any regulations prescribed under this section shall be prescribed by the Secretary of Labor, in consultation with the Secretary of Health and Human Services.".

(b) Conforming Amendments to ERISA to Ensure Compliance with Medicare and Medicaid Coverage Data Bank Requirements.–

(1) Reports to data bank.–Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended–

(A) by redesignating subsection (f) as subsection (g); and

(B) by inserting after subsection (e) the following new subsection:

"(f) Information Necessary To Comply With Medicare and Medicaid Coverage Data Bank Requirements.–

"(1) Provision of information by group health plan upon request of employer.–

"(A) In general.–An employer shall comply with the applicable requirements of section 1144 of the Social Security Act (as added by section 13581 of the Omnibus Budget Reconciliation Act of 1993). Upon the request of an employer maintaining a group health plan, any plan sponsor, plan administrator, insurer, third-party administrator, or other person who maintains under the plan the information necessary to enable the employer to comply with the applicable requirements of section 1144 of the Social Security Act shall, in such form and manner as may be prescribed in regulations of the Secretary (in consultation with the Secretary of Health and Human Services), provide such information (not inconsistent with paragraph (2))–

"(i) in the case of a request by an employer described in subparagraph (B) and a plan that is not a multiemployer plan or a component of an arrangement described in subparagraph (C), to the Medicare and Medicaid Coverage Data Bank;
"(ii) in the case of a plan that is a multiemployer plan or is a component of an arrangement described in subparagraph (C), to the employer or to such Data Bank, at the option of the plan; and
"(iii) in any other case, to the employer or to such Data Bank, at the option of the employer.

"(B) Employer described.–An employer is described in this subparagraph for any calendar year if such employer normally employed fewer than 50 employees on a typical business day during such calendar year.

"(C) Arrangement described.–An arrangement described in this subparagraph is any arrangement in which ***68** two or more employers contribute for the purpose of providing group health plan coverage for employees.

"(2) Information not required to be provided.–Any plan sponsor, plan administrator, insurer, third-party administrator, or other person described in paragraph (1)(A) (other than the employer) that maintains the information under the plan shall not provide to an employer in order to satisfy the requirements of section 1144 of the Social Security Act, and shall not provide to the Data Bank under such section, information that pertains in any way to–

"(A) the health status of a participant, or of the participant's spouse, dependent child, or other beneficiary,

"(B) the cost of coverage provided to any participant or beneficiary, or

"(C) any limitations on such coverage specific to any participant or beneficiary.

"(3) Regulations.–The Secretary may, in consultation with the Secretary of Health and Human Services, prescribe such regulations as are necessary to carry out this subsection.".

(c) Conforming Amendments.–

(1) Civil actions.–Section 502(a) of such Act (29 U.S.C. 1132(a)) is amended–

(A) in paragraph (5), by striking "or" at the end;

(B) in paragraph (6), by striking the period and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

"(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 609(a)(2)(A)); or

"(8) by the Secretary, or by an employer or other person referred to in section 101(f)(1), (A) to enjoin any act or practice which violates subsection (f) of section 101, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection.".

(2) Civil penalty.–Section 502(c) of such Act (29 U.S.C. 1132(c)) is amended by adding at the end the following new paragraph:

"(4) The Secretary may assess a civil penalty of not more than $1,000 for each violation by any person of section 101(f)(1). For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation. The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1144(c)(8) of the Social Security Act.".

(3) Jurisdiction.–Section 502(e)(1) of such Act (29 U.S.C. 1132(e)(1)) is amended–

(A) in the first sentence, by striking "or fiduciary" and inserting "fiduciary, or any person referred to in section 101(f)(1)"; and

***69** (B) in the second sentence, by striking "subsection (a)(1)(B)" and inserting "paragraphs (1)(B) and (7) of subsection (a)".

(4) Effect on other laws.–Section 514 of such Act (29 U.S.C. 1144) is amended–

(A) in subsection (b)(7)(D), by inserting ",qualified medical child support orders (within the meaning of section 609(a)(2)(A)), and the provisions of law referred to in section 609(a)(2)(B)(ii) to the extent enforced by qualified medical child support orders" before the period; and

(B) by striking subsection (b)(8) and inserting the following:

"(8) Subsection (a) of this section shall not be construed to preclude any State cause of action–

"(A) with respect to which the State exercises its acquired rights under section 609(b)(3) with respect to a group health plan (as defined in section 607(1)), or

"(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act which would not have been payable if such acquired rights had been executed before payment with respect to such items or services by the group health plan.";

(5) Clerical amendments.–

(A) The heading for part 6 of subtitle B of title I of such Act is amended to read as follows:

"PART 6–GROUP HEALTH PLANS".

(B) The table of contents in section 1 of such Act is amended–

(i) by striking the item relating to the heading for part 6 of subtitle B of title I and inserting the following:

"PART 6–GROUP HEALTH PLANS";

and

(ii) by inserting after the item relating to section 608 the following new item:

"Sec. 609. Additional standards for group health plans.".

(d) Effective Date.–

(1) In general.–The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Plan amendments not required until january 1, 1994.–Any amendment to a plan required to be made by an amendment made by this section shall not be required to be made before the first plan year beginning on or after January 1, 1994, if–

(A) during the period after the date before the date of the enactment of this Act and before such first plan year, the plan is operated in accordance with the requirements of the amendments made by this section, and

***70** (B) such plan amendment applies retroactively to the period after the date before the date of the enactment of this Act and before such first plan year.

A plan shall not be treated as failing to be operated in accordance with the provisions of the plan merely because it operates in accordance with this paragraph.

Subtitle E–Fee Increase

SEC. 4401. FEE INCREASE.

The Tea Importation Act (21 U.S.C. 41 et seq.) is amended–

(1) by inserting the 4th undesignated paragraph under the center heading "food and drug administration" of title II of the Labor-Federal Security Appropriation Act, 1942 (21 U.S.C. 46a) as a new section 13 of the Tea Importation Act, and

(2) by amending such new section 13 to read as follows:

"Sec. 13. No tea or merchandise described as tea shall be examined for importation into the United States, or released by the Customs Service, under the Tea Importation Act unless the importer or consignee of such tea or merchandise has paid, before the examination, a fee in an amount equal to–

"(1) 10 cents for each hundred weight or fraction thereof of the tea or merchandise; or

"(2) the approximate cost of the examinations;

whichever amount is less. Such fee shall be deposited into the Treasury of the United States as miscellaneous receipts."

TITLE V–TRANSPORTATION AND PUBLIC WORKS PROVISIONS

SEC. 5001. RECREATIONAL USER FEES.

(a) In General.–Section 210 of the Flood Control Act of 1968 (16 U.S.C. 460d–3) is amended–

(1) by striking "Sec. 210. No entrance" and inserting the following:

"SEC. 210. RECREATIONAL USER FEES.

"(a) Prohibition on Admissions Fees.–No entrance";

(2) by striking the second sentence; and

(3) by adding at the end the following new subsection:

"(b) Fees for Use of Developed Recreation Sites and Facilities.–

"(1) Establishment and collection.–Notwithstanding section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(b)), the Secretary of the Army is authorized, subject to paragraphs (2) and (3), to establish and collect fees for the use of developed recreation sites and facilities, including campsites, swimming beaches, and boat launching ramps but excluding a site or facility which includes only a boat launch ramp and a courtesy dock.

"(2) Exemption of certain facilities.–The Secretary shall not establish or collect fees under this subsection for the use or provision of drinking water, wayside exhibits, roads, scenic ***71** drives, overlook sites, picnic tables, toilet facilities, surface water areas, undeveloped or lightly developed shoreland, or general visitor information.

"(3) Per vehicle limit.–The fee under this subsection for use of a site or facility (other than an overnight camping site or facility or any other site or facility at which a fee is charged for use of the site or facility as of the date of the enactment of this paragraph) for persons entering the site or facility by private, noncommercial vehicle transporting not more than 8 persons (including the driver) shall not exceed $3 per day per vehicle. Such maximum amount may be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

"(4) Deposit into treasury account.–All fees collected under this subsection shall be deposited into the Treasury account for the Corps of Engineers established by section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(i))."

(b) Conforming Amendment for Campsites.–Section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(b)) is amended by striking the next to the last sentence.

TITLE VI–COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION IMPROVEMENT

SEC. 6001. TRANSFER OF AUCTIONABLE FREQUENCIES.

(a) Amendment.–The National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended–

(1) by striking the heading of part B and inserting the following:

"PART C–SPECIAL AND TEMPORARY PROVISIONS";

(2) by redesignating sections 131 through 135 as sections 151 through 155, respectively; and

(3) by inserting after part A the following new part:

"PART B–TRANSFER OF AUCTIONABLE FREQUENCIES.

"SEC. 111. DEFINITIONS.

"As used in this part:

"(1) The term 'allocation' means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

"(2) The term 'assignment' means an authorization given to a station licensee to use specific frequencies or channels.

***72** "(3) The term 'the 1934 Act' means the Communications Act of 1934 (47 U.S.C. 151 et seq.).

"SEC. 112. NATIONAL SPECTRUM ALLOCATION PLANNING.

"The Assistant Secretary and the Chairman of the Commission shall meet, at least biannually, to conduct joint spectrum planning with respect to the following issues:

"(1) the extent to which licenses for spectrum use can be issued pursuant to section 309(j) of the 1934 Act to increase Federal revenues;

"(2) the future spectrum requirements for public and private uses, including State and local government public safety agencies;

"(3) the spectrum allocation actions necessary to accommodate those uses; and

"(4) actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference as a means of increasing commercial access.

"SEC. 113. IDENTIFICATION OF REALLOCABLE FREQUENCIES.

"(a) Identification Required.–The Secretary shall, within 18 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 1993, prepare and submit to the President and the Congress a report identifying and recommending for reallocation bands of frequencies–

"(1) that are allocated on a primary basis for Federal Government use;

"(2) that are not required for the present or identifiable future needs of the Federal Government;

"(3) that can feasibly be made available, as of the date of submission of the report or at any time during the next 15 years, for use under the 1934 Act (other than for Federal Government stations under section 305 of the 1934 Act);

"(4) the transfer of which (from Federal Government use) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits to the public that may be provided by non-Federal licensees; and

"(5) that are most likely to have the greatest potential for productive uses and public benefits under the 1934 Act if allocated for non-Federal use.

"(b) Minimum Amount of Spectrum Recommended.–

"(1) In general.–In accordance with the provisions of this section, the Secretary shall recommend for reallocation, for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that in the aggregate span not less than 200 megahertz, that are located below 5 gigahertz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a). Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that span in the aggregate not less than 100 megahertz.

***73** "(2) Mixed uses permitted to be counted.–Bands of frequencies which a report of the Secretary under subsection (a) or (d)(1) recommends be partially retained for use by Federal Government stations, but which are also recommended to be reallocated to be made available under the 1934 Act for use by non-Federal stations, may be counted toward the minimum spectrum required by paragraph (1) of this subsection, except that–

"(A) the bands of frequencies counted under this paragraph may not count toward more than one-half of the minimums required by paragraph (1) of this subsection;

"(B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by such Federal Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential use to be made by non-Federal stations; and

"(C) the operational sharing permitted under this paragraph shall be subject to the interference regulations prescribed by the Commission pursuant to section 305(a) of the 1934 Act and to coordination procedures that the Commission and the Secretary shall jointly establish and implement to ensure against harmful interference.

"(c) Criteria for Identification.–

"(1) Needs of the federal government.–In determining whether a band of frequencies meets the criteria specified in subsection (a)(2), the Secretary shall–

"(A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider or other vendor;

"(B) seek to promote–

"(i) the maximum practicable reliance on commercially available substitutes;
"(ii) the sharing of frequencies (as permitted under subsection (b)(2));
"(iii) the development and use of new communications technologies; and
"(iv) the use of nonradiating communications systems where practicable; and

"(C) seek to avoid–

"(i) serious degradation of Federal Government services and operations;
"(ii) excessive costs to the Federal Government and users of Federal Government services; and
"(iii) excessive disruption of existing use of Federal Government frequencies by amateur radio licensees.

"(2) Feasibility of use.–In determining whether a frequency band meets the criteria specified in subsection (a)(3), the Secretary shall–

***74** "(A) assume that the frequency will be assigned by the Commission under section 303 of the 1934 Act (47 U.S.C. 303) within 15 years;

"(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

"(C) seek to include frequencies which can be used to stimulate the development of new technologies; and

"(D) consider the immediate and recurring costs to reestablish services displaced by the reallocation of spectrum.

"(3) Analysis of benefits.–In determining whether a band of frequencies meets the criteria specified in subsection (a)(5), the Secretary shall consider–

"(A) the extent to which equipment is or will be available that is capable of utilizing the band;

"(B) the proximity of frequencies that are already assigned for commercial or other non-Federal use;

"(C) the extent to which, in general, commercial users could share the frequency with amateur radio licensees; and

"(D) the activities of foreign governments in making frequencies available for experimentation or commercial assignments

in order to support their domestic manufacturers of equipment.

"(4) Power agency frequencies.–

"(A) Applicability of criteria.–The criteria specified by subsection (a) shall be deemed not to be met for any purpose under this part with regard to any frequency assignment to, or any frequency assignment used by, a Federal power agency for the purpose of withdrawing that assignment.

"(B) Mixed use eligibility.–The frequencies assigned to any Federal power agency may only be eligible for mixed use under subsection (b)(2) in geographically separate areas, but in those cases where a frequency is to be shared by an affected Federal power agency and a non-Federal user, such use by the non-Federal user shall not cause harmful interference to the affected Federal power agency or adversely affect the reliability of its power system.

"(C) Definition.–As used in this paragraph, the term 'Federal power agency' means the Tennessee Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, the Southeastern Power Administration, or the Alaska Power Administration.

"(5) Limitation on reallocation.–None of the frequencies recommended for reallocation in the reports required by this subsection shall have been recommended, prior to the date of enactment of the Omnibus Budget Reconciliation Act of 1993, for reallocation to non-Federal use by international agreement.

"(d) Procedure for Identification of Reallocable Bands of Frequencies.–

"(1) Submission of preliminary identification to congress.–Within 6 months after the date of the enactment of the ***75** Omnibus Budget Reconciliation Act of 1993, the Secretary shall prepare, make publicly available, and submit to the President, the Congress, and the Commission a report which makes a preliminary identification of reallocable bands of frequencies which meet the criteria established by this section.

"(2) Public comment.–The Secretary shall provide interested persons with the opportunity to submit, within 90 days after the date of its publication, written comment on the preliminary report required by paragraph (1). The Secretary shall immediately transmit a copy of any such comment to the Commission.

"(3) Comment and recommendations from commission.–The Commission shall, within 90 days after the conclusion of the period for comment provided pursuant to paragraph (2), submit to the Secretary the Commission's analysis of such comments and the Commission's recommendations for responses to such comments, together with such other comments and recommendations as the Commission deems appropriate.

"(4) Direct discussions.–The Secretary shall encourage and provide opportunity for direct discussions among commercial representatives and Federal Government users of the spectrum to aid the Secretary in determining which frequencies to recommend for reallocation. The Secretary shall provide notice to the public and the Commission of any such discussions, including the name or names of any businesses or other persons represented in such discussions. A representative of the Commission (and of the Secretary at the election of the Secretary) shall be permitted to attend any such discussions. The Secretary shall provide the public and the Commission with an opportunity to comment on the results of any such discussions prior to the submission of the final report required by subsection (a).

"(e) Timetable for Reallocation and Limitation.–

"(1) Timetable required.–The Secretary shall, as part of the reports required by subsections (a) and (d)(1), include a timetable that recommends effective dates by which the President shall withdraw or limit assignments of the frequencies specified in such reports.

"(2) Expedited reallocation.–

"(A) Required reallocation.–The Secretary shall, as part of the report required by subsection (d)(1), specifically identify

and recommend for immediate reallocation bands of frequencies that in the aggregate span not less than 50 megahertz, that meet the criteria described in subsection (a), and that can be made available for reallocation immediately upon issuance of the report required by subsection (d)(1). Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that in the aggregate span not less than 25 megahertz .

"(B) Permitted reallocation.–The Secretary may, as part of such report, identify and recommend bands of frequencies for immediate reallocation for a mixed use pursuant to subsection (b)(2), but such bands of frequencies ***76** may not count toward the minimums required by subparagraph (A).

"(3) Delayed effective dates.– In setting the recommended delayed effective dates, the Secretary shall–

"(A) consider the need to reallocate bands of frequencies as early as possible, taking into account the requirements of paragraphs (1) and (2) of section 115(b);

"(B) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

"(C) consider the need to coordinate frequency use with other nations; and

"(D) take into account the relationship between the costs to the Federal Government of changing to different frequencies and the benefits that may be obtained from commercial and other non-Federal uses of the reassigned frequencies.

"SEC. 114. WITHDRAWAL OR LIMITATION OF ASSIGNMENT TO FEDERAL GOVERNMENT STATIONS.

"(a) In General.–The President shall–

"(1) within 6 months after receipt of a report by the Secretary under subsection (a) or (d)(1) of section 113, withdraw the assignment to a Federal Government station of any frequency which the report recommends for immediate reallocation;

"(2) within either such 6-month period, limit the assignment to a Federal Government station of any frequency which the report recommends be made immediately available for mixed use under section 113(b)(2);

"(3) by the delayed effective date recommended by the Secretary under section 113(e) (except as provided in subsection (b)(4) of this section), withdraw or limit the assignment to a Federal Government station of any frequency which the report recommends be reallocated or made available for mixed use on such delayed effective date;

"(4) assign or reassign other frequencies to Federal Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

"(5) transmit a notice and description to the Commission and each House of Congress of the actions taken under this subsection.

"(b) Exceptions.–

"(1) Authority to substitute.–If the President determines that a circumstance described in paragraph (2) exists, the President–

"(A) may substitute an alternative frequency or frequencies for the frequency that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency in the manner required by subsection (a); and

"(B) shall submit a statement of the reasons for taking the action described in subparagraph (A) to the Commission, Committee on Energy and Commerce of the House of ***77** Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

"(2) Grounds for substitution.–For purposes of paragraph (1), the following circumstances are described in this paragraph:

"(A) the reassignment would seriously jeopardize the national defense interests of the United States;

"(B) the frequency proposed for reassignment is uniquely suited to meeting important governmental needs;

"(C) the reassignment would seriously jeopardize public health or safety;

"(D) the reassignment will result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from commercial or other non-Federal uses of the reassigned frequency; or

"(E) the reassignment will disrupt the existing use of a Federal Government band of frequencies by amateur radio licensees.

"(3) Criteria for substituted frequencies.–For purposes of paragraph (1), a frequency may not be substituted for a frequency identified and recommended by the report of the Secretary under section 113(a) unless the substituted frequency also meets each of the criteria specified by section 113(a).

"(4) Delays in implementation.–If the President determines that any action cannot be completed by the delayed effective date recommended by the Secretary pursuant to section 113(e), or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 115, the President may–

"(A) withdraw or limit the assignment to Federal Government stations on a later date that is consistent with such plan, except that the President shall notify each committee specified in paragraph (1)(B) and the Commission of the reason that withdrawal or limitation at a later date is required; or

"(B) substitute alternative frequencies pursuant to the provisions of this subsection.

"SEC. 115. DISTRIBUTION OF FREQUENCIES BY THE COMMISSION.

"(a) Allocation and Assignment of Immediately Available Frequencies.–With respect to the frequencies made available for immediate reallocation pursuant to section 113(e)(2), the Commission, not later than 18 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, shall issue regulations to allocate such frequencies and shall propose regulations to assign such frequencies.

"(b) Allocation and Assignment of Remaining Available Frequencies.–With respect to the frequencies made available for reallocation pursuant to section 113(e)(3), the Commission shall, not later than 1 year after receipt of the report required by section 113(a), prepare, submit to the President and the Congress, and implement, a plan for the allocation and assignment under the 1934 Act of such frequencies. Such plan shall–

"(1) not propose the immediate allocation and assignment of all such frequencies but, taking into account the timetable ***78** recommended by the Secretary pursuant to section 113(e), shall propose–

"(A) gradually to allocate and assign the frequencies remaining, after making the reservation required by subparagraph (B), over the course of 10 years beginning on the date of submission of such plan; and

"(B) to reserve a significant portion of such frequencies for allocation and assignment beginning after the end of such 10-year period;

"(2) contain appropriate provisions to ensure–

"(A) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the 1934 Act (47 U.S.C. 157);

"(B) the availability of frequencies to stimulate the development of such technologies; and

"(C) the safety of life and property in accordance with the policies of section 1 of the 1934 Act (47 U.S.C. 151);

"(3) address (A) the feasibility of reallocating portions of the spectrum from current commercial and other non-Federal uses to provide for more efficient use of the spectrum, and (B) innovation and marketplace developments that may affect the relative efficiencies of different spectrum allocations;

"(4) not prevent the Commission from allocating frequencies, and assigning licenses to use frequencies, not included in the plan; and

"(5) not preclude the Commission from making changes to the plan in future proceedings.

"SEC. 116. AUTHORITY TO RECOVER REASSIGNED FREQUENCIES.

"(a) Authority of President.–Subsequent to the withdrawal of assignment to Federal Government stations pursuant to section 114, the President may reclaim reassigned frequencies for reassignment to Federal Government stations in accordance with this section.

"(b) Procedure for Reclaiming Frequencies.–

"(1) Unallocated frequencies.–If the frequencies to be reclaimed have not been allocated or assigned by the Commission pursuant to the 1934 Act, the President shall follow the procedures for substitution of frequencies established by section 114(b) of this part.

"(2) Allocated frequencies.–If the frequencies to be reclaimed have been allocated or assigned by the Commission, the President shall follow the procedures for substitution of frequencies established by section 114(b) of this part, except that the statement required by section 114(b)(1)(B) shall include–

"(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for its utilization; and

"(B) an estimate of the cost of displacing spectrum users licensed by the Commission.

"(c) Costs of Reclaiming Frequencies.–The Federal Government shall bear all costs of reclaiming frequencies pursuant to this section, including the cost of equipment which is rendered unusable, the cost of relocating operations to a different frequency, and any other costs that are directly attributable to the reclaiming of the ***79** frequency pursuant to this section, and there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

"(d) Effective Date of Reclaimed Frequencies.–The Commission shall not withdraw licenses for any reclaimed frequencies until the end of the fiscal year following the fiscal year in which a statement under section 114(b)(1)(B) pertaining to such frequencies is received by the Commission.

"(e) Effect on Other Law.–Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the 1934 Act (47 U.S.C. 606).

"SEC. 117. EXISTING ALLOCATION AND TRANSFER AUTHORITY RETAINED.

"(a) Additional Reallocation.–Nothing in this part prevents or limits additional reallocation of spectrum from the Federal Government to other users.

"(b) Implementation of New Technologies and Services.–Notwithstanding any other provision of this part–

"(1) the Secretary may, consistent with section 104(e) of this Act, at any time allow frequencies allocated on a primary basis for Federal Government use to be used by non-Federal licensees on a mixed-use basis for the purpose of facilitating the prompt implementation of new technologies or services and for other purposes; and

"(2) the Commission shall make any allocation and licensing decisions with respect to such frequencies in a timely manner and in no event later than the date required by section 7 of the 1934 Act.".

(b) Conforming Amendment To Ensure Collection of FCC Fees.–Section 104 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 903) is amended by adding at the end the following new subsection:

"(e) Proof of Compliance with FCC Licensing Requirements.–

"(1) Amendment to manual required.–Within 90 days after the date of enactment of this subsection, the Secretary and the NTIA shall amend the spectrum management document described in subsection (a) to require that–

"(A) no person or entity (other than an agency or instrumentality of the United States) shall be permitted, after 1 year after such date of enactment, to operate a radio station utilizing a frequency that is authorized for the use of government stations pursuant to section 103(b)(2)(A) of this Act for any non-government application unless such person or entity has submitted to the NTIA proof, in a form prescribed by such manual, that such person or entity has obtained a license from the Commission; and

"(B) no person or entity (other than an agency or instrumentality of the United States) shall be permitted, after 1 year after such date of enactment, to utilize a radio station belonging to the United States for any non-government application unless such person or entity has submitted to the NTIA proof, in a form prescribed by such manual, that ***80** such person or entity has obtained a license from the Commission.

"(2) Retention of forms.–The NTIA shall maintain on file the proofs submitted under paragraph (1), or facsimiles thereof.

"(3) Certification.–Within 1 year after the date of enactment of this subsection, the Secretary and the NTIA shall certify to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that–

"(A) the amendments required by paragraph (1) have been accomplished; and

"(B) the requirements of subparagraphs (A) and (B) of such paragraph are being enforced.".

SEC. 6002. AUTHORITY TO USE COMPETITIVE BIDDING.

(a) Use of Competitive Bidding.–Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended by adding at the end the following new subsection:

"(j) Use of Competitive Bidding.–

"(1) General authority.–If mutually exclusive applications are accepted for filing for any initial license or construction permit which will involve a use of the electromagnetic spectrum described in paragraph (2), then the Commission shall have the authority, subject to paragraph (10), to grant such license or permit to a qualified applicant through the use of a system of competitive bidding that meets the requirements of this subsection.

"(2) Uses to which bidding may apply.–A use of the electromagnetic spectrum is described in this paragraph if the Commission determines that–

"(A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee–

"(i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or

"(ii) enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate; and

"(B) a system of competitive bidding will promote the objectives described in paragraph (3).

"(3) Design of systems of competitive bidding.–For each class of licenses or permits that the Commission grants through the use of a competitive bidding system, the Commission shall, by regulation, establish a competitive bidding methodology. The Commission shall seek to design and test multiple alternative methodologies under appropriate circumstances. In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the ***81** spectrum and shall seek to promote the purposes specified in section 1 of this Act and the following objectives:

"(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

"(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

"(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and

"(D) efficient and intensive use of the electromagnetic spectrum.

"(4) Contents of regulations.–In prescribing regulations pursuant to paragraph (3), the Commission shall–

"(A) consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B), and combinations of such schedules and methods;

"(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

"(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services;

"(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures; and

"(E) require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.

***82** "(5) Bidder and licensee qualification.–No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected

pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310. Consistent with the objectives described in paragraph (3), the Commission shall, by regulation, prescribe expedited procedures consistent with the procedures authorized by subsection (i)(2) for the resolution of any substantial and material issues of fact concerning qualifications.

"(6) Rules of construction.–Nothing in this subsection, or in the use of competitive bidding, shall–

"(A) alter spectrum allocation criteria and procedures established by the other provisions of this Act;

"(B) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 706, or any other provision of this Act (other than subsections (d)(2) and (e) of this section);

"(C) diminish the authority of the Commission under the other provisions of this Act to regulate or reclaim spectrum licenses;

"(D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;

"(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

"(F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;

"(G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or

"(H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 8 of this Act.

"(7) Consideration of revenues in public interest determinations.–

"(A) Consideration prohibited.–In making a decision pursuant to section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

***83** "(B) Consideration limited.–In prescribing regulations pursuant to paragraph (4)(A) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

"(C) Consideration of demand for spectrum not affected.–Nothing in this paragraph shall be construed to prevent the Commission from continuing to consider consumer demand for spectrum-based services.

"(8) Treatment of revenues.–

"(A) General rule.–Except as provided in subparagraph (B), all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

"(B) Retention of revenues.–Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Any funds appropriated to the Commission for fiscal years 1994 through 1998 for the purpose of assigning licenses

using random selection under subsection (i) shall be used by the Commission to implement this subsection.

"(9) Use of former government spectrum.–The Commission shall, not later than 5 years after the date of enactment of this subsection, issue licenses and permits pursuant to this subsection for the use of bands of frequencies that–

"(A) in the aggregate span not less than 10 megahertz; and

"(B) have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

"(10) Authority contingent on availability of additional spectrum.–

"(A) Initial conditions.–The Commission's authority to issue licenses or permits under this subsection shall not take effect unless–

"(i) the Secretary of Commerce has submitted to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act;
"(ii) such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 megahertz;
"(iii) such bands of frequencies meet the criteria required by section 113(a) of such Act; and
"(iv) the Commission has completed the rulemaking required by section 332(c)(1)(D) of this Act.

***84** "(B) Subsequent conditions.–The Commission's authority to issue licenses or permits under this subsection on and after 2 years after the date of the enactment of this subsection shall cease to be effective if–

"(i) the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act;
"(ii) the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of section 114(a) of such Act;
"(iii) the Commission has failed to issue the regulations required by section 115(a) of such Act;
"(iv) the Commission has failed to complete and submit to Congress, not later than 18 months after the date of enactment of this subsection, a study of current and future spectrum needs of State and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees; or
"(v) the Commission has failed under section 332(c)(3) to grant or deny within the time required by such section any petition that a State has filed within 90 days after the date of enactment of this subsection;

until such failure has been corrected.

"(11) Termination.–The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 1998.

"(12) Evaluation.–Not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report–

"(A) containing a statement of the revenues obtained, and a projection of the future revenues, from the use of competitive bidding systems under this subsection;

"(B) describing the methodologies established by the Commission pursuant to paragraphs (3) and (4);

"(C) comparing the relative advantages and disadvantages of such methodologies in terms of attaining the objectives described in such paragraphs;

"(D) evaluating whether and to what extent–

"(i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio

spectrum licenses;
"(ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;
"(iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and
"(iv) small businesses, rural telephone companies, and businesses owned by members of minority groups and women were able to participate successfully in the competitive bidding process; and
***85** "(E) recommending any statutory changes that are needed to improve the competitive bidding process.".

(b) Conforming Amendments.–

(1) Limitations on lotteries.–Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is further amended–

(A) by striking subsection (i)(1) and inserting the following:

"(i) Random Selection.–

"(1) General authority.–If–

"(A) there is more than one application for any initial license or construction permit which will involve a use of the electromagnetic spectrum; and

"(B) the Commission has determined that the use is not described in subsection (j)(2)(A);

then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of random selection."; and

(B) in paragraph (4), by adding at the end the following new subparagraph:

"(C) Not later than 180 days after the date of enactment of this subparagraph, the Commission shall prescribe such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses or permits as a result of the methods employed to issue licenses under this subsection.".

(2) Regulatory treatment to enhance auction value of spectrum licenses.–

(A) Amendment.–Section 332 of the Communications Act of 1934 (47 U.S.C. 332) is amended–

(i) by striking "private land" from the heading of the section;
(ii) by striking "land" each place it appears in subsections (a) and (b); and
(iii) by striking subsection (c) and inserting the following:
"(c) Regulatory Treatment of Mobile Services.–

"(1) Common carrier treatment of commercial mobile services.–(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of title II as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208, and may specify any other provision only if the Commission determines that–

"(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

"(ii) enforcement of such provision is not necessary for the protection of consumers; and

***86** "(iii) specifying such provision is consistent with the public interest.

"(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

"(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

"(D) The Commission shall, not later than 180 days after the date of enactment of this subparagraph, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

"(2) Non-common carrier treatment of private mobile services.–A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

"(3) State preemption.–(A) Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this ***87** paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that–

"(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

"(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

"(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial ***88** mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

"(4) Regulatory treatment of communications satellite corporation.–Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 of the corporation authorized by title III of such Act.

"(5) Space segment capacity.–Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

"(6) Foreign ownership.–The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, may waive the application of section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

"(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

"(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

"(d) Definitions.–For purposes of this section–

"(1) the term 'commercial mobile service' means any mobile service (as defined in section 3(n)) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

"(2) the term 'interconnected service' means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

"(3) the term 'private mobile service' means any mobile service (as defined in section 3(n)) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.".

(B) Additional conforming amendments.–(i) Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by inserting "and section 332," after "inclusive,".

(ii) Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended–

(I) in subsection (n) by inserting "(1)" after "and includes", and by inserting before the period at the end the following: ",

(2) a mobile service which provides a ***89** regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding"; and

(II) by striking subsection (gg).

(c) Effective Dates.–

(1) In general.–Except as provided in paragraph (2), the amendments made by this section are effective on the date of enactment of this Act.

(2) Effective dates of mobile service amendments.–The amendments made by subsection (b)(2) shall be effective on the date of enactment of this Act, except that–

(A) section 332(c)(3)(A) of the Communications Act of 1934, as amended by such subsection, shall take effect 1 year after such date of enactment; and

(B) any private land mobile service provided by any person before such date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, except for purposes of section 332(c)(6) of such Act, be treated as a private mobile service until 3 years after such date of enactment.

(d) Deadlines for Commission Action.–

(1) General rulemaking.–The Federal Communications Commission shall prescribe regulations to implement section 309(j) of the Communications Act of 1934 (as added by this section) within 210 days after the date of enactment of this Act.

(2) PCS orders and licensing.–The Commission shall–

(A) within 180 days after such date of enactment, issue a final report and order (i) in the matter entitled "Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies" (ET Docket No. 92–9); and (ii) in the matter entitled "Amendment of the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90–314; ET Docket No. 92–100); and

(B) within 270 days after such date of enactment, commence issuing licenses and permits in the personal communications service.

(3) Transitional rulemaking for mobile service providers.–Within 1 year after the date of enactment of this Act, the Federal Communications Commission–

(A) shall issue such modifications or terminations of the regulations applicable (before the date of enactment of this Act) to private land mobile services as are necessary to implement the amendments made by subsection (b)(2);

***90** (B) in the regulations that will, after such date of enactment, apply to a service that was a private land mobile service and that becomes a commercial mobile service (as a consequence of such amendments), shall make such other modifications or terminations as may be necessary and practical to assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services;

(C) shall issue such other regulations as are necessary to implement the amendments made by subsection (b)(2); and

(D) shall include, in such regulations, modifications, and terminations, such provisions as are necessary to provide for an orderly transition.

(e) Special Rule.–The Federal Communications Commission shall not issue any license or permit pursuant to section 309(i) of the Communications Act of 1934 (47 U.S.C. 309(i)) after the date of enactment of this Act unless–

(1) the Commission has made the determination required by paragraph (1)(B) of such section (as added by this section); or

(2) one or more applications for such license were accepted for filing by the Commission before July 26, 1993.

SEC. 6003. ADDITIONAL COMMUNICATIONS FEES.

(a) Regulatory fees.–

(1) Amendment.–Title I of the Communications Act of 1934 is amended by inserting after section 8 the following new section:

"SEC. 9. REGULATORY FEES.

"(a) General Authority.–The Commission, in accordance with this section, shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.

"(b) Establishment and Adjustment of Regulatory Fees.–

"(1) In general.–The fees assessed under subsection (a) shall–

"(A) be derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

"(B) be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for ***91** such fiscal year for the performance of the activities described in subsection (a); and

"(C) until adjusted or amended by the Commission pursuant to paragraph (2) or (3), be the fees established by the Schedule of Regulatory Fees in subsection (g).

"(2) Mandatory adjustment of schedule.–For any fiscal year after fiscal year 1994, the Commission shall, by rule, revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect, in accordance with paragraph (1)(B), changes in the amount appropriated for the performance of the activities described in subsection (a) for such fiscal year. Such proportionate increases or decreases shall–

"(A) be adjusted to reflect, within the overall amounts described in appropriations Act under the authority of paragraph (1)(A), unexpected increases or decreases in the number of licensees or units subject to payment of such fees; and

"(B) be established at amounts that will result in collection of an aggregate amount of fees pursuant to this section that can reasonably be expected to equal the aggregate amount of fees that are required to be collected by appropriations Acts pursuant to paragraph (1)(B).

Increases or decreases in fees made by adjustments pursuant to this paragraph shall not be subject to judicial review. In making adjustments pursuant to this paragraph the Commission may round such fees to the nearest $5 in the case of fees under $1,000, or to the nearest $25 in the case of fees of $1,000 or more.

"(3) Permitted amendments.–In addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A). In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law. Increases or decreases in fees made by amendments pursuant to this paragraph shall not be subject to judicial review.

"(4) Notice to congress.–The Commission shall–

"(A) transmit to the Congress notification of any adjustment made pursuant to paragraph (2) immediately upon the adoption of such adjustment; and

"(B) transmit to the Congress notification of any amendment made pursuant to paragraph (3) not later than 90 days before the effective date of such amendment.

"(c) Enforcement.–

"(1) Penalties for late payment.–The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner.

***92** "(2) Dismissal of applications for filings.–The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.

"(3) Revocations.–In addition to or in lieu of the penalties and dismissals authorized by paragraphs (1) and (2), the Commission may revoke any instrument of authorization held by any entity that has failed to make payment of a regulatory fee assessed pursuant to this section. Such revocation action may be taken by the Commission after notice of the Commission's intent to take such action is sent to the licensee by registered mail, return receipt requested, at the licensee's last known address. The notice will provide the licensee at least 30 days to either pay the fee or show cause why the fee does not apply to the licensee or should otherwise be waived or payment deferred. A hearing is not required under this subsection unless the licensee's response presents a substantial and material question of fact. In any case where a hearing is conducted pursuant to this section, the hearing shall be based on written evidence only, and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the licensee. Unless the licensee substantially prevails in the hearing, the Commission may assess the licensee for the costs of such hearing. Any Commission order adopted pursuant to this subsection shall determine the amount due, if any, and provide the licensee with at least 30 days to pay that amount or have its authorization revoked. No order of revocation under this subsection shall become final until the licensee has exhausted its right to judicial review of such order under section 402(b)(5) of this title.

"(d) Waiver, Reduction, and Deferment.–The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.

"(e) Deposit of Collections.–Moneys received from fees established under this section shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Commission.

"(f) Regulations.–

"(1) In general.–The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section. Such rules and regulations shall permit payment by installments in the case of fees in large amounts, and in the case of fees in small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor.

"(g) Schedule.–Until amended by the Commission pursuant to subsection (b), the Schedule of Regulatory Fees which the Federal Communications Commission shall, subject to subsection (a)(2), assess and collect shall be as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

***93** "(h) Exceptions.–The charges established under this section shall not be applicable to (1) governmental entities or nonprofit entities; or (2) to amateur radio operator licenses under part 97 of the Commission's regulations (47 C.F.R. Part 97).

"(i) Accounting System.–The Commission shall develop accounting systems necessary to making the adjustments authorized by subsection (b)(3). In the Commission's annual report, the Commission shall prepare an analysis of its progress in developing such systems and shall afford interested persons the opportunity to submit comments concerning the allocation of the costs of performing the functions described in subsection (a) among the services in the Schedule.".

(2) Conforming amendments.–Section 8 of the Communications Act of 1934 (47 U.S.C. 158) is amended–

(A) by striking the heading of such section and inserting "application fees";

***94** (B) by striking "charges" each place it appears and inserting "application fees";

(C) by striking "charge" each place it appears in subsection (c) and inserting "application fee";

(D) by striking out "Schedule of Charges" each place it appears and inserting "Schedule of Application Fees"; and

(E) in the schedule contained in subsection (g)–

(i) by striking "Schedule of Charges" and inserting "Schedule of Application Fees";
(ii) by striking "charge" and "Charges" each place they appear and inserting "application fee" and "Application fee", respectively; and
(iii) by striking "Charges" and inserting "Application fees".

(b) Use of Regulatory Fees.–Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended by adding at the end the following new subsection:

"(d) Of the sum appropriated in any fiscal year under this section, a portion, in an amount determined under section 9(b), shall be derived from fees authorized by section 9.".

TITLE VII–NUCLEAR REGULATORY COMMISSION PROVISIONS

SEC. 7001. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

Section 6101(a)(3) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(a)(3)) is amended by striking "September 30, 1995" and inserting "September 30, 1998".

TITLE VIII–PATENT AND TRADEMARK FEES

SEC. 8001. PATENT AND TRADEMARK FEES.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended–

(1) in subsection (a) by striking "1995" and inserting "1998";

(2) in subsection (b)(2) by striking "1995" and inserting "1998"; and

(3) in subsection (c)–

(A) by striking "through 1995" and inserting "through 1998"; and

(B) by adding at the end the following:

"(6) $111,000,000 in fiscal year 1996.

"(7) $115,000,000 in fiscal year 1997.

"(8) $119,000,000 in fiscal year 1998.".

***95** TITLE IX–MERCHANT MARINE PROVISIONS

SEC. 9001. EXTENSION OF VESSEL TONNAGE DUTIES.

(a) Extension of Duties.–Section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 App. U.S.C. 121), is amended by–

(1) striking "and 1995," each place it appears and inserting "1995, 1996, 1997, 1998,";

(2) striking "place," and inserting "place;"; and

(3) striking "port, not, however, to include vessels in distress or not engaged in trade" and inserting "port. However, neither duty shall be imposed on vessels in distress or not engaged in trade".

(b) Conforming Amendment.–The Act of March 8, 1910 (36 Stat. 234; 46 App. U.S.C. 132), is amended by striking "and 1995," and inserting "1995, 1996, 1997, and 1998,".

(c) Technical Correction.–

(1) Correction.–Section 10402(a) of the Omnibus Budget Reconciliation Act of 1990 (104 Stat. 1388–398) is amended by striking "in the second paragraph".

(2) Effective date.–The amendment made by paragraph (1) shall be effective on and after November 5, 1990.

TITLE X–NATURAL RESOURCE PROVISIONS

Subtitle A–Recreation Use Fees

SEC. 10001. ADMISSION FEES.

(a) Additional Areas.–(1) The first sentence of section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a)) is amended by inserting after "National Park System" the phrase "or National Conservation Areas" and by inserting after "National Recreation Areas" the following ", National Monuments, National Volcanic Monuments, National Scenic Areas, and no more than 21 areas of concentrated public use".

(2) Section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a) is amended by inserting the following after the first sentence: "For purposes of this subsection, the term 'area of concentrated public use' means an area that is managed primarily for outdoor recreation purposes, contains at least one major recreation attraction, where facilities and services necessary to accommodate heavy public use are provided, and public access to the area is provided in such a manner that admission fees can be efficiently collected at one or more centralized locations.".

(b) Golden Age Passport.–The second sentence of section 4(a)(4) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a)(4)) is amended by striking "without charge," and inserting in lieu thereof "for a one-time charge of

$10,”.

***96** SEC. 10002. RECREATION USER FEES.

(a) In General.–(1) The first sentence of section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(b)) is amended by striking out “toilet facilities, picnic tables, or boat ramps” and all that follows down through the end of the sentence and inserting in lieu thereof: “or toilet facilities, nor shall there be any such charge solely for the use of picnic tables: Provided, That in no event shall there be a charge for the use of any campground not having a majority of the following: tent or trailer spaces, picnic tables, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). For the purposes of this subsection, the term ‘specialized outdoor recreation sites’ includes, but is not limited to, campgrounds, swimming sites, boat launch facilities, and managed parking lots.”.

(2) Section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(b)) is amended by striking the second sentence.

(b) Costs of Collection.–Section 4(i)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(i)) is amended by inserting “(A)” after “(1)” and by adding the following at the end of paragraph (1):

“(B) Notwithstanding subparagraph (A), in any fiscal year, the Secretary of Agriculture and the Secretary of the Interior may withhold from the special account established under subparagraph (A) such portion of all receipts collected from fees imposed under this section in such fiscal year as the Secretary of Agriculture or the Secretary of the Interior, as appropriate, determines to be equal to the fee collection costs for that fiscal year: Provided, That such costs shall not exceed 15 percent of all receipts collected from fees imposed under this section in that fiscal year. The amounts so withheld shall be retained by the Secretary of Agriculture or the Secretary of the Interior, as appropriate, and shall be available, without further appropriation, for expenditure by the Secretary concerned to cover fee collection costs in that fiscal year. The Secretary concerned shall deposit into the special account established pursuant to subparagraph (A) any amounts so retained which remain unexpended and unobligated at the end of the fiscal year. For the purposes of this subparagraph, for any fiscal year, the term ‘fee collection costs’ means those costs for personnel and infrastructure directly associated with the collection of fees imposed under this section.”.

(c) Commercial Tour Use Fees.–Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a) is amended by adding the following new subsection at the end thereof:

“(n)(1) In the case of each unit of the National Park System for which an admission fee is charged under this section, the Secretary of the Interior shall establish, by October 1, 1993, a commercial tour use fee to be imposed on each vehicle entering the unit for the purpose of providing commercial tour services within the unit. Fee revenue derived from such commercial tour use fees shall be deposited into the special account established under subsection (i).

***97** “(2) The Secretary shall establish the amount of fee per entry as follows:

“(A) $25 per vehicle with a passenger capacity of 25 persons or less, and

“(B) $50 per vehicle with a passenger capacity of more than 25 persons.

“(3) The Secretary may periodically make reasonable adjustments to the commercial tour use fee imposed under this subsection.

“(4) The commercial tour use fee imposed under this subsection shall not apply to either of the following:

“(A) Any vehicle transporting organized school groups or outings conducted for educational purposes by schools or other bona fide educational institutions.

"(B) Any vehicle entering a park system unit pursuant to a contract issued under the Act of October 9, 1965 (16 U.S.C. 20–20g) entitled 'An Act relating to the establishment of concession policies in the areas administered by the National Park Service and for other purposes.'.

"(5)(A) The provisions of this subsection shall apply to aircraft entering the airspace of units of the National Park System identified in section 2(b) and section 3 of Public Law 100-91 for the specific purpose of providing commercial tour services within the airspace of such units.

"(B) The provisions of this subsection shall also apply to aircraft entering the airspace of other units of the National Park System for the specific purpose of providing commercial tour services if the Secretary determines that the level of such services is equal to or greater than the level at those units of the National Park System specified in subparagraph (A).".

(d) Non-Federal Golden Eagle Passport Sales.–Section 4(a)(1)(A) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a)(1)(A)) is amended by inserting "(i)" after "(A)" and by adding at the end thereof the following new clause:

"(ii) The Secretary of the Interior and the Secretary of Agriculture may authorize businesses, nonprofit entities, and other organizations to sell and collect fees for the Golden Eagle Passport subject to such terms and conditions as the Secretaries may jointly prescribe. The Secretaries shall develop detailed guidelines for promotional advertising of non-Federal Golden Eagle Passport sales and shall monitor compliance with such guidelines. The Secretaries may authorize the sellers to withhold amounts up to, but not exceeding 8 percent of the gross fees collected from the sale of such passports as reimbursement for actual expenses of the sales. Receipts from such non-Federal sales of the Golden Eagle Passport shall be deposited into the special account established in subsection (i), to be allocated between the Secretary of the Interior and the Secretary of Agriculture in the same ratio as receipts from admission into Federal fee areas administered by the Secretary of Agriculture and the Secretary of the Interior pursuant to subsection (a).".

(e) Conforming Amendment.–Section 4(a)(1)(A) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a)(1)(A)) is amended by striking the third sentence in its entirety and inserting in lieu thereof "The annual permit shall be valid for a period of 12 months from the date the annual fee is paid.".

***98** SEC. 10003. COMMUNICATION SITE FEES.

Notwithstanding any other provision of law, for fiscal year 1994 the Secretary of Agriculture and the Secretary of the Interior shall assess and collect annual charges for the utilization of existing radio, television, and commercial telephone transmission communication sites located on Federal lands administered by the Forest Service and the Bureau of Land Management at a level 10 percent above the fee assessed and collected during fiscal year 1993. For a site located after the enactment of this Act, the charges for fiscal year 1994 shall be equal in amount to the charges assessed for a comparable new site located before the enactment of this Act, plus 10 percent.

Subtitle B–Hardrock Mining Claim Maintenance Fee

SEC. 10101. FEE.

(a) Claim Maintenance Fee.–The holder of each unpatented mining claim, mill or tunnel site located pursuant to the Mining Laws of the United States, whether located before or after the enactment of this Act, shall pay to the Secretary of the Interior, on or before August 31 of each year, for years 1994 through 1998, a claim maintenance fee of $100 per claim. Such claim maintenance fee shall be in lieu of the assessment work requirement contained in the Mining Law of 1872 (30 U.S.C. 28–28e) and the related filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(a) and (c)).

(b) Time of Payment.–The claim maintenance fee payable pursuant to subsection (a) for any assessment year shall be paid before the commencement of the assessment year, except that for the initial assessment year in which the location is made,

the locator shall pay the claim maintenance fee at the time the location notice is recorded with the Bureau of Land Management. The location fee imposed under section 10102 shall be payable not later than 90 days after the date of location.

(c) Oil Shale Claims Subject to Claim Maintenance Fees Under Energy Policy Act of 1992.–This section shall not apply to any oil shale claims for which a fee is required to be paid under section 2511(e)(2) of the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 3111; 30 U.S.C. 242).

(d) Waiver.–(1) The claim maintenance fee required under this section may be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties–

(A) held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands; and

(B) have performed assessment work required under the Mining Law of 1872 (30 U.S.C. 28–28e) to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due.

(2) For purposes of paragraph (1), with respect to any claimant, the term "related party" means–

***99** (A) the spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986), of the claimant; and

(B) a person who controls, is controlled by, or is under common control with the claimant.

For purposes of this section, the term control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

SEC. 10102. LOCATION FEE.

Notwithstanding any other provision of law, for every unpatented mining claim, mill or tunnel site located after the date of enactment of this subtitle and before September 30, 1998, pursuant to the Mining Laws of the United States, the locator shall, at the time the location notice is recorded with the Bureau of Land Management, pay to the Secretary of the Interior a location fee, in addition to the claim maintenance fee required by section 10101, of $25.00 per claim.

SEC. 10103. CO-OWNERSHIP.

The co-ownership provisions of the Mining Law of 1872 (30 U.S.C. 28) shall remain in effect, except that in applying such provisions, the annual claim maintenance fee required under this Act shall, where applicable, replace applicable assessment requirements and expenditures.

SEC. 10104. FAILURE TO PAY.

Failure to pay the claim maintenance fee or the location fee as required by this subtitle shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law.

SEC. 10105. OTHER REQUIREMENTS.

(a) Federal Land Policy and Management Act Requirements.–Nothing in this subtitle shall change or modify the requirements of section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), or the requirements of section 314(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(c)) related to

filings required by section 314(b), and such requirements shall remain in effect with respect to claims, and mill or tunnel sites for which fees are required to be paid under this section.

(b) Revised Statutes Section 2324.–The third sentence of section 2324 of the Revised Statutes (30 U.S.C. 28) is amended by inserting after "On each claim located after the tenth day of May, eighteen hundred and seventy-two," the following: "that is granted a waiver under section 10101 of the Omnibus Budget Reconciliation Act of 1993,".

(c) Fee Adjustments.–(1) The Secretary of the Interior shall adjust the fees required by this subtitle to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor every 5 years after the date of the enactment of this Act, or more frequently if the Secretary determines an adjustment to be reasonable.

***100** (2) The Secretary shall provide claimants notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made.

(3) A fee adjustment under this subsection shall begin to apply the first assessment year which begins after adjustment is made.

SEC. 10106. REGULATIONS.

The Secretary of the Interior shall promulgate rules and regulations to carry out the terms and conditions of this subtitle as soon as practicable after the date of the enactment of this subtitle.

Subtitle C–Mineral Receipts

SEC. 10201. AMENDMENT TO THE MINERAL LEASING ACT.

Section 35 of the Mineral Leasing Act (30 U.S.C. 191) is amended as follows:

(1) Delete the last sentence and redesignate the remaining language as subsection (a).

(2) Amend subsection (a) by inserting the "and, subject to the provisions of subsection (b)," between the words "United States;" and "50 per centum".

(3) Add a new subsection (b) as follows:

"(b)(1) In calculating the amount to be paid to States during any fiscal year under this section or under any other provision of law requiring payment to a State of any revenues derived from the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this Act or of geothermal steam, 50 percent of the portion of the enacted appropriation of the Department of the Interior and any other agency during the preceding fiscal year allocable to the administration of all laws providing for the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this Act or of geothermal steam, and to enforcement of such laws, shall be deducted from the receipts derived under those laws in approximately equal amounts each month (subject to paragraph (4)) prior to the division and distribution of such receipts between the States and the United States.

"(2) The proportion of the deduction provided in paragraph (1) allocable to each State shall be determined by dividing the monies disbursed to the State during the preceding fiscal year derived from onshore mineral leasing referred to in paragraph (1) in that State by the total money disbursed to States during the preceding fiscal year from such onshore mineral leasing in all States.

"(3) In the event the deduction apportioned to any State under this subsection exceeds 50 percent of the Secretary of the Interior's estimate of the amounts attributable to onshore mineral leasing referred to in paragraph (1) within that State

during the preceding fiscal year, the deduction from receipts received from leases in that State shall be limited to such estimated amounts and the total amount to be deducted from such onshore mineral leasing receipts shall be reduced accordingly.

"(4) If the amount otherwise deductible under this subsection in any month from the portion of receipts to be distributed to a State ***101** exceeds the amount payable to the State during that month, any amount exceeding the amount payable shall be carried forward and deducted from amounts payable to the State in subsequent months. If any amount remains to be carried forward at the end of the fiscal year, such amount shall not be deducted from any disbursements in any subsequent fiscal year.

"(5) All deductions to be made pursuant to this subsection shall be made in full during the fiscal year in which such deductions were incurred.".

SEC. 10202. CONFORMING AMENDMENTS.

(a) Mineral Leasing Act for Acquired Lands.–Section 6(a) of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355) is amended by striking "All receipts" at the beginning of the first sentence and inserting the following: "Subject to the provisions of section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)), all receipts".

(b) Geothermal Steam Act.–Section 20 of the Geothermal Steam Act (30 U.S.C. 1019) is amended by striking "All moneys" at the beginning of thereof and inserting "Subject to the provisions of section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)), all moneys".

TITLE XI–CIVIL SERVICE AND POST OFFICE PROVISIONS

Subtitle A–Civil Service

SEC. 11001. DELAY IN COST-OF-LIVING ADJUSTMENTS IN FEDERAL EMPLOYEE RETIREMENT BENEFITS DURING FISCAL YEARS 1994, 1995, AND 1996.

(a) Applicability.–This section shall apply with respect to any cost-of-living increase scheduled to take effect, during fiscal year 1994, 1995, or 1996, under–

(1) section 8340(b) or 8462(b) of title 5, United States Code;

(2) section 826 or 858 of the Foreign Service Act of 1980; or

(3) section 291 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2131), as set forth in section 802 of the CIARDS Technical Corrections Act of 1992 (Public Law 102–496; 106 Stat. 3196).

(b) Delay in Effective Date of Adjustments.–A cost-of-living increase described in subsection (a) shall not take effect until the first day of the third calendar month after the date such increase would otherwise take effect.

(c) Rule of Construction.–Nothing in this section shall be considered to affect any determination relating to eligibility for an annuity increase or the amount of the first increase in an annuity under section 8340(b) or (c) or section 8462(b) or (c) of title 5, United States Code, or comparable provisions of law.

***102** SEC. 11002. PERMANENT ELIMINATION OF THE ALTERNATIVE-FORM-OF-ANNUITY OPTION EXCEPT FOR INDIVIDUALS WITH A CRITICAL MEDICAL CONDITION.

(a) Civil Service Retirement System; Federal Employees' Retirement System.–Sections 8343a and 8420a of title 5, United

States Code, are each amended–

(1) in subsection (a) by striking "an employee or Member may," and inserting "any employee or Member who has a life-threatening affliction or other critical medical condition may,"; and

(2) by striking subsection (f).

(b) Foreign Service Retirement and Disability System.–Section 807(e)(1) of the Foreign Service Act of 1980 (22 U.S.C. 4047(e)(1)) is amended by striking "a participant may," and inserting "any participant who has a life-threatening affliction or other critical medical condition may,".

(c) Central Intelligence Agency Retirement and Disability System.–Section 294(a) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2143(a)), as set forth in section 802 of the CIARDS Technical Corrections Act of 1992 (Public Law 102–496; 106 Stat. 3196), is amended by striking "a participant may," and inserting "any participant who has a life-threatening affliction or other critical medical condition may,".

(d) Effective Date.–The amendments made by this section shall become effective on October 1, 1994, and shall apply with respect to any annuity commencing on or after that date.

SEC. 11003. APPLICATION OF MEDICARE PART B LIMITS TO PHYSICIANS' SERVICES FURNISHED TO FEDERAL EMPLOYEE HEALTH BENEFITS ENROLLEES AGE 65 OR OLDER.

(a) In General.–Section 8904(b) of title 5, United States Code, is amended–

(1) in paragraph (1) by inserting "(A)" after "(b)(1)" and by adding at the end the following:

"(B)(i) A plan, other than a prepayment plan described in section 8903(4), may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not entitled to Medicare supplementary medical insurance benefits under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.), to pay a charge imposed for physicians' services (as defined in section 1848(j) of such Act, 42 U.S.C. 1395w–4(j)) which are covered for purposes of benefit payments under this chapter and under such part, to the extent that such charge exceeds the fee schedule amount under section 1848(a) of such Act (42 U.S.C. 1395w–4(a)).

"(ii) Physicians and suppliers who have in force participation agreements with the Secretary of Health and Human Services consistent with section 1842(h)(1) of such Act (42 U.S.C. 1395u(h)(1)), whereby the participating provider accepts Medicare benefits (including allowable deductible and coinsurance amounts) as full payment for covered items and services shall accept equivalent benefit and enrollee cost-sharing under this chapter as full payment for services described in clause (i). Physicians and suppliers who are nonparticipating physicians and suppliers for purposes of part B of title XVIII of such Act shall not impose charges that exceed the limiting charge under section 1848(g) of such Act (42 U.S.C. 1395w–4(g)) with respect to services described in clause (i) provided to enrollees ***103** described in such clause. The Office of Personnel Management shall notify a physician or supplier who is found to have violated this clause and inform them of the requirements of this clause and sanctions for such a violation. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a physician or supplier is found to knowingly and willfully violate this clause on a repeated basis and the Secretary of Health and Human Services may invoke appropriate sanctions in accordance with sections 1128A(a) and section 1848(g)(1) of such Act (42 U.S.C. 1320a–7a(a), 1395w–4(g)(1)) and applicable regulations.

"(C) If the Secretary of Health and Human Services determines that a violation of this subsection warrants excluding a provider from participation for a specified period under title XVIII of the Social Security Act, the Office shall enforce a corresponding exclusion of such provider for purposes of this chapter.";

(2) in paragraph (3)(B)–

(A) by inserting "(i)" after "includes"; and

(B) by inserting before the period at the end the following: ", and (ii) the fee schedule amounts and limiting charges for physicians' services established under section 1848 of such Act (42 U.S.C. 1395w–4) and the identity of participating physicians and suppliers who have in force agreements with such Secretary under section 1842(h) of such Act (42 U.S.C. 1395u(h))"; and

(3) by adding at the end the following:

"(4) The Director of the Office of Personnel Management shall enter into an arrangement with the Secretary of Health and Human Services, to be effective before the first day of the fifth month that begins before each contract year, under which–

"(A) physicians and suppliers (whether or not participating) under the Medicare program will be notified of the requirements of paragraph (1)(B);

"(B) enforcement procedures will be in place to carry out such paragraph (including enforcement of protections against overcharging of beneficiaries); and

"(C) Medicare program information described in paragraph (3)(B)(ii) will be supplied to carriers under paragraph (3)(A).".

(b) Effective Date.–The amendments made by subsection (a) shall apply with respect to contract years beginning on or after January 1, 1995.

SEC. 11004. FEDERAL EMPLOYEES' SURVIVOR ANNUITY IMPROVEMENTS.

(a) Civil Service Retirement System.–

(1) Reduction for spousal annuity.–Section 8339(j) of title 5, United States Code, is amended–

(A) in paragraph (3)–

(i) in the second sentence by striking ", within such 2-year period,"; and
(ii) by striking the fourth sentence and inserting the following: "The Office shall, by regulation, provide for payment of the deposit required under this paragraph by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction ***104** is actuarially equivalent to the deposit required under this paragraph, except that the total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph, paragraph (5), or subsection (k)(2) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), and (q), including adjustments under section 8340. The reduction, which shall be effective on the same date as the election under this paragraph, shall be permanent and unaffected by any future termination of the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under the first sentence of this paragraph."; and

(B) in paragraph (5)(C)–

(i) in clause (ii) by striking ", within 2 years after the date of the remarriage or, if later, the death or remarriage of the former spouse (or of the last such surviving former spouse),"; and
(ii) by amending clause (iii) to read as follows:

"(iii) The Office shall, by regulation, provide for payment of the deposit required under clause (ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under clause (ii), except that total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph or paragraph (3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), and (q), including adjustments under section 8340. The reduction required by this clause, which shall be effective on the same date as the election under clause (i), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under clause (i).".

(2) Reduction relating to former spouse.–Section 8339(k)(2) of title 5, United States Code, is amended–

(A) in subparagraph (B)(ii) by striking "Within 2 years after the date of the marriage, the" and inserting "The"; and

(B) by amending subparagraph (C) to read as follows:

"(C) The Office shall, by regulation, provide for payment of the deposit required under subparagraph (B)(ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subparagraph (B)(ii), except that total reductions in the annuity of an employee or Member to pay deposits required by this subsection or subsection (j)(3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), and (q), including adjustments under section 8340. The reduction required by this subparagraph, which shall be effective on the same date as the election under subparagraph ***105** (A), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under subparagraph (A).".

(3) Deposits.–Section 8334(h) of title 5, United States Code, is amended by striking "and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title".

(b) Federal Employees' Retirement System.–Section 8418 of title 5, United States Code, is amended–

(1) in subsection (a)(1) by striking ", before the expiration of the 2-year period involved,"; and

(2) by amending subsection (b) to read as follows:

"(b) The Office shall, by regulation, provide for payment of the deposit required under subsection (a) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subsection (a), except that the total reductions in the annuity of an employee or Member to pay deposits required by this section shall not exceed 25 percent of the annuity computed under section 8415 or section 8452, including adjustments under section 8462. The reduction required by this subsection, which shall be effective at the same time as the election under section 8416 (b) and (c) or section 8417(b), shall be permanent and unaffected by any future termination of the marriage or the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under section 8416 (b) and (c) or section 8417(b).".

(c) Effective Date.–

(1) In general.–The amendments made by this section shall take effect on the first day of the first month beginning at least 30 days after the date of the enactment of this Act and shall apply to all deposits required under section 8339(j) (3) or (5), 8339(k)(2), or 8418 of title 5, United States Code, on which no payment has been made prior to such effective date.

(2) Partial deposit.–For any deposit required under section 8339(j) (3) or (5), 8339(k)(2), or 8418 of title 5, United States Code, or section 4 (b) or (c) of the Civil Service Retirement Spouse Equity Act of 1984 (5 U.S.C. 8341 note) that has been partially, but not fully, paid before the effective date of this Act, the Office shall by regulation provide for determining the remaining portion of the deposit and for payment of the remaining portion of the deposit by a prospective reduction in the annuity of the employee or Member. The reduction shall be similar to the reductions provided pursuant to the amendments made under this section.

SEC. 11005. TEMPORARY EXTENSION AND MODIFICATION OF THE METHOD FOR DETERMINING GOVERNMENT CONTRIBUTIONS UNDER FEHBP IN THE ABSENCE OF A GOVERNMENT-WIDE INDEMNITY BENEFIT PLAN.

Public Law 101–76 (5 U.S.C. 8906 note) is amended by striking the matter after the enacting clause and before paragraph (2) of subsection (a) and inserting the following:

"That (a)(1) in the administration of chapter 89 of title 5, United States Code, for each of contract years 1990 through 1998 (inclusive), ***106** in order to compute the average subscription charges under section 8906(a) of such title for such contract years, the subscription charges in effect for the indemnity benefit plan on the beginning date of each such contract year–

"(A) shall be deemed to be the subscription charges which were in effect for such plan on the beginning date of the preceding contract year as adjusted under paragraph (2); or

"(B) if subparagraph (A) does not apply, shall be deemed to be–

"(i) the subscription charges which were deemed under this Act to have been in effect for such plan with respect to the preceding contract year as adjusted under paragraph (2), except as provided in clause (ii); or

"(ii) for each of contract years 1997 and 1998, the subscription charges which would be derived by applying the terms of clause (i), reduced by 1 percent.".

Subtitle B–Postal Service

SEC. 11101. PAYMENTS TO BE MADE BY THE UNITED STATES POSTAL SERVICE.

(a) Relating to Corrected Calculations for Past Retirement COLAs.–In addition to any other payments required under section 8348(m) of title 5, United States Code, or any other provision of law, the United States Postal Service shall pay into the Civil Service Retirement and Disability Fund a total of $693,000,000, of which–

(1) at least one-third shall be paid not later than September 30, 1996;

(2) at least two-thirds shall be paid not later than September 30, 1997; and

(3) any remaining balance shall be paid not later than September 30, 1998.

(b) Relating to Corrected Calculations for Past Health Benefits.–In addition to any other payments required under section 8906(g)(2) of title 5, United States Code, or any other provision of law, the United States Postal Service shall pay into the Employees Health Benefits Fund a total of $348,000,000, of which–

(1) at least one-third shall be paid not later than September 30, 1996;

(2) at least two-thirds shall be paid not later than September 30, 1997; and

(3) any remaining balance shall be paid not later than September 30, 1998.

TITLE XII–VETERANS' AFFAIRS PROVISIONS

SEC. 12001. SHORT TITLE.

This title may be cited as the "Veterans Reconciliation Act of 1993".

***107** SEC. 12002. EXTENSION OF AUTHORITY TO REQUIRE THAT CERTAIN VETERANS AGREE TO MAKE COPAYMENTS IN EXCHANGE FOR RECEIVING HEALTH-CARE BENEFITS.

(a) Hospital and Medical Care.–Section 8013(e) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508; 38 U.S.C. 1710 note) is amended–

(1) by striking out "September 30, 1992" in the first sentence and inserting in lieu thereof "September 30, 1998"; and

(2) by striking out the second sentence.

(b) Outpatient Medications.–Section 1722A(c) of title 38, United States Code, is amended–

(1) by striking out "September 30, 1992" in the first sentence and inserting in lieu thereof "September 30, 1998"; and

(2) by striking out the second sentence.

SEC. 12003. EXTENSION OF AUTHORITY FOR MEDICAL CARE COST RECOVERY.

Section 1729(a)(2)(E) of title 38, United States Code, is amended by striking out "before August 1, 1994," and inserting in lieu thereof "before October 1, 1998,".

SEC. 12004. EXTENSION OF CERTAIN INCOME VERIFICATION AUTHORITY.

Section 5317(g) of title 38, United States Code, is amended by striking out "September 30, 1997" and inserting in lieu thereof "September 30, 1998".

SEC. 12005. EXTENSION OF LIMITATION ON PENSION FOR CERTAIN RECIPIENTS OF MEDICAID-COVERED NURSING HOME CARE.

Section 5503(f)(7) of title 38, United States Code, is amended by striking out "September 30, 1997" and inserting in lieu thereof "September 30, 1998".

SEC. 12006. EXTENSION OF PROCEDURES APPLICABLE TO LIQUIDATION SALES ON DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) Inclusion of Losses.–Section 3732(c) of title 38, United States Code, is amended–

(1) in paragraph (1)(C), by striking out "resale," and inserting in lieu thereof "resale (including losses sustained on the resale of the property),"; and

(2) in paragraph (11), by striking out "shall" and all that follows and inserting in lieu thereof "shall apply to loans closed before October 1, 1998.".

(b) Effective Date.–The amendments made by this section shall become effective October 1, 1993.

SEC. 12007. LOAN FEES.

(a) Increase in Home Loan Fees.–Subsection (a) of section 3729 of title 38, United States Code, is amended–

(1) by striking out paragraph (6); and

(2) by inserting after paragraph (3) the following:

"(4) With respect to a loan closed after September 30, 1993, and before October 1, 1998, for which a fee is collected under paragraph (1), the amount of such fee, as computed under paragraph (2), shall be increased by 0.75 percent of the total loan amount other than in the case of a loan described in subparagraph (A), (D)(ii), or (E) of paragraph (2).".

***108** (b) Fee for Multiple Use of Housing Assistance.–Subsection (a) of such section, as amended by subsection (a) of this section, is amended by adding at the end the following:

"(5)(A) Except as provided in subparagraph (B) of this paragraph, notwithstanding paragraphs (2) and (4) of this subsection, after a veteran has obtained an initial loan pursuant to section 3710 of this title, the amount of such fee with respect to any additional loan obtained under this chapter by such veteran shall be 3 percent of the total loan amount.

"(B) Subparagraph (A) of this paragraph does not apply with respect to (i) a loan obtained by a veteran with a downpayment described in paragraph (2)(B), (2)(C), or (2)(D)(iii) of this subsection, and (ii) loans described in paragraph (2)(E) of this subsection.

"(C) This paragraph applies with respect to a loan closed after September 30, 1993, and before October 1, 1998.".

(c) Conforming Amendment.–Paragraph (2) of subsection (a) of such section is amended by striking out "paragraph (6)" and inserting in lieu thereof "paragraphs (4) and (5)".

SEC. 12008. POLICY REGARDING COST-OF-LIVING ADJUSTMENT IN COMPENSATION RATES.

(a) Policy.–The fiscal year 1994 cost-of-living adjustments in the rates of and limitations for compensation payable under chapter 11 of title 38, United States Code, and of dependency and indemnity compensation payable under chapter 13 of such title, except as provided in subsection (b) of this section, will be no more than a percentage equal to the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1993, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)), with all increased monthly rates and limitations (other than increased rates or limitations equal to a whole dollar amount) rounded down to the next lower dollar.

(b) Limitation on Fiscal Year 1994 Cost-of-Living Adjustment for Certain DIC Recipients.–(1) During fiscal year 1994, the amount of any increase in any of the rates of dependency and indemnity compensation in effect under section 1311(a)(3) of title 38, United States Code, will not exceed 50 percent of the new law increase, rounded down (if not an even dollar amount) to the next lower dollar.

(2) For purposes of paragraph (1), the new law increase is the amount by which the rate of dependency and indemnity compensation provided for recipients under section 1311(a)(1) of such title is increased for fiscal year 1994.

SEC. 12009. LIMITATION REGARDING COST-OF-LIVING ADJUSTMENTS FOR MONTGOMERY GI BILL BENEFITS.

(a) Benefits Payable Under Chapter 30.–Section 3015(g) of title 38, United States Code, is amended–

(1) by striking out "(1)" and all that follows through "(2)" and by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(2) in paragraph (2), as redesignated by paragraph (1) of this subsection, by striking out "subparagraph (A)" and inserting in lieu thereof "paragraph (1)".

***109** (b) Benefits Payable Under Selected Reserve Program.–Section 2131(b)(2) of title 10, United States Code, is amended–

(1) by striking out "(A)" the first place it appears and all that follows through "(B) With respect to" and inserting in lieu thereof "With respect to";

(2) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(3) in subparagraph (B), as redesignated by paragraph (2) of this subsection, by striking out "clause (i)" and inserting in lieu thereof "subparagraph (A)".

(c) Limitation.–The fiscal year 1995 cost-of-living adjustments in the rates of educational assistance payable under chapter 30 of title 38, United States Code, and under chapter 106 of title 10, United States Code, shall be the percentage equal to 50 percent of the percentage by which such assistance would be increased under section 3015(g) of title 38, and under section 2131(b)(2) of title 10, United States Code, respectively, but for this section.

(d) Technical Amendments.–(1) Section 301(c) of Public Law 102–568 (106 Stat. 4326) is amended by striking out "Section 3015(f)" and inserting in lieu thereof "Section 3015(g) (as redesignated by section 307(a)(1))".

(2) Section 307(a) of such Public Law (106 Stat. 4328) is amended by striking out "(as amended by section 301)".

(3) The amendments made by paragraphs (1) and (2) shall apply as if included in the enactment of Public Law 102–568.

TITLE XIII–REVENUE, HEALTH CARE, HUMAN RESOURCES, INCOME SECURITY, CUSTOMS AND TRADE, FOOD STAMP PROGRAM, AND TIMBER SALE PROVISIONS

CHAPTER 1–REVENUE PROVISIONS

SEC. 13001. SHORT TITLE; ETC.

(a) Short Title.–This chapter may be cited as the "Revenue Reconciliation Act of 1993".

(b) Amendment to 1986 Code.–Except as otherwise expressly provided, whenever in this chapter an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) Section 15 Not To Apply.–Except in the case of the amendments made by section 13221 (relating to corporate rate increase), no amendment made by this chapter shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) Waiver of Estimated Tax Penalties.–No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 for any period before April 16, 1994 (March 16, 1994, in the case of a corporation), with respect to any underpayment to ***110** the extent such underpayment was created or increased by any provision of this chapter.

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Subchapter A–Training and Investment Incentives

PART I–PROVISIONS RELATING TO EDUCATION AND TRAINING

SEC. 13101. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) Extension of Exclusion.–

(1) In general.–Subsection (d) of section 127 (relating to educational assistance programs) is amended to read as follows:

"(d) Termination.–This section shall not apply to taxable years beginning after December 31, 1994."

(2) Conforming amendment.–Paragraph (2) of section 103(a) of the Tax Extension Act of 1991 is hereby repealed.

(b) Coordination With Section 132.–Paragraph (8) of section 132(i) is amended to read as follows:

"(8) Application of section to otherwise taxable educational or training benefits.–Amounts paid or expenses incurred by the employer for education or training provided to the employee which are not excludable from gross income under section 127 shall be excluded from gross income under this section if (and only if) such amounts or expenses are a working condition fringe."

(c) Effective Dates.–

(1) Subsection (a).–The amendments made by subsection (a) shall apply to taxable years ending after June 30, 1992.

(2) Subsection (b).–The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1988.

SEC. 13102. TARGETED JOBS CREDIT.

(a) Extension of Credit.–Paragraph (4) of section 51(c) (relating to termination) is amended by striking "June 30, 1992" and inserting "December 31, 1994".

(b) Effective Date.–The amendment made by subsection (a) shall apply to individuals who begin work for the employer after June 30, 1992.

***114** PART II–INVESTMENT INCENTIVES

Subpart A–Research and Clinical Testing Credits

SEC. 13111. EXTENSION OF RESEARCH AND CLINICAL TESTING CREDITS.

(a) Research Credit.–

(1) In general.–Subsection (h) of section 41 (relating to credit for research activities) is amended–

(A) by striking "June 30, 1992" each place it appears and inserting "June 30, 1995", and

(B) by striking "July 1, 1992" each place it appears and inserting "July 1, 1995".

(2) Conforming amendment.–Subparagraph (D) of section 28(b)(1) is amended by striking "June 30, 1992" and inserting "June 30, 1995".

(b) Clinical Testing Credit.–Subsection (e) of section 28 is amended by striking "June 30, 1992" and inserting "December 31, 1994".

(c) Effective Date.–The amendments made by this section shall apply to taxable years ending after June 30, 1992.

SEC. 13112. MODIFICATION OF FIXED BASE PERCENTAGE FOR STARTUP COMPANIES.

(a) General Rule.–Clause (ii) of section 41(c)(3)(B) is amended to read as follows:

"(ii) Fixed-base percentage.–In a case to which this subparagraph applies, the fixed-base percentage is–
"(I) 3 percent for each of the taxpayer's 1st 5 taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses,
"(II) in the case of the taxpayer's 6th such taxable year, 1/6 of the percentage which the aggregate qualified research expenses of the taxpayer for the 4th and 5th such taxable years is of the aggregate gross receipts of the taxpayer for such years,
"(III) in the case of the taxpayer's 7th such taxable year, ⅓ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th and 6th such taxable years is of the aggregate gross receipts of the taxpayer for such years,
"(IV) in the case of the taxpayer's 8th such taxable year, ½ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years,
"(V) in the case of the taxpayer's 9th such taxable year, 2/3 of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, and 8th such taxable years is of the aggregate gross receipts of the taxpayer for such years,
***115** "(VI) in the case of the taxpayer's 10th such taxable year, 5/6 of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, 8th, and 9th such taxable years is of the aggregate gross receipts of the taxpayer for such years, and
"(VII) for taxable years thereafter, the percentage which the aggregate qualified research expenses for any 5 taxable years selected by the taxpayer from among the 5th through the 10th such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.".

(b) Conforming Amendments.–

(1) Clause (iii) of section 41(c)(3)(B) is amended by striking "clause (i)" and inserting "clauses (i) and (ii)".

(2) Subparagraph (D) of section 41(c)(3) is amended by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)(ii)".

(c) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

Subpart B–Capital Gain Provisions

SEC. 13113. 50-PERCENT EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSINESS STOCK.

(a) General Rule.–Part I of subchapter P of chapter 1 (relating to capital gains and losses) is amended by adding at the end

thereof the following new section:

"SEC. 1202. 50-PERCENT EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSINESS STOCK.

"(a) 50-Percent Exclusion.–In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

"(b) Per-Issuer Limitation on Taxpayer's Eligible Gain.–

"(1) In general.–If the taxpayer has eligible gain for the taxable year from 1 or more dispositions of stock issued by any corporation, the aggregate amount of such gain from dispositions of stock issued by such corporation which may be taken into account under subsection (a) for the taxable year shall not exceed the greater of–

"(A) $10,000,000 reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subsection (a) for prior taxable years and attributable to dispositions of stock issued by such corporation, or

"(B) 10 times the aggregate adjusted bases of qualified small business stock issued by such corporation and disposed of by the taxpayer during the taxable year.

For purposes of subparagraph (B), the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which such stock was originally issued.

"(2) Eligible gain.–For purposes of this subsection, the term 'eligible gain' means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

***116** "(3) Treatment of married individuals.–

"(A) Separate returns.–In the case of a separate return by a married individual, paragraph (1)(A) shall be applied by substituting '$5,000,000' for '$10,000,000'.

"(B) Allocation of exclusion.–In the case of any joint return, the amount of gain taken into account under subsection (a) shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

"(C) Marital status.–For purposes of this subsection, marital status shall be determined under section 7703.

"(c) Qualified Small Business Stock.–For purposes of this section–

"(1) In general.–Except as otherwise provided in this section, the term 'qualified small business stock' means any stock in a C corporation which is originally issued after the date of the enactment of the Revenue Reconciliation Act of 1993, if–

"(A) as of the date of issuance, such corporation is a qualified small business, and

"(B) except as provided in subsections (f) and (h), such stock is acquired by the taxpayer at its original issue (directly or through an underwriter)–

"(i) in exchange for money or other property (not including stock), or
"(ii) as compensation for services provided to such corporation (other than services performed as an underwriter of such stock).

"(2) Active business requirement; etc.–

"(A) In general.–Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for such stock, such corporation meets the active business requirements of subsection (e) and such corporation is a C corporation.

"(B) Special rule for certain small business investment companies.–

"(i) Waiver of active business requirement.–Notwithstanding any provision of subsection (e), a corporation shall be treated as meeting the active business requirements of such subsection for any period during which such corporation qualifies as a specialized small business investment company.
"(ii) Specialized small business investment company.–For purposes of clause (i), the term 'specialized small business investment company' means any eligible corporation (as defined in subsection (e)(4)) which is licensed to operate under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).
"(3) Certain purchases by corporation of its own stock.–

"(A) Redemptions from taxpayer or related person.–Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the ***117** 4-year period beginning on the date 2 years before the issuance of such stock, the corporation issuing such stock purchased (directly or indirectly) any of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

"(B) Significant redemptions.–Stock issued by a corporation shall not be treated as qualified business stock if, during the 2-year period beginning on the date 1 year before the issuance of such stock, such corporation made 1 or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of such 2-year period.

"(C) Treatment of certain transactions.–If any transaction is treated under section 304(a) as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), such corporation shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution under section 304(a).

"(d) Qualified Small Business.–For purposes of this section–

"(1) In general.–The term 'qualified small business' means any domestic corporation which is a C corporation if–

"(A) the aggregate gross assets of such corporation (or any predecessor thereof) at all times on or after the date of the enactment of the Revenue Reconciliation Act of 1993 and before the issuance did not exceed $50,000,000,

"(B) the aggregate gross assets of such corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed $50,000,000, and

"(C) such corporation agrees to submit such reports to the Secretary and to shareholders as the Secretary may require to carry out the purposes of this section.

"(2) Aggregate gross assets.–

"(A) In general.–For purposes of paragraph (1), the term 'aggregate gross assets' means the amount of cash and the aggregate adjusted bases of other property held by the corporation.

"(B) Treatment of contributed property.–For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation (immediately after such contribution) were equal to its fair market value as of the time of such contribution.

"(3) Aggregation rules.–

"(A) In general.–All corporations which are members of the same parent-subsidiary controlled group shall be treated as 1 corporation for purposes of this subsection.

"(B) Parent-subsidiary controlled group.–For purposes of subparagraph (A), the term 'parent-subsidiary ***118** controlled group' means any controlled group of corporations as defined in section 1563(a)(1), except that–

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and
"(ii) section 1563(a)(4) shall not apply.
"(e) Active Business Requirement.–

"(1) In general.–For purposes of subsection (c)(2), the requirements of this subsection are met by a corporation for any period if during such period–

"(A) at least 80 percent (by value) of the assets of such corporation are used by such corporation in the active conduct of 1 or more qualified trades or businesses, and

"(B) such corporation is an eligible corporation.

"(2) Special rule for certain activities.–For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in–

"(A) start-up activities described in section 195(c)(1)(A),

"(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

"(C) activities with respect to in-house research expenses described in section 41(b)(4),

assets used in such activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from such activities at the time of the determination.

"(3) Qualified trade or business.–For purposes of this subsection, the term 'qualified trade or business' means any trade or business other than–

"(A) any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees,

"(B) any banking, insurance, financing, leasing, investing, or similar business,

"(C) any farming business (including the business of raising or harvesting trees),

"(D) any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A, and

"(E) any business of operating a hotel, motel, restaurant, or similar business.

"(4) Eligible corporation.–For purposes of this subsection, the term 'eligible corporation' means any domestic corporation; except that such term shall not include–

"(A) a DISC or former DISC,

"(B) a corporation with respect to which an election under section 936 is in effect or which has a direct or indirect ***119** subsidiary with respect to which such an election is in effect,

"(C) a regulated investment company, real estate investment trust, or REMIC, and

"(D) a cooperative.

"(5) Stock in other corporations.–

"(A) Look-thru in case of subsidiaries.–For purposes of this subsection, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

"(B) Portfolio stock or securities.–A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of such corporation (other than assets described in paragraph (6)).

"(C) Subsidiary.–For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such corporation.

"(6) Working capital.–For purposes of paragraph (1)(A), any assets which–

"(A) are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation, or

"(B) are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business,

shall be treated as used in the active conduct of a qualified trade or business. For periods after the corporation has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

"(7) Maximum real estate holdings.–A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property which is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business.

"(8) Computer software royalties.–For purposes of paragraph (1), rights to computer software which produces active business computer software royalties (within the meaning of section 543(d)(1)) shall be treated as an asset used in the active conduct of a trade or business.

"(f) Stock Acquired on Conversion of Other Stock.–If any stock in a corporation is acquired solely through the conversion ***120** of other stock in such corporation which is qualified small business stock in the hands of the taxpayer–

"(1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

"(2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

"(g) Treatment of Pass-Thru Entities.–

"(1) In general.–If any amount included in gross income by reason of holding an interest in a pass-thru entity meets the requirements of paragraph (2)–

"(A) such amount shall be treated as gain described in subsection (a), and

"(B) for purposes of applying subsection (b), such amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-thru entity and the taxpayer's proportionate share of the adjusted basis of the pass-thru entity in such stock shall be taken into account.

"(2) Requirements.–An amount meets the requirements of this paragraph if–

"(A) such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity (determined by treating such entity as an individual) and which was held by such entity for more than 5 years, and

"(B) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such stock and at all times thereafter before the disposition of such stock by such pass-thru entity.

"(3) Limitation based on interest originally held by taxpayer.–Paragraph (1) shall not apply to any amount to the extent such amount exceeds the amount to which paragraph (1) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

"(4) Pass-thru entity.–For purposes of this subsection, the term 'pass-thru entity' means–

"(A) any partnership,

"(B) any S corporation,

"(C) any regulated investment company, and

"(D) any common trust fund.

"(h) Certain Tax-Free and Other Transfers.–For purposes of this section–

"(1) In general.–In the case of a transfer described in paragraph (2), the transferee shall be treated as–

"(A) having acquired such stock in the same manner as the transferor, and

"(B) having held such stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

***121** "(2) Description of transfers.–A transfer is described in this subsection if such transfer is–

"(A) by gift,

"(B) at death, or

"(C) from a partnership to a partner of stock with respect to which requirements similar to the requirements of subsection (g) are met at the time of the transfer (without regard to the 5-year holding period requirement).

"(3) Certain rules made applicable.–Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

"(4) Incorporations and reorganizations involving nonqualified stock.–

"(A) In general.–In the case of a transaction described in section 351 or a reorganization described in section 368, if qualified small business stock is exchanged for other stock which would not qualify as qualified small business stock but for this subparagraph, such other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

"(B) Limitation.–This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain which would have been recognized at the time of the

transfer described in subparagraph (A) if section 351 or 368 had not applied at such time. The preceding sentence shall not apply if the stock which is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation which (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

"(C) Successive application.–For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which such limitation applied (determined after the application of the second sentence of subparagraph (B)).

"(D) Control test.–In the case of a transaction described in section 351, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was exchanged.

"(i) Basis Rules.–For purposes of this section–

"(1) Stock exchanged for property.–In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation–

"(A) such stock shall be treated as having been acquired by the taxpayer on the date of such exchange, and

"(B) the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

***122** "(2) Treatment of contributions to capital.–If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which such stock was originally issued, in determining the amount of the adjustment by reason of such contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

"(j) Treatment of Certain Short Positions.–

"(1) In general.–If the taxpayer has an offsetting short position with respect to any qualified small business stock, subsection (a) shall not apply to any gain from the sale or exchange of such stock unless–

"(A) such stock was held by the taxpayer for more than 5 years as of the first day on which there was such a short position, and

"(B) the taxpayer elects to recognize gain as if such stock were sold on such first day for its fair market value.

"(2) Offsetting short position.–For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if–

"(A) the taxpayer has made a short sale of substantially identical property,

"(B) the taxpayer has acquired an option to sell substantially identical property at a fixed price, or

"(C) to the extent provided in regulations, the taxpayer has entered into any other transaction which substantially reduces the risk of loss from holding such qualified small business stock.

For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

"(k) Regulations.–The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through split-ups, shell corporations, partnerships, or otherwise."

(b) One-Half of Exclusion Treated as Preference for Minimum Tax.–

(1) In general.–Subsection (a) of section 57 (relating to items of tax preference) is amended by adding at the end thereof the following new paragraph:

"(8) Exclusion for gains on sale of certain small business stock.–An amount equal to one-half of the amount excluded from gross income for the taxable year under section 1202."

(2) Conforming amendment.–Subclause (II) of section 53(d)(1)(B)(ii) is amended by striking "and (6)" and inserting "(6), and (8)".

(c) Penalty for Failure To Comply With Reporting Requirements.–Section 6652 is amended by inserting before the last subsection thereof the following new subsection:

***123** "(k) Failure To Make Reports Required Under Section 1202.–In the case of a failure to make a report required under section 1202(d)(1)(C) which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to make such report, an amount equal to $50 for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard, the preceding sentence shall be applied by substituting '$100' for '$50'. In the case of a report covering periods in 2 or more years, the penalty determined under preceding provisions of this subsection shall be multiplied by the number of such years."

(d) Conforming Amendments.–

(1)(A) Section 172(d)(2) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) Capital gains and losses of taxpayers other than corporations.–In the case of a taxpayer other than a corporation–

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

"(B) the exclusion provided by section 1202 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) is amended by inserting ", (2) (B)," after "paragraph (1)".

(2) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) Adjustments.–To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(3) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The exclusion under section 1202 shall not be taken into account.".

(4) Paragraph (4) of section 691(c) is amended by striking "1201, and 1211" and inserting "1201, 1202, and 1211".

(5) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1202 and" after "except that".

(6) The table of sections for part I of subchapter P of chapter 1 is amended by adding after the item relating to section 1201 the following new item:

"Sec. 1202. 50-percent exclusion for gain from certain small business stock."

(e) Effective Date.–The amendments made by this section shall apply to stock issued after the date of the enactment of this Act.

***124** SEC. 13114. ROLLOVER OF GAIN FROM SALE OF PUBLICLY TRADED SECURITIES INTO SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.

(a) In General.–Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by adding at the end the following new section:

"SEC. 1044. ROLLOVER OF PUBLICLY TRADED SECURITIES GAIN INTO SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.

"(a) Nonrecognition of Gain.–In the case of the sale of any publicly traded securities with respect to which the taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds–

"(1) the cost of any common stock or partnership interest in a specialized small business investment company purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

"(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this subtitle.

"(b) Limitations.–

"(1) Limitation on individuals.–In the case of an individual, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of–

"(A) $50,000, or

"(B) $500,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

"(2) Limitation on c corporations.–In the case of a C corporation, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of–

"(A) $250,000, or

"(B) $1,000,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

"(3) Special rules for married individuals.–For purposes of this subsection–

"(A) Separate returns.–In the case of a separate return by a married individual, paragraph (1) shall be applied by substituting '$25,000' for '$50,000' and '$250,000' for '$500,000'.

"(B) Allocation of gain.–In the case of any joint return, the amount of gain excluded under subsection (a) for any taxable year shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

"(C) Marital status.–For purposes of this subsection, marital status shall be determined under section 7703.

"(4) Special rules for c corporation.–For purposes of this subsection–

"(A) all corporations which are members of the same controlled group of corporations (within the meaning of section 52(a)) shall be treated as 1 taxpayer, and

***125** "(B) any gain excluded under subsection (a) by a predecessor of any C corporation shall be treated as having been excluded by such C corporation.

"(c) Definitions and Special Rules.–For purposes of this section–

"(1) Publicly traded securities.–The term 'publicly traded securities' means securities which are traded on an established securities market.

"(2) Purchase.–The term 'purchase' has the meaning given such term by section 1043(b)(4).

"(3) Specialized small business investment company.–The term 'specialized small business investment company' means any partnership or corporation which is licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

"(4) Certain entities not eligible.–This section shall not apply to any estate, trust, partnership, or S corporation.

"(d) Basis Adjustments.–If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any common stock or partnership interest in any specialized small business investment company which is purchased by the taxpayer during the 60-day period described in subsection (a). This subsection shall not apply for purposes of section 1202."

(b) Conforming Amendment.–Paragraph (24) of section 1016(a) is amended–

(1) by striking "section 1043" and inserting "section 1043 or 1044", and

(2) by striking "section 1043(c)" and inserting "section 1043(c) or 1044(d), as the case may be".

(c) Clerical Amendment.–The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end the following new item:

"Sec. 1044. Rollover of publicly traded securities gain into specialized small business investment companies."

(d) Effective Date.–The amendments made by this section shall apply to sales on and after the date of the enactment of this Act, in taxable years ending on and after such date.

Subpart C–Modification To Minimum Tax Depreciation Rules

SEC. 13115. MODIFICATION TO MINIMUM TAX DEPRECIATION RULES.

(a) Elimination of ACE Depreciation Adjustment.–Clause (i) of section 56(g)(4)(A) (relating to depreciation adjustments for computing adjusted current earnings) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any property placed in service after December 31, 1993, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A).".

(b) Effective Dates.–

***126** (1) In general.–Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1993.

(2) Coordination with transitional rules.–The amendments made by this section shall not apply to any property to which paragraph (1) of section 56(a) of the Internal Revenue Code of 1986 does not apply by reason of subparagraph (C)(i) thereof.

Subpart D–Increase in Expense Treatment for Small Businesses

SEC. 13116. INCREASE IN EXPENSE TREATMENT FOR SMALL BUSINESSES.

(a) General Rule.–Paragraph (1) of section 179(b) (relating to dollar limitation) is amended by striking "$10,000" and inserting "$17,500".

(b) Effective Date.–The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

Subpart E–Tax Exempt Bonds

SEC. 13121. HIGH-SPEED INTERCITY RAIL FACILITY BONDS EXEMPT FROM STATE VOLUME CAP.

(a) In General.–Paragraph (4) of section 146(g) (relating to exemption for certain bonds) is amended by adding at the end thereof the following flush sentence:

"Paragraph (4) shall be applied without regard to '75 percent of' if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1))."

(b) Effective Date.–The amendment made by subsection (a) shall apply to bonds issued after December 31, 1993.

SEC. 13122. PERMANENT EXTENSION OF QUALIFIED SMALL ISSUE BONDS.

(a) In General.–Subparagraph (B) of section 144(a)(12) is amended to read as follows:

"(B) Bonds issued to finance manufacturing facilities and farm property.–Subparagraph (A) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide–

"(i) any manufacturing facility, or
"(ii) any land or property in accordance with section 147(c)(2)."

(b) Effective Date.–The amendment made by subsection (a) shall apply to bonds issued after June 30, 1992.

(c) Treatment Under Inducement Regulations.–If the 1-year period specified in Treasury Regulation S 1.103–8(a)(5) (as in effect before July 1, 1993) or any successor regulation would (but for this subsection) expire after June 30, 1992, and before January 1, 1994, such period shall not expire before January 1, 1994.

***127** PART III–EXPANSION AND SIMPLIFICATION OF EARNED INCOME TAX CREDIT

SEC. 13131. EXPANSION AND SIMPLIFICATION OF EARNED INCOME TAX CREDIT.

(a) General Rule.–Section 32 (relating to earned income credit) is amended by striking subsections (a) and (b) and inserting the following:

"(a) Allowance of Credit.–

"(1) In general.–In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed the earned income amount.

"(2) Limitation.–The amount of the credit allowable to a taxpayer under paragraph (1) for any taxable year shall not exceed the excess (if any) of–

"(A) the credit percentage of the earned income amount, over

"(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the phaseout amount.

"(b) Percentages and Amounts.–For purposes of subsection (a)–

"(1) Percentages.–The credit percentage and the phaseout percentage shall be determined as follows:

"(A) In general.–In the case of taxable years beginning after 1995:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
"(B) Transitional percentages for 1995.–In the case of taxable years beginning in 1995:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
"(C) Transitional percentages for 1994.–In the case of a taxable year beginning in 1994:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
"(2) Amounts.–The earned income amount and the phaseout amount shall be determined as follows:

***128** "(A) In general.–In the case of taxable years beginning after 1994:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
"(B) Transitional amounts.–In the case of a taxable year beginning in 1994:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
(b) Eligible Individual.–Subparagraph (A) of section 32(c)(1) (defining eligible individual) is amended to read as follows:–

"(A) In general.–The term 'eligible individual' means–

"(i) any individual who has a qualifying child for the taxable year, or
"(ii) any other individual who does not have a qualifying child for the taxable year, if–
"(I) such individual's principal place of abode is in the United States for more than one-half of such taxable year,
"(II) such individual (or, if the individual is married, either the individual or the individual's spouse) has attained age 25 but not attained age 65 before the close of the taxable year, and
"(III) such individual is not a dependent for whom a deduction is allowable under section 151 to another taxpayer for any taxable year beginning in the same calendar year as such taxable year.
For purposes of the preceding sentence, marital status shall be determined under section 7703."
(c) Inflation Adjustments.–Section 32(i) (relating to inflation adjustments) is amended–

(1) by striking paragraphs (1) and (2) and inserting the following new paragraph:

"(1) In general.–In the case of any taxable year beginning after 1994, each dollar amount contained in subsection (b)(2)(A) shall be increased by an amount equal to–

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1993' for 'calendar year 1992'.", and

(2) by redesignating paragraph (3) as paragraph (2).

(d) Conforming Amendments.–

(1) Subparagraph (D) of section 32(c)(3) is amended–

***129** (A) by striking "clause (i) or (ii)" in clause (iii) and inserting "clause (i)",

(B) by striking clause (ii), and

(C) by redesignating clause (iii) as clause (ii).

(2) Paragraph (3) of section 162(l) is amended to read as follows:

"(3) Coordination with medical deduction.–Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a)."

(3) Section 213 is amended by striking subsection (f).

(4) Subsection (b) of section 3507 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) certifies that the employee has 1 or more qualifying children (within the meaning of section 32(c)(3)) for such taxable year,".

(5) Subparagraph (B) of section 3507(c)(2) is amended by striking clauses (i) and (ii) and inserting the following:

"(i) of not more than 60 percent of the credit percentage in effect under section 32(b)(1) for an eligible individual with 1 qualifying child and with earned income not in excess of the earned income amount in effect under section 32(b)(2) for such an eligible individual, which
"(ii) phases out at 60 percent of the phaseout percentage in effect under section 32(b)(1) for such an eligible individual between the phaseout amount in effect under section 32(b)(2) for such an eligible individual and the amount of earned income at which the credit under section 32(a) phases out for such an eligible individual, or".

(6) Section 3507 is amended by adding at the end thereof the following new subsection:

"(f) Internal Revenue Service Notification.–The Internal Revenue Service shall take such steps as may be appropriate to ensure that taxpayers who have 1 or more qualifying children and who receive a refund of the credit under section 32 are aware of the availability of earned income advance amounts under this section."

(e) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

***130** PART IV–INCENTIVES FOR INVESTMENT IN REAL ESTATE

Subpart A–Extension of Qualified Mortgage Bonds and Low-Income Housing Credit

SEC. 13141. PERMANENT EXTENSION OF QUALIFIED MORTGAGE BONDS.

(a) In General.–Paragraph (1) of section 143(a) (defining qualified mortgage bond) is amended to read as follows:

"(1) Qualified mortgage bond defined.–For purposes of this title, the term 'qualified mortgage bond' means a bond which is issued as part of a qualified mortgage issue."

(b) Mortgage Credit Certificates.–Section 25 is amended by striking subsection (h) and by redesignating subsections (i) and (j) as subsections (h) and (i), respectively.

(c) Treatment of Resale Price Control and Subsidy Lien Programs.–Subsection (k) of section 143 is amended by adding at the end thereof the following new paragraph:

"(10) Treatment of resale price control and subsidy lien programs.–

"(A) In general.–In the case of a residence which is located in a high housing cost area (as defined in section 143(f)(5)), the interest of a governmental unit in such residence by reason of financing provided under any qualified program shall not be taken into account under this section (other than subsection (m)), and the acquisition cost of the residence which is taken into account under subsection (e) shall be such cost reduced by the amount of such financing.

"(B) Qualified program.–For purposes of subparagraph (A), the term 'qualified program' means any governmental program providing mortgage loans (other than 1st mortgage loans) or grants–

"(i) which restricts (throughout the 9-year period beginning on the date the financing is provided) the resale of the residence to a purchaser qualifying under this section and to a price determined by an index that reflects less than the full amount of any appreciation in the residence's value, or
"(ii) which provides for deferred or reduced interest payments on such financing and grants the governmental unit a share in the appreciation of the residence,

but only if such financing is not provided directly or indirectly through the use of any tax-exempt private activity bond."

(d) Financing Allowed for Contract for Deed Agreements.–

(1) In general.–Paragraph (2) of section 143(d) (relating to exceptions to 3-year requirement) is amended–

(A) by striking "and" at the end of subparagraph (A),

(B) by adding "and" at the end of subparagraph (B), and

***131** (C) by inserting after subparagraph (B) the following new subparagraph:

"(C) financing with respect to land described in subsection (i)(1)(C) and the construction of any residence thereon."

(2) Exception to new mortgage requirement.–Paragraph (1) of section 143(i) (relating to mortgages must be new mortgages) is amended by adding at the end thereof the following new subparagraph:

"(C) Exception for certain contract for deed agreements.–

"(i) In general.–In the case of land possessed under a contract for deed by a mortgagor–
"(I) whose principal residence (within the meaning of section 1034) is located on such land, and
"(II) whose family income (as defined in subsection (f)(2)) is not more than 50 percent of applicable median family income (as defined in subsection (f)(4)),

the contract for deed shall not be treated as an existing mortgage for purposes of subparagraph (A).
"(ii) Contract for deed defined.–For purposes of this subparagraph, the term 'contract for deed' means a seller-financed contract for the conveyance of land under which–
"(I) legal title does not pass to the purchaser until the consideration under the contract is fully paid to the seller, and
"(II) the seller's remedy for nonpayment is forfeiture rather than judicial or nonjudicial foreclosure."

(3) Acquisition cost includes cost of land.–Clause (iii) of section 143(k)(3)(B) is amended by inserting "(other than land

described in subsection (i)(1)(C)(i))" after "cost of land".

(e) Financing of New 2-Family Residences Permitted.–Paragraph (7) of section 143(k) is amended by adding at the end thereof the following flush sentence:

"Subparagraph (B) shall not apply to any 2-family residence if the residence is a targeted area residence and the family income of the mortgagor meets the requirement of subsection (f)(3)(B)."

(f) Effective Dates.–

(1) Bonds.–The amendment made by subsection (a) shall apply to bonds issued after June 30, 1992.

(2) Certificates.–The amendment made by subsection (b) shall apply to elections for periods after June 30, 1992.

(3) Subsections (c) and (e).–The amendments made by subsections (c) and (e) shall apply to qualified mortgage bonds issued and mortgage credit certificates provided on or after the date of enactment of this Act.

(4) Contract for deed agreements.–The amendments made by subsection (d) shall apply to loans originated and credit certificates provided after the date of the enactment of this Act.

***132** SEC. 13142. LOW-INCOME HOUSING CREDIT.

(a) Permanent Extension.–

(1) In general.–Section 42 (relating to low-income housing credit) is amended by striking subsection (o).

(2) Effective date.–The amendments made by paragraph (1) shall apply to periods ending after June 30, 1992.

(b) Modifications.–

(1) Housing credit agency determination of reasonableness of project costs.–Subparagraph (B) of section 42(m)(2) (relating to credit allocated to building not to exceed amount necessary to assure project feasibility) is amended–

(A) by striking "and" at the end of clause (ii),

(B) by striking the period at the end of clause (iii) and inserting ", and", and

(C) by inserting after clause (iii) the following new clause:

"(iv) the reasonableness of the developmental and operational costs of the project."

(2) Units with certain full-time students not disqualified.–Subparagraph (D) of section 42(i)(3) (defining low-income unit) is amended to read as follows:

"(D) Certain students not to disqualify unit.–A unit shall not fail to be treated as a low-income unit merely because it is occupied–

"(i) by an individual who is–
"(I) a student and receiving assistance under title IV of the Social Security Act, or
"(II) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or
"(ii) entirely by full-time students if such students are–
"(I) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or
"(II) married and file a joint return."

(3) Treasury waivers of certain de minimis errors and recertifications.–Subsection (g) of section 42 (relating to qualified low-income housing projects) is amended by adding at the end thereof the following new paragraph:

"(8) Waiver of certain de minimis errors and recertifications.–On application by the taxpayer, the Secretary may waive–

"(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

"(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants."

(4) Discrimination against tenants prohibited.–Section 42(h)(6)(B) (defining extended low-income housing commitment) is amended by redesignating clauses (iv) and (v) as clauses (v) and (vi) and by inserting after clause (iii) the following new clause:

***133** "(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,".

(5) HOME assistance not to result in certain buildings being federally subsidized.–Paragraph (2) of section 42(i) (relating to determination of whether building is federally subsidized) is amended by adding at the end thereof the following new subparagraph:

"(E) Buildings receiving home assistance.–

"(i) In general.–Assistance provided under the HOME Investment Partnerships Act (as in effect on the date of the enactment of this subparagraph) with respect to any building shall not be taken into account under subparagraph (D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of area median gross income. Subsection (d)(5)(C) shall not apply to any building to which the preceding sentence applies.

"(ii) Special rule for certain high-cost housing areas.–In the case of a building located in a city described in section 142(d)(6), clause (i) shall be applied by substituting '25 percent' for '40 percent'."

(6) Effective dates.–

(A) In general.–Except as provided in subparagraphs (B) and (C), the amendments made by this subsection shall apply to–

(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B) Waiver authority and prohibited discrimination.–The amendments made by paragraphs (3) and (4) shall take effect on the date of the enactment of this Act.

(C) HOME assistance.–The amendment made by paragraph (2) shall apply to periods after the date of the enactment of this Act.

(c) Election To Determine Rent Limitation Based on Number of Bedrooms and Deep Rent Skewing.–

(1) In the case of a building to which the amendments made by subsection (e)(1) or (n)(2) of section 7108 of the Revenue Reconciliation Act of 1989 did not apply, the taxpayer may elect to have such amendments apply to such building if the taxpayer has met the requirements of the procedures described in section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986.

(2) In the case of the amendment made by such subsection (e)(1), such election shall apply only with respect to tenants first occupying any unit in the building after the date of the election.

***134** (3) In the case of the amendment made by such subsection (n)(2), such election shall apply only if rents of

low-income tenants in such building do not increase as a result of such election.

(4) An election under this subsection may be made only during the 180 day period beginning on the date of the enactment of this Act and, once made, shall be irrevocable.

Subpart B–Passive Loss Rules

SEC. 13143. APPLICATION OF PASSIVE LOSS RULES TO RENTAL REAL ESTATE ACTIVITIES.

(a) Rental Real Estate Activities of Persons in Real Property Business Not Automatically Treated as Passive Activities.–Subsection (c) of section 469 (defining passive activity) is amended by adding at the end thereof the following new paragraph:

"(7) Special rules for taxpayers in real property business–

"(A) In general.–If this paragraph applies to any taxpayer for a taxable year–

"(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and
"(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity. Nothing in the preceding provisions of this subparagraph shall be construed as affecting the determination of whether the taxpayer materially participates with respect to any interest in a limited partnership as a limited partner.

"(B) Taxpayers to whom paragraph applies.–This paragraph shall apply to a taxpayer for a taxable year if–

"(i) more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and
"(ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

In the case of a joint return, the requirements of the preceding sentence are satisfied if and only if either spouse separately satisfies such requirements. For purposes of the preceding sentence, activities in which a spouse materially participates shall be determined under subsection (h).

"(C) Real property trade or business.–For purposes of this paragraph, the term 'real property trade or business' means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

***135** "(D) Special rules for subparagraph (b).–

"(i) Closely held c corporations.–In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.
"(ii) Personal services as an employee.–For purposes of subparagraph (B), personal services performed as an employee shall not be treated as performed in real property trades or businesses. The preceding sentence shall not apply if such employee is a 5-percent owner (as defined in section 416(i)(1)(B)) in the employer."

(b) Conforming Amendments.–

(1) Paragraph (2) of section 469(c) is amended by striking "The" and inserting "Except as provided in paragraph (7), the".

(2) Clause (iv) of section 469(i)(3)(E) is amended by inserting "or any loss allowable by reason of subsection (c)(7)" after "loss".

(c) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

Subpart C–Provisions Relating to Real Estate Investments by Pension Funds

SEC. 13144. REAL ESTATE PROPERTY ACQUIRED BY A QUALIFIED ORGANIZATION.

(a) Modifications of Exceptions.–Paragraph (9) of section 514(c) (relating to real property acquired by a qualified organization) is amended by adding at the end thereof the following new subparagraphs:

"(G) Special rules for purposes of the exceptions.–Except as otherwise provided by regulations–

"(i) Small leases disregarded.–For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 25 percent of the leasable floor space in a building (or complex of buildings) is covered by the lease and if the lease is on commercially reasonable terms.

"(ii) Commercially reasonable financing.–Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms.

"(H) Qualifying sales by financial institutions.–

"(i) In general.–In the case of a qualifying sale by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

"(ii) Qualifying sale.–For purposes of this clause, there is a qualifying sale by a financial institution if–

***136** "(I) a qualified organization acquires property described in clause (iii) from a financial institution and any gain recognized by the financial institution with respect to the property is ordinary income,

"(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the property described in clause (iii) immediately before the acquisition referred to in clause (iii) or (v), whichever is applicable, and

"(III) the present value (determined as of the time of the sale and by using the applicable Federal rate determined under section 1274(d)) of the maximum amount payable pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property cannot exceed 30 percent of the total purchase price of the property (including the contingent payments).

"(iii) Property to which subparagraph applies.–Property is described in this clause if such property is foreclosure property, or is real property which–

"(I) was acquired by the qualified organization from a financial institution which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

"(II) was held by the financial institution at the time it entered into conservatorship or receivership.

"(iv) Financial institution.–For purposes of this subparagraph, the term 'financial institution' means–

"(I) any financial institution described in section 581 or 591(a),

"(II) any other corporation which is a direct or indirect subsidiary of an institution referred to in subclause (I) but only if, by virtue of being affiliated with such institution, such other corporation is subject to supervision and examination by a Federal or State agency which regulates institutions referred to in subclause (I), and

"(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II) (or any government agency or corporation succeeding to the rights or interest of such person).

"(v) Foreclosure property.–For purposes of this subparagraph, the term 'foreclosure property' means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was ***137** imminent) on indebtedness which such property secured.".

(b) Conforming Amendment.–Paragraph (9) of section 514(c) is amended–

(1) by adding the following new sentence at the end of subparagraph (A): "For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.", and

(2) by striking the last sentence of subparagraph (B).

(c) Effective Dates.–

(1) In general.–The amendments made by this section shall apply to acquisitions on or after January 1, 1994.

(2) Small leases.–The provisions of section 514(c)(9)(G)(i) of the Internal Revenue Code of 1986 shall, in addition to any leases to which the provisions apply by reason of paragraph (1), apply to leases entered into on or after January 1, 1994.

SEC. 13145. REPEAL OF SPECIAL TREATMENT OF PUBLICLY TREATED PARTNERSHIPS.

(a) General Rule.–Subsection (c) of section 512 is amended–

(1) by striking paragraph (2),

(2) by redesignating paragraph (3) as paragraph (2), and

(3) by striking "paragraph (1) or (2)" in paragraph (2) (as so redesignated) and inserting "paragraph (1)".

(b) Effective Date.–The amendments made by subsection (a) shall apply to partnership years beginning on or after January 1, 1994.

SEC. 13146. TITLE-HOLDING COMPANIES PERMITTED TO RECEIVE SMALL AMOUNTS OF UNRELATED BUSINESS TAXABLE INCOME.

(a) General Rule.–Paragraph (25) of section 501(c) is amended by adding at the end thereof the following new subparagraph:

"(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

"(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income."

(b) Conforming Amendment.–Paragraph (2) of section 501(c) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph."

(c) Effective Date.–The amendments made by this section shall apply to taxable years beginning on or after January 1, 1994.

SEC. 13147. EXCLUSION FROM UNRELATED BUSINESS TAX OF GAINS FROM CERTAIN PROPERTY.

(a) General Rule.–Subsection (b) of section 512 (relating to modifications) is amended by adding at the end thereof the following new paragraph:

***138** "(16)(A) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property described in subparagraph (B) if–

"(i) such property was acquired by the organization from–

"(I) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or
"(II) the conservator or receiver of such an institution (or any government agency or corporation succeeding to the rights or interests of the conservator or receiver),

"(ii) such property is designated by the organization within the 9-month period beginning on the date of its acquisition as

property held for sale, except that not more than one-half (by value determined as of such date) of property acquired in a single transaction may be so designated,

"(iii) such sale, exchange, or disposition occurs before the later of–

"(I) the date which is 30 months after the date of the acquisition of such property, or
"(II) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

"(iv) while such property was held by the organization, the aggregate expenditures on improvements and development activities included in the basis of the property are (or were) not in excess of 20 percent of the net selling price of such property.

"(B) Property is described in this subparagraph if it is real property which–

"(i) was held by the financial institution at the time it entered into conservatorship or receivership, or

"(ii) was foreclosure property (as defined in section 514(c)(9)(H)(v)) which secured indebtedness held by the financial institution at such time.

For purposes of this subparagraph, real property includes an interest in a mortgage."

(b) Effective Date.–The amendment made by subsection (a) shall apply to property acquired on or after January 1, 1994.

SEC. 13148. EXCLUSION FROM UNRELATED BUSINESS TAX OF CERTAIN FEES AND OPTION PREMIUMS.

(a) Loan Commitment Fees.–Paragraph (1) of section 512(b) (relating to modifications) is amended by inserting "amounts received or accrued as consideration for entering into agreements to make loans," before "and annuities".

(b) Option Premiums.–The second sentence of section 512(b)(5) is amended–

(1) by striking "all gains on" and inserting "all gains or losses recognized, in connection with the organization's investment activities, from",

***139** (2) by striking ", written by the organization in connection with its investment activities," and

(3) by inserting "or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities" before the period.

(c) Effective Date.–The amendments made by this section shall apply to amounts received on or after January 1, 1994.

SEC. 13149. TREATMENT OF PENSION FUND INVESTMENTS IN REAL ESTATE INVESTMENT TRUSTS.

(a) General Rule.–Subsection (h) of section 856 (relating to closely held determinations) is amended by adding at the end thereof the following new paragraph:

"(3) Treatment of trusts described in section 401(a).–

"(A) Look-thru treatment.–

"(i) In general.–Except as provided in clause (ii), in determining whether the stock ownership requirement of section 542(a)(2) is met for purposes of paragraph (1)(A), any stock held by a qualified trust shall be treated as held directly by its beneficiaries in proportion to their actuarial interests in such trust and shall not be treated as held by such trust.

"(ii) Certain related trusts not eligible.–Clause (i) shall not apply to any qualified trust if one or more disqualified persons (as defined in section 4975(e)(2), without regard to subparagraphs (B) and (I) thereof) with respect to such qualified trust hold in the aggregate 5 percent or more in value of the interests in the real estate investment trust and such real estate investment trust has accumulated earnings and profits attributable to any period for which it did not qualify as a real estate investment trust.

"(B) Coordination with personal holding company rules.–If any entity qualifies as a real estate investment trust for any taxable year by reason of subparagraph (A), such entity shall not be treated as a personal holding company for such taxable year for purposes of part II of subchapter G of this chapter.

"(C) Treatment for purposes of unrelated business tax.–If any qualified trust holds more than 10 percent (by value) of the interests in any pension-held REIT at any time during a taxable year, the trust shall be treated as having for such taxable year gross income from an unrelated trade or business in an amount which bears the same ratio to the aggregate dividends paid (or treated as paid) by the REIT to the trust for the taxable year of the REIT with or within which the taxable year of the trust ends (the 'REIT year') as–

"(i) the gross income (less direct expenses related thereto) of the REIT for the REIT year from unrelated trades or businesses (determined as if the REIT were a qualified trust), bears to

***140** "(ii) the gross income (less direct expenses related thereto) of the REIT for the REIT year.

This subparagraph shall apply only if the ratio determined under the preceding sentence is at least 5 percent.

"(D) Pension-held reit.–The purposes of subparagraph (C)–

"(i) In general.–A real estate investment trust is a pension-held REIT if such trust would not have qualified as a real estate investment trust but for the provisions of this paragraph and if such trust is predominantly held by qualified trusts.

"(ii) Predominantly held.–For purposes of clause (i), a real estate investment trust is predominantly held by qualified trusts if–

"(I) at least 1 qualified trust holds more than 25 percent (by value) of the interests in such real estate investment trust, or

"(II) 1 or more qualified trusts (each of whom own more than 10 percent by value of the interests in such real estate investment trust) hold in the aggregate more than 50 percent (by value) of the interests in such real estate investment trust.

"(E) Qualified trust.–For purposes of this paragraph, the term 'qualified trust' means any trust described in section 401(a) and exempt from tax under section 501(a)."

(b) Effective Date.–The amendment made by this section shall apply to taxable years beginning after December 31, 1993.

Subpart D–Discharge of Indebtedness

SEC. 13150. EXCLUSION FROM GROSS INCOME FOR INCOME FROM DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.

(a) In General.–Paragraph (1) of section 108(a) (relating to income from discharge of indebtedness) is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by adding at the end the following new subparagraph:

"(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness."

(b) Qualified Real Property Business Indebtedness.–Section 108 is amended by inserting after subsection (b) the following new subsection:

"(c) Treatment of Discharge of Qualified Real Property Business Indebtedness.–

"(1) Basis reduction.–

"(A) In general.–The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

"(B) Cross-reference.–For provisions making the reduction described in subparagraph (A), see section 1017.

***141** "(2) Limitations.–

"(A) Indebtedness in excess of value.–The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of–

"(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over
"(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

"(B) Overall limitation.–The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

"(3) Qualified real property business indebtedness.–The term 'qualified real property business indebtedness' means indebtedness which–

"(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

"(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

"(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

"(4) Qualified acquisition indebtedness.–For purposes of paragraph (3)(B), the term 'qualified acquisition indebtedness' means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

"(5) Regulations.–The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means."

(c) Technical Amendments.–

(1) Subparagraph (A) of section 108(a)(2) is amended by striking "and (C)" and inserting ", (C), and (D)".

(2) Subparagraph (B) of section 108(a)(2) is amended to read as follows:

"(B) Insolvency exclusion takes precedence over qualified farm exclusion and qualified real property business exclusion.–Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent."

***142** (3) Subsection (d) of section 108 is amended–

(A) by striking "subsections (a), (b), and (g)" in paragraphs (6) and (7)(A) and inserting "subsections (a), (b), (c), and (g)",

(B) by striking "Subsections (a), (b), and (g)" in the subsection heading and inserting "Certain Provisions", and

(C) by striking "Subsections (a), (b), and (g)" in the headings of paragraphs (6) and (7)(A) and inserting "Certain provisions".

(4) Subparagraph (B) of section 108(d)(7) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge."

(5) Subparagraph (A) of section 108(d)(9) is amended by inserting "or under paragraph (3)(B) of subsection (c)" after "subsection (b)".

(6) Paragraph (2) of section 1017(a) is amended by striking "or (b)(5)" and inserting ", (b)(5), or (c)(1)".

(7) Subparagraph (A) of section 1017(b)(3) is amended by inserting "or (c)(1)" after "subsection (b)(5)".

(8) Section 1017(b)(3) is amended by adding at the end the following new subparagraph:

"(F) Special rules for qualified real property business indebtedness.–In the case of any amount which under section 108(c)(1) is to be applied to reduce basis–

"(i) depreciable property shall only include depreciable real property for purposes of subparagraphs (A) and (C),
"(ii) subparagraph (E) shall not apply, and
"(iii) in the case of property taken into account under section 108(c)(2)(B), the reduction with respect to such property shall be made as of the time immediately before disposition if earlier than the time under subsection (a)."

(9) Paragraph (1) of section 703(b) is amended by striking "subsection (b)(5)" and inserting "subsection (b)(5) or (c)(3)".

(d) Effective Date.–The amendments made by this section shall apply to discharges after December 31, 1992, in taxable years ending after such date.

Subpart E–Increase in Recovery Period for Nonresidential Real Property

SEC. 13151. INCREASE IN RECOVERY PERIOD FOR NONRESIDENTIAL REAL PROPERTY.

(a) General Rule.–Paragraph (1) of section 168(c) (relating to applicable recovery period) is amended by striking the item relating to nonresidential real property and inserting the following:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(b) Effective Date.–

***143** (1) In general.–Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to property placed in service by the taxpayer on or after May 13, 1993.

(2) Exception.–The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1994, if–

(A) the taxpayer or a qualified person entered into a binding written contract to purchase or construct such property before May 13, 1993, or

(B) the construction of such property was commenced by or for the taxpayer or a qualified person before May 13, 1993.

For purposes of this paragraph, the term "qualified person" means any person who transfers his rights in such a contract or

such property to the taxpayer but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

PART V–LUXURY TAX

SEC. 13161. REPEAL OF LUXURY EXCISE TAXES OTHER THAN ON PASSENGER VEHICLES.

(a) In General.–Subchapter A of chapter 31 (relating to retail excise taxes) is amended to read as follows:

"Subchapter A–Luxury Passenger Automobiles

"Sec. 4001. Imposition of tax.

"Sec. 4002. 1st retail sale; uses, etc. treated as sales; determination of price.

"Sec. 4003. Special rules.

"SEC. 4001. IMPOSITION OF TAX.

"(a) Imposition of Tax.–There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $30,000.

"(b) Passenger Vehicle.–

"(1) In general.–For purposes of this subchapter, the term 'passenger vehicle' means any 4-wheeled vehicle–

"(A) which is manufactured primarily for use on public streets, roads, and highways, and

"(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

"(2) Special rules.–

"(A) Trucks and vans.–In the case of a truck or van, paragraph (1)(B) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'.

"(B) Limousines.–In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

"(c) Exceptions for Taxicabs, Etc.–The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

***144** "(d) Exemption for Law Enforcement Uses, Etc.–No tax shall be imposed by this section on the sale of any passenger vehicle–

"(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

"(2) to any person for use exclusively in providing emergency medical services.

"(e) Inflation Adjustment.–

"(1) In general.–If, for any calendar year, the excess (if any) of–

"(A) $30,000, increased by the cost-of-living adjustment for the calendar year, over

"(B) the dollar amount in effect under subsection (a) for the calendar year,

is equal to or greater than $2,000, then the $30,000 amount in subsection (a) and section 4003(a) (as previously adjusted under this subsection) for any subsequent calendar year shall be increased by the amount of such excess rounded to the next lowest multiple of $2,000.

"(2) Cost-of-living adjustment.–For purposes of paragraph (1), the cost-of-living adjustment for any calendar year shall be the cost-of-living adjustment under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 1990' for 'calendar year 1992' in subparagraph (B) thereof.

"(f) Termination.–The tax imposed by this section shall not apply to any sale or use after December 31, 1999.

"SEC. 4002. 1ST RETAIL SALE; USES, ETC. TREATED AS SALES; DETERMINATION OF PRICE.

"(a) 1st Retail Sale.–For purposes of this subchapter, the term '1st retail sale' means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

"(b) Use Treated as Sale.–

"(1) In general.–If any person uses a passenger vehicle (including any use after importation) before the 1st retail sale of such vehicle, then such person shall be liable for tax under this subchapter in the same manner as if such vehicle were sold at retail by him.

"(2) Exemption for further manufacture.–Paragraph (1) shall not apply to use of a vehicle as material in the manufacture or production of, or as a component part of, another vehicle taxable under this subchapter to be manufactured or produced by him.

"(3) Exemption for demonstration use.–Paragraph (1) shall not apply to any use of a passenger vehicle as a demonstrator.

"(4) Exception for use after importation of certain vehicles.–Paragraph (1) shall not apply to the use of a vehicle after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the vehicle occurred before January 1, 1991, outside the United States.

"(5) Computation of tax.–In the case of any person made liable for tax by paragraph (1), the tax shall be computed on ***145** the price at which similar vehicles are sold at retail in the ordinary course of trade, as determined by the Secretary.

"(c) Leases Considered as Sales.–For purposes of this subchapter–

"(1) In general.–Except as otherwise provided in this subsection, the lease of a vehicle (including any renewal or any extension of a lease or any subsequent lease of such vehicle) by any person shall be considered a sale of such vehicle at retail.

"(2) Special rules for long-term leases.–

"(A) Tax not imposed on sale for leasing in a qualified lease.–The sale of a passenger vehicle to a person engaged in a passenger vehicle leasing or rental trade or business for leasing by such person in a long-term lease shall not be treated as the 1st retail sale of such vehicle.

"(B) Long-term lease.–For purposes of subparagraph (A), the term 'long-term lease' means any long-term lease (as defined in section 4052).

"(C) Special rules.–In the case of a long-term lease of a vehicle which is treated as the 1st retail sale of such vehicle–

"(i) Determination of price.–The tax under this subchapter shall be computed on the lowest price for which the vehicle is sold by retailers in the ordinary course of trade.
"(ii) Payment of tax.–Rules similar to the rules of section 4217(e)(2) shall apply.
"(iii) No tax where exempt use by lessee.–No tax shall be imposed on any lease payment under a long-term lease if the lessee's use of the vehicle under such lease is an exempt use (as defined in section 4003(b)) of such vehicle.

"(d) Determination of Price.–

"(1) In general.–In determining price for purposes of this subchapter–

"(A) there shall be included any charge incident to placing the passenger vehicle in condition ready for use,

"(B) there shall be excluded–

"(i) the amount of the tax imposed by this subchapter,
"(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and
"(iii) the value of any component of such passenger vehicle if–
"(I) such component is furnished by the 1st user of such passenger vehicle, and
"(II) such component has been used before such furnishing, and

"(C) the price shall be determined without regard to any trade-in.

***146** "(2) Other rules.–Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

"SEC. 4003. SPECIAL RULES.

"(a) Separate Purchase of Vehicle and Parts and Accessories Therefor.–Under regulations prescribed by the Secretary–

"(1) In general.–Except as provided in paragraph (2), if–

"(A) the owner, lessee, or operator of any passenger vehicle installs (or causes to be installed) any part or accessory on such vehicle, and

"(B) such installation is not later than the date 6 months after the date the vehicle was 1st placed in service,

then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

"(2) Limitation.–The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of–

"(A) the sum of–

"(i) the price of such part or accessory and its installation,
"(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus
"(iii) the price for which the passenger vehicle was sold, over
"(B) $30,000.

"(3) Exceptions.–Paragraph (1) shall not apply if–

"(A) the part or accessory installed is a replacement part or accessory,

"(B) the part or accessory is installed to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or

"(C) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the vehicle does not exceed $200 (or such other amount or amounts as the Secretary may by regulation prescribe).

The price of any part or accessory (and its installation) to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2)(A).

"(4) Installers secondarily liable for tax.–The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

"(b) Imposition of Tax on Sales, Etc., Within 2 Years of Vehicles Purchased Tax-Free.–

"(1) In general.–If–

"(A) no tax was imposed under this subchapter on the 1st retail sale of any passenger vehicle by reason of its exempt use, and

***147** "(B) within 2 years after the date of such 1st retail sale, such vehicle is resold by the purchaser or such purchaser makes a substantial nonexempt use of such vehicle,

then such sale or use of such vehicle by such purchaser shall be treated as the 1st retail sale of such vehicle for a price equal to its fair market value at the time of such sale or use.

"(2) Exempt use.–For purposes of this subsection, the term 'exempt use' means any use of a vehicle if the 1st retail sale of such vehicle is not taxable under this subchapter by reason of such use.

"(c) Parts and Accessories Sold With Taxable Passenger Vehicle.–Parts and accessories sold on, in connection with, or with the sale of any passenger vehicle shall be treated as part of the vehicle.

"(d) Partial Payments, Etc.–In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c), rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter."

(b) Technical Amendments.–

(1) Subsection (c) of section 4221 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4001(d)".

(2) Subsection (d) of section 4222 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4001(d)".

(3) The table of subchapters for chapter 31 is amended by striking the item relating to subchapter A and inserting the following:

"Subchapter A. Luxury passenger vehicles."

(c) Effective Date.–The amendments made by this section shall take effect on January 1, 1993, except that the provisions of section 4001(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall take effect on the date of the enactment of this Act.

SEC. 13162. EXEMPTION FROM LUXURY EXCISE TAX FOR CERTAIN EQUIPMENT INSTALLED ON PASSENGER VEHICLES FOR USE BY DISABLED INDIVIDUALS.

(a) In General.–Paragraph (3) of section 4004(b) (relating to separate purchase of article and parts and accessories therefor), as in effect on the day before the date of the enactment of this Act, is amended–

(1) by striking "or" at the end of subparagraph (A),

(2) by redesignating subparagraph (B) as subparagraph (C),

(3) by inserting after subparagraph (A) the following new subparagraph:

"(B) the part or accessory is installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or", and

(4) by inserting after subparagraph (C) the following flush sentence:

"The price of any part or accessory (and its installation) to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2)(A)."

***148** (b) Effective Date.–The amendments made by this section shall take effect as if included in the amendments made by section 11221(a) of the Omnibus Budget Reconciliation Act of 1990.

(c) Period for Filing Claims.–If refund or credit of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

SEC. 13163. TAX ON DIESEL FUEL USED IN NONCOMMERCIAL BOATS.

(a) General Rule.–

(1) Paragraph (2) of section 4092(a) (defining diesel fuel) is amended by striking "or a diesel-powered train" and inserting ", a diesel-powered train, or a diesel-powered boat".

(2) Paragraph (1) of section 4041(a) is amended–

(A) by striking "diesel-powered highway vehicle" each place it appears and inserting "diesel-powered highway vehicle or diesel-powered boat", and

(B) by striking "such vehicle" and inserting "such vehicle or boat".

(3) Subparagraph (B) of section 4092(b)(1) is amended by striking "commercial and noncommercial vessels" each place it appears and inserting "vessels for use in an off-highway business use (as defined in section 6421(e)(2)(B))".

(b) Exemption for Use in Fisheries or Commercial Transportation.–Subparagraph (B) of section 6421(e)(2) is amended to read as follows:

"(B) Uses in boats.–

"(i) In general.–Except as otherwise provided in this subparagraph, the term 'off-highway business use' does not include any use in a motorboat.
"(ii) Fisheries and whaling.–The term 'off-highway business use' shall include any use in a vessel employed in the fisheries or in the whaling business.
"(iii) Exception for diesel fuel.–The term 'off-highway business use' shall include the use of diesel fuel in a boat in the active conduct of–
"(I) a trade or business of commercial fishing or transporting persons or property for compensation or hire, and
"(II) except as provided in clause (iv), any other trade or business.

"(iv) Noncommercial boats.–In the case of a boat used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement, or recreation, clause (iii)(II) shall not apply to–

"(I) the taxes under sections 4041(a)(1) and 4081 for the period after December 31, 1993, and before January 1, 2000, and

***149** "(II) so much of the tax under sections 4041(a)(1) and 4081 as does not exceed 4.3 cents per gallon for the period after December 31, 1999."

(c) Retention of Taxes in General Fund.–Subsection (b) of section 9508 (relating to transfers to Leaking Underground Storage Tank Trust Fund) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4081 on diesel fuel sold for use or used as fuel in a diesel-powered boat."

(d) Effective Date.–The amendments made by this section shall take effect on January 1, 1994.

PART VI–OTHER CHANGES

SEC. 13171. ALTERNATIVE MINIMUM TAX TREATMENT OF CONTRIBUTIONS OF APPRECIATED PROPERTY.

(a) Repeal of Tax Preference.–Subsection (a) of section 57 (as amended by section 13113) is amended by striking paragraph (6) (relating to appreciated property charitable deduction) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) Effect on Adjusted Current Earnings.–Paragraph (4) of section 56(g) is amended by adding at the end thereof the following new subparagraph:

"(J) Treatment of charitable contributions.–Notwithstanding subparagraphs (B) and (C), no adjustment related to the earnings and profits effects of any charitable contribution shall be made in computing adjusted current earnings."

(c) Conforming Amendment.–Subclause (II) of section 53(d)(1)(B)(ii) (as amended by section 13113) is amended by striking "(5), (6), and (8)" and inserting "(5), and (7)".

(d) Effective Date.–The amendments made by this section shall apply to contributions made after June 30, 1992, except that in the case of any contribution of capital gain property which is not tangible personal property, such amendments shall apply only if the contribution is made after December 31, 1992.

SEC. 13172. SUBSTANTIATION REQUIREMENT FOR DEDUCTION OF CERTAIN CHARITABLE CONTRIBUTIONS.

(a) Substantiation Requirement.–Section 170(f) (providing special rules relating to the deduction of charitable contributions and gifts) is amended by adding at the end the following new paragraph:

"(8) Substantiation requirement for certain contributions.–

"(A) General rule.–No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

***150** "(B) Content of acknowledgement.–An acknowledgement meets the requirements of this subparagraph if it includes the following information:

"(i) The amount of cash and a description (but not value) of any property other than cash contributed.

"(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

"(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term 'intangible religious benefit' means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

"(C) Contemporaneous.–For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of–

"(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

"(ii) the due date (including extensions) for filing such return.

"(D) Substantiation not required for contributions reported by the donee organization.–Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

"(E) Regulations.–The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases."

(b) Effective Date.–The provisions of this section shall apply to contributions made on or after January 1, 1994.

SEC. 13173. DISCLOSURE RELATED TO QUID PRO QUO CONTRIBUTIONS.

(a) Disclosure Requirement.–Subchapter B of chapter 61 (relating to information and returns) is amended by redesignating section 6115 as section 6116 and by inserting after section 6114 the following new section:

"SEC. 6115. DISCLOSURE RELATED TO QUID PRO QUO CONTRIBUTIONS.

"(a) Disclosure Requirement.–If an organization described in section 170(c) (other than paragraph (1) thereof) receives a quid pro quo contribution in excess of $75, the organization shall, in connection with the solicitation or receipt of the contribution, provide a written statement which–

***151** "(1) informs the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the amount of any money and the value of any property other than money contributed by the donor over the value of the goods or services provided by the organization, and

"(2) provides the donor with a good faith estimate of the value of such goods or services.

"(b) Quid Pro Quo Contribution.–For purposes of this section, the term 'quid pro quo contribution' means a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization. A quid pro quo contribution does not include any payment made to an organization, organized exclusively for religious purposes, in return for which the taxpayer receives solely an intangible religious benefit that generally is not sold in a commercial transaction outside the donative context."

(b) Penalty for Failure To Disclose.–Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6713 the following new section:

"SEC. 6714. FAILURE TO MEET DISCLOSURE REQUIREMENTS APPLICABLE TO QUID PRO QUO CONTRIBUTIONS.

"(a) Imposition of Penalty.–If an organization fails to meet the disclosure requirement of section 6115 with respect to a quid pro quo contribution, such organization shall pay a penalty of $10 for each contribution in respect of which the

organization fails to make the required disclosure, except that the total penalty imposed by this subsection with respect to a particular fundraising event or mailing shall not exceed $5,000.

"(b) Reasonable Cause Exception.–No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause."

(c) Clerical Amendments.–

(1) The table for subchapter B of chapter 61 is amended by striking the item relating to section 6115 and inserting the following new items:

"Sec. 6115. Disclosure related to quid pro quo contributions.

"Sec. 6116. Cross reference."

(2) The table for part I of subchapter B of chapter 68 is amended by inserting after the item for section 6713 the following new item:

"Sec. 6714. Failure to meet disclosure requirements applicable to quid pro quo contributions."

(d) Effective Date.–The provisions of this section shall apply to quid pro quo contributions made on or after January 1, 1994.

SEC. 13174. TEMPORARY EXTENSION OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) In General.–

(1) Extension.–Paragraph (6) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(2) Conforming amendment.–Paragraph (2) of section 110(a) of the Tax Extension Act of 1991 is hereby repealed.

***152** (3) Effective date.–The amendments made by this subsection shall apply to taxable years ending after June 30, 1992.

(b) Determination of Eligibility for Employer-Sponsored Health Plan.–

(1) In general.–Paragraph (2)(B) of section 162(l) is amended to read as follows:

"(B) Other coverage.–Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer."

(2) Effective date.–The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1992.

SUBCHAPTER B–REVENUE INCREASES

PART I–PROVISIONS AFFECTING INDIVIDUALS

Subpart A–Rate Increases

SEC. 13201. INCREASE IN TOP MARGINAL RATE UNDER SECTION 1.

(a) General Rule.–Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

"(a) Married Individuals Filing Joint Returns and Surviving Spouses.–There is hereby imposed on the taxable income of–

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

"(b) Heads of Households.–There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

"(c) Unmarried Individuals (Other Than Surviving Spouses and Heads of Households).–There is hereby imposed on the taxable income of every individual (other than a surviving ***153** spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

"(d) Married Individuals Filing Separate Returns.–There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

"(e) Estates and Trusts.–There is hereby imposed on the taxable income of–

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(b) Conforming Amendments.–

(1) Section 531 is amended by striking "28 percent" and inserting "36 percent".

(2) Section 541 is amended by striking "28 percent" and inserting "36 percent".

(3)(A) Subsection (f) of section 1 is amended–

(i) by striking "1990" in paragraph (1) and inserting "1993", and

(ii) by striking "1989" in paragraph (3)(B) and inserting "1992".

(B) Subsection (f) of section 1 is amended by adding at the end thereof the following new paragraph:

"(7) Special rule for certain brackets.–

"(A) Calendar year 1994.–In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 ***154** percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

"(B) Later calendar years.–In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting '1993' for '1992'."

(C) Subparagraph (C) of section 41(e)(5) is amended by striking "1989" each place it appears and inserting "1992".

(D) Subparagraph (B) of section 63(c)(4) is amended by striking "1989" and inserting "1992".

(E) Subparagraph (B) of section 68(b)(2) is amended by striking "1989" and inserting "1992".

(F) Subparagraph (B) of section 132(f)(6) is amended by striking ", determined by substituting" and all that follows down through the period at the end thereof and inserting a period.

(G) Subparagraphs (A)(ii) and (B)(ii) of section 151(d)(4) are each amended by striking "1989" and inserting "1992".

(H) Clause (ii) of section 513(h)(2)(C) is amended by striking "1989" and inserting "1992".

(4) Paragraph (3) of section 453A(c) is amended by adding at the end thereof the following new sentence:

"For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) or 1201 (whichever is appropriate) shall be taken into account."

(c) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

(d) Election to Pay Additional 1993 Taxes in Installments.–

(1) In general.–At the election of the taxpayer, the additional 1993 taxes may be paid in 3 equal installments.

(2) Dates for paying installments.–In the case of any tax payable in installments by reason of paragraph (1)–

(A) the first installment shall be paid on or before the due date for the taxpayer's taxable year beginning in calendar year 1993,

(B) the second installment shall be paid on or before the date 1 year after the date determined under subparagraph (A), and

(C) the third installment shall be paid on or before the date 2 years after the date determined under subparagraph (A).

For purposes of the preceding sentence, the term "due date" means the date prescribed for filing the taxpayer's return determined without regard to extensions.

(3) Extension without interest.–For purposes of section 6601 of the Internal Revenue Code of 1986, the date prescribed for the payment of any tax payable in installments under paragraph***155** (1) shall be determined with regard to the extension under paragraph (1).

(4) Additional 1993 taxes.–

(A) In general.–For purposes of this subsection, the term "additional 1993 taxes" means the excess of–

(i) the taxpayer's net chapter 1 liability as shown on the taxpayer's return for the taxpayer's taxable year beginning in calendar year 1993, over

(ii) the amount which would have been the taxpayer's net chapter 1 liability for such taxable year if such liability had been determined using the rates which would have been in effect under section 1 of the Internal Revenue Code of 1986 for taxable years beginning in calendar year 1993 but for the amendments made by this section and section 13202 and such liability had otherwise been determined on the basis of the amounts shown on the taxpayer's return.

(B) Net chapter 1 liability.–For purposes of subparagraph (A), the term "net chapter 1 liability" means the liability for tax under chapter 1 of the Internal Revenue Code of 1986 determined–

(i) after the application of any credit against such tax other than the credits under sections 31 and 34, and

(ii) before crediting any payment of estimated tax for the taxable year.

(5) Acceleration of payments.–If the taxpayer does not pay any installment under this section on or before the date prescribed for its payment or if the Secretary of the Treasury or his delegate believes that the collection of any amount payable in installments under this section is in jeopardy, the Secretary shall immediately terminate the extension under paragraph (1) and the whole of the unpaid tax shall be paid on notice and demand from the Secretary.

(6) Election on return.–An election under paragraph (1) shall be made on the taxpayer's return for the taxpayer's taxable year beginning in calendar year 1993.

(7) Exception for estates and trusts.–This subsection shall not apply in the case of an estate or trust.

SEC. 13202. SURTAX ON HIGH-INCOME TAXPAYERS.

(a) General Rule.–

(1) Subsection (a) of section 1 (as amended by section 13201) is amended by striking the last item in the table contained therein and inserting the following:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(2) Subsection (b) of section 1 (as so amended) is amended by striking the last item in the table contained therein and inserting the following:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

***156** (3) Subsection (c) of section 1 (as so amended) is amended by striking the last item in the table contained therein and inserting the following:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(4) Subsection (d) of section 1 (as so amended) is amended by striking the last item in the table contained therein and inserting the following:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(5) Subsection (e) of section 1 (as so amended) is amended by striking the last item in the table contained therein and inserting the following:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(b) Technical Amendment.–Sections 531 and 541 (as amended by section 13201) are each amended by striking "36 percent" and inserting "39.6 percent".

(c) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 13203. MODIFICATIONS TO ALTERNATIVE MINIMUM TAX RATES AND EXEMPTION AMOUNTS.

(a) Increase in Rate.–Paragraph (1) of section 55(b) (defining tentative minimum tax) is amended to read as follows:

"(1) Amount of tentative tax.–

"(A) Noncorporate taxpayers.–

"(i) In general.–In the case of a taxpayer other than a corporation, the tentative minimum tax for the taxable year is the sum of–
"(I) 26 percent of so much of the taxable excess as does not exceed $175,000, plus
"(II) 28 percent of so much of the taxable excess as exceeds $175,000.
The amount determined under the preceding sentence shall be reduced by the alternative minimum tax foreign tax credit for the taxable year.
"(ii) Taxable excess.–For purposes of clause (i), the term 'taxable excess' means so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.
"(iii) Married individual filing separate return.–In the case of a married individual filing a separate return, clause (i) shall be applied by substituting '$87,500' for '$175,000' each place it appears. For ***157** purposes of the preceding sentence, marital status shall be determined under section 7703.
"(B) Corporations.–In the case of a corporation, the tentative minimum tax for the taxable year is–

"(i) 20 percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by
"(ii) the alternative minimum tax foreign tax credit for the taxable year."
(b) Increase in Exemption Amounts.–Paragraph (1) of section 55(d) (defining exemption amount) is amended–

(1) by striking "$40,000" in subparagraph (A) and inserting "$45,000",

(2) by striking "$30,000" in subparagraph (B) and inserting "$33,750", and

(3) by striking "$20,000" in subparagraph (C) and inserting "$22,500".

(c) Conforming Amendments.–

(1) The last sentence of section 55(d)(3) is amended by striking "$155,000 or (ii) $20,000" and inserting "$165,000 or (ii) $22,500".

(2)(A) Subparagraph (A) of section 897(a)(2) is amended by striking "the amount determined under section 55(b)(1)(A) shall not be less than 21 percent of" and inserting "the taxable excess for purposes of section 55(b)(1)(A) shall not be less than".

(B) The heading for paragraph (2) of section 897(a) is amended by striking "21-percent".

(d) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 13204. OVERALL LIMITATION ON ITEMIZED DEDUCTIONS FOR HIGH-INCOME TAXPAYERS MADE PERMANENT.

Subsection (f) of section 68 (relating to overall limitation on itemized deductions) is hereby repealed.

SEC. 13205. PHASEOUT OF PERSONAL EXEMPTION OF HIGH-INCOME TAXPAYERS MADE PERMANENT.

Section 151(d)(3) (relating to phaseout of personal exemption) is amended by striking subparagraph (E).

SEC. 13206. PROVISIONS TO PREVENT CONVERSION OF ORDINARY INCOME TO CAPITAL GAIN.

(a) Interest Embedded in Financial Transactions.–

(1) In general.–Part IV of subchapter P of chapter 1 (relating to special rules for determining capital gains and losses) is amended by adding at the end the following new section:

"SEC. 1258. RECHARACTERIZATION OF GAIN FROM CERTAIN FINANCIAL TRANSACTIONS.

"(a) General Rule.–In the case of any gain–

"(1) which (but for this section) would be treated as gain from the sale or exchange of a capital asset, and

"(2) which is recognized on the disposition or other termination of any position which was held as part of a conversion transaction,

such gain (to the extent such gain does not exceed the applicable imputed income amount) shall be treated as ordinary income.

***158** "(b) Applicable Imputed Income Amount.–For purposes of subsection (a), the term 'applicable imputed income amount' means, with respect to any disposition or other termination referred to in subsection (a), an amount equal to–

"(1) the amount of interest which would have accrued on the taxpayer's net investment in the conversion transaction for the period ending on the date of such disposition or other termination (or, if earlier, the date on which the requirements of subsection (c) ceased to be satisfied) at a rate equal to 120 percent of the applicable rate, reduced by

"(2) the amount treated as ordinary income under subsection (a) with respect to any prior disposition or other termination of a position which was held as a part of such transaction.

The Secretary shall by regulations provide for such reductions in the applicable imputed income amount as may be appropriate by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise.

"(c) Conversion Transaction.–For purposes of this section, the term 'conversion transaction' means any transaction–

"(1) substantially all of the taxpayer's expected return from which is attributable to the time value of the taxpayer's net investment in such transaction, and

"(2) which is–

"(A) the holding of any property (whether or not actively traded), and the entering into a contract to sell such property (or substantially identical property) at a price determined in accordance with such contract, but only if such property was acquired and such contract was entered into on a substantially contemporaneous basis,

"(B) an applicable straddle,

"(C) any other transaction which is marketed or sold as producing capital gains from a transaction described in paragraph (1), or

"(D) any other transaction specified in regulations prescribed by the Secretary.

"(d) Definitions and Special Rules.–For purposes of this section–

"(1) Applicable straddle.–The term 'applicable straddle' means any straddle (within the meaning of section 1092(c)); except that the term 'personal property' shall include stock.

"(2) Applicable rate.–The term 'applicable rate' means–

"(A) the applicable Federal rate determined under section 1274(d) (compounded semiannually) as if the conversion transaction were a debt instrument, or

"(B) if the term of the conversion transaction is indefinite, the Federal short-term rates in effect under section 6621(b) during the period of the conversion transaction (compounded daily).

"(3) Treatment of built-in losses.–

"(A) In general.–If any position with a built-in loss becomes part of a conversion transaction–

"(i) for purposes of applying this subtitle to such position for periods after such position becomes part of ***159** such transaction, such position shall be taken into account at its fair market value as of the time it became part of such transaction, except that
"(ii) upon the disposition or other termination of such position in a transaction in which gain or loss is recognized, such built-in loss shall be recognized and shall have a character determined without regard to this section.

"(B) Built-in loss.–For purposes of subparagraph (A), the term 'built-in loss' means the loss (if any) which would have been realized if the position had been disposed of or otherwise terminated at its fair market value as of the time such position became part of the conversion transaction.

"(4) Position taken into account at fair market value.–In determining the taxpayer's net investment in any conversion transaction, there shall be included the fair market value of any position which becomes part of such transaction (determined as of the time such position became part of such transaction).

"(5) Special rule for options dealers and commodities traders.–

"(A) In general.–Subsection (a) shall not apply to transactions –

"(i) of an options dealer in the normal course of the dealer's trade or business of dealing in options, or
"(ii) of a commodities trader in the normal course of the trader's trade or business of trading section 1256 contracts.

"(B) Definitions.–For purposes of this paragraph–

"(i) Options dealer.–The term 'options dealer' has the meaning given such term by section 1256(g)(8).
"(ii) Commodities trader.–The term 'commodities trader' means any person who is a member (or, except as otherwise provided in regulations, is entitled to trade as a member) of a domestic board of trade which is designated as a contract market by the Commodity Futures Trading Commission.

"(C) Limited partners and limited entrepreneurs.–In the case of any gain from a transaction recognized by an entity which is allocable to a limited partner or limited entrepreneur (within the meaning of section 464(e)(2)), subparagraph (A) shall not apply if–

"(i) substantially all of the limited partner's (or limited entrepreneur's) expected return from the entity is attributable to the time value of the partner's (or entrepreneur's) net investment in such entity,
"(ii) the transaction (or the interest in the entity) was marketed or sold as producing capital gains treatment from a transaction described in subsection (c)(1), or
"(iii) the transaction (or the interest in the entity) is a transaction (or interest) specified in regulations prescribed by the Secretary."

***160** (2) Clerical amendment.–The table of sections for part IV of subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1258. Recharacterization of gain from certain financial transactions."

(3) Effective date.–The amendments made by this section shall apply to conversion transactions entered into after April 30, 1993.

(b) Repeal of Certain Exceptions to Market Discount Rules.–

(1) Market discount bonds issued on or before july 18, 1984.–The following provisions are hereby repealed:

(A) Section 1276(e).

(B) Section 1277(d).

(2) Tax-exempt obligations.–

(A) In general.–Paragraph (1) of section 1278(a) (defining market discount bond) is amended–

(i) by striking clause (ii) of subparagraph (B) and redesignating clauses (iii) and (iv) of such subparagraph as clauses (ii) and (iii), respectively,
(ii) by redesignating subparagraph (C) as subparagraph (D), and
(iii) by inserting after subparagraph (B) the following new subparagraph:
"(C) Section 1277 not applicable to tax-exempt obligations.–For purposes of section 1277, the term 'market discount bond' shall not include any tax-exempt obligation (as defined in section 1275(a)(3))."

(B) Conforming amendments.–

(i) Sections 1276(a)(4) and 1278(b)(1) are each amended by striking "sections 871(a)" and inserting "sections 103, 871(a),".
(ii) Subparagraph (B) of section 1278(a)(4) is amended by inserting before the period at the end thereof the following: "or, in the case of a tax-exempt obligation, the aggregate amount of the original issue discount which accrued in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof) during periods before the acquisition of the bond by the taxpayer".
(3) Effective date.–The amendments made by this section shall apply to obligations purchased (within the meaning of section 1272(d)(1) of the Internal Revenue Code of 1986) after April 30, 1993.

(c) Treatment of Stripped Preferred Stock.–

(1) In general.–Section 305 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Treatment of Purchaser of Stripped Preferred Stock.–

"(1) In general.–If any person purchases after April 30, 1993, any stripped preferred stock, then such person, while holding such stock, shall include in gross income amounts equal to the amounts which would have been so includible if ***161** such stripped preferred stock were a bond issued on the purchase date and having original issue discount equal to the excess, if any, of–

"(A) the redemption price for such stock, over

"(B) the price at which such person purchased such stock.

The preceding sentence shall also apply in the case of any person whose basis in such stock is determined by reference to the basis in the hands of such purchaser.

"(2) Basis adjustments.–Appropriate adjustments to basis shall be made for amounts includible in gross income under paragraph (1).

"(3) Tax treatment of person stripping stock.–If any person strips the rights to 1 or more dividends from any stock described in paragraph (5)(B) and after April 30, 1993, disposes of such dividend rights, for purposes of paragraph (1),

such person shall be treated as having purchased the stripped preferred stock on the date of such disposition for a purchase price equal to such person's adjusted basis in such stripped preferred stock.

"(4) Amounts treated as ordinary income.–Any amount included in gross income under paragraph (1) shall be treated as ordinary income.

"(5) Stripped preferred stock.–For purposes of this subsection–

"(A) In general.–The term 'stripped preferred stock' means any stock described in subparagraph (B) if there has been a separation in ownership between such stock and any dividend on such stock which has not become payable.

"(B) Description of stock.–Stock is described in this subsection if such stock–

"(i) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, and
"(ii) has a fixed redemption price.
"(6) Purchase.–For purposes of this subsection, the term 'purchase' means–

"(A) any acquisition of stock, where

"(B) the basis of such stock is not determined in whole or in part by the reference to the adjusted basis of such stock in the hands of the person from whom acquired."

(2) Coordination with section 167(e).–Paragraph (2) of section 167(e) is amended to read as follows:

"(2) Coordination with other provisions.–

"(A) Section 273.–This subsection shall not apply to any term interest to which section 273 applies.

"(B) Section 305(e).–This subsection shall not apply to the holder of the dividend rights which were separated from any stripped preferred stock to which section 305(e)(1) applies."

(3) Effective date.–The amendments made by this subsection shall take effect on April 30, 1993.

(d) Treatment of Capital Gain Under Limitation on Investment Interest.–

***162** (1) In general.–Subparagraph (B) of section 163(d)(4) (defining investment income) is amended to read as follows:

"(B) Investment income.–The term 'investment income' means the sum of–

"(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I)),
"(ii) the excess (if any) of–
"(I) the net gain attributable to the disposition of property held for investment, over
"(II) the net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus
"(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I)) as the taxpayer elects to take into account under this clause."
(2) Coordination with special capital gains rate.–Subsection (h) of section 1 is amended by adding at the end the following new sentence:

"For purposes of the preceding sentence, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer elects to take into account as investment income for the taxable year under section 163(d)(4)(B)(iii)."

(3) Effective date.–The amendments made by this subsection shall apply to taxable years beginning after December 31,

1992.

(e) Treatment of Certain Appreciated Inventory.–

(1) In general.–Paragraph (1) of section 751(d) is amended to read as follows:

"(1) Substantial appreciation.–

"(A) In general.–Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property.

"(B) Certain property excluded.–For purposes of subparagraph (A), there shall be excluded any inventory property if a principal purpose for acquiring such property was to avoid the provisions of this section relating to inventory items."

(2) Effective date.–The amendment made by paragraph (1) shall apply to sales, exchanges, and distributions after April 30, 1993.

Subpart B–Other Provisions

SEC. 13207. REPEAL OF LIMITATION ON AMOUNT OF WAGES SUBJECT TO HEALTH INSURANCE EMPLOYMENT TAX.

(a) Hospital Insurance Tax.–

(1) Paragraph (1) of section 3121(a) (defining wages) is amended–

(A) by inserting "in the case of the taxes imposed by sections 3101(a) and 3111(a)" after "(1)",

***163** (B) by striking "applicable contribution base (as determined under subsection (x))" each place it appears and inserting "contribution and benefit base (as determined under section 230 of the Social Security Act)", and

(C) by striking "such applicable contribution base" and inserting "such contribution and benefit base".

(2) Section 3121 is amended by striking subsection (x).

(b) Self-Employment Tax.–

(1) Subsection (b) of section 1402 is amended–

(A) by striking "that part of the net" in paragraph (1) and inserting "in the case of the tax imposed by section 1401(a), that part of the net",

(B) by striking "applicable contribution base (as determined under subsection (k))" in paragraph (1) and inserting "contribution and benefit base (as determined under section 230 of the Social Security Act)",

(C) by inserting "and" after "section 3121(b),", and

(D) by striking "and (C) includes" and all that follows through "3111(b)".

(2) Section 1402 is amended by striking subsection (k).

(c) Railroad Retirement Tax.–

(1) Subparagraph (A) of section 3231(e)(2) is amended by adding at the end thereof the following new clause:

"(iii) Hospital insurance taxes.–Clause (i) shall not apply to–
"(I) so much of the rate applicable under section 3201(a) or 3221(a) as does not exceed the rate of tax in effect under section 3101(b), and
"(II) so much of the rate applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b)."

(2) Clause (i) of section 3231(e)(2)(B) is amended to read as follows:

"(i) Tier 1 taxes.–Except as provided in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year."

(d) Technical Amendments.–

(1) Paragraph (1) of section 6413(c) is amended by striking "section 3101 or section 3201" and inserting "section 3101(a) or section 3201(a) (to the extent of so much of the rate applicable under section 3201(a) as does not exceed the rate of tax in effect under section 3101(a))".

(2) Subparagraphs (B) and (C) of section 6413(c)(2) are each amended by striking "section 3101" each place it appears and inserting "section 3101(a)".

(3) Subsection (c) of section 6413 is amended by striking paragraph (3).

(4) Sections 3122 and 3125 are each amended by striking "applicable contribution base limitation" and inserting "contribution and benefit base limitation".

(e) Effective Date.–The amendments made by this section shall apply to 1994 and later calendar years.

***164** SEC. 13208. TOP ESTATE AND GIFT TAX RATES MADE PERMANENT.

(a) General Rule.–The table contained in paragraph (1) of section 2001(c) is amended by striking the last item and inserting the following new items:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(b) Conforming Amendments.–

(1) Subsection (c) of section 2001 is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) Paragraph (2) of section 2001(c), as redesignated by paragraph (1), is amended by striking "($18,340,000 in the case of decedents dying, and gifts made, after 1992)".

(3) The last sentence of section 2101(b) is amended by striking "section 2001(c)(3)" and inserting "section 2001(c)(2)".

(c) Effective Date.–The amendments made by this section shall apply in the case of decedents dying and gifts made after December 31, 1992.

SEC. 13209. REDUCTION IN DEDUCTIBLE PORTION OF BUSINESS MEALS AND ENTERTAINMENT.

(a) General Rule.–Paragraph (1) of section 274(n) (relating to only 80 percent of meal and entertainment expenses allowed as deduction) is amended by striking "80 percent" and inserting "50 percent".

(b) Conforming Amendment.–The subsection heading for section 274(n) is amended by striking "80" and inserting "50".

(c) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 13210. ELIMINATION OF DEDUCTION FOR CLUB MEMBERSHIP FEES.

(a) In General.–Subsection (a) of section 274 (relating to disallowance of certain entertainment, etc., expenses) is amended by adding at the end thereof the following new paragraph:

"(3) Denial of deduction for club dues.–Notwithstanding the preceding provisions of this subsection, no deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose."

(b) Exception for Employee Recreational Expenses Not To Apply.–Paragraph (4) of section 274(e) is amended by adding at the end thereof the following: "This paragraph shall not apply for purposes of subsection (a)(3)."

(c) Effective Date.–The amendments made by this section shall apply to amounts paid or incurred after December 31, 1993.

SEC. 13211. DISALLOWANCE OF DEDUCTION FOR CERTAIN EMPLOYEE REMUNERATION IN EXCESS OF $1,000,000.

(a) General Rule.–Section 162 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) Certain Excessive Employee Remuneration.–

***165** "(1) In general.–In the case of any publicly held corporation, no deduction shall be allowed under this chapter for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

"(2) Publicly held corporation.–For purposes of this subsection, the term 'publicly held corporation' means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

"(3) Covered employee.–For purposes of this subsection, the term 'covered employee' means any employee of the taxpayer if–

"(A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such a capacity, or

"(B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 4 highest compensated officers for the taxable year (other than the chief executive officer).

"(4) Applicable employee remuneration.–For purposes of this subsection–

"(A) In general.–Except as otherwise provided in this paragraph, the term 'applicable employee remuneration' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

"(B) Exception for remuneration payable on commission basis.–The term 'applicable employee remuneration' shall not include any remuneration payable on a commission basis solely on account of income generated directly by the individual performance of the individual to whom such remuneration is payable.

"(C) Other performance-based compensation.–The term 'applicable employee remuneration' shall not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if–

"(i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors,
"(ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before the payment of such remuneration, and
"(iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies ***166** that the performance goals and any other material terms were in fact satisfied.

"(D) Exception for existing binding contracts.–The term 'applicable employee remuneration' shall not include any remuneration payable under a written binding contract which was in effect on February 17, 1993, and which was not modified thereafter in any material respect before such remuneration is paid.

"(E) Remuneration.–For purposes of this paragraph, the term 'remuneration' includes any remuneration (including benefits) in any medium other than cash, but shall not include–

"(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof, and
"(ii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under this chapter.

For purposes of clause (i), section 3121(a)(5) shall be applied without regard to section 3121(v)(1).

"(F) Coordination with disallowed golden parachute payments.–The dollar limitation contained in paragraph (1) shall be reduced (but not below zero) by the amount (if any) which would have been included in the applicable employee remuneration of the covered employee for the taxable year but for being disallowed under section 280G."

(b) Effective Date.–The amendment made by subsection (a) shall apply to amounts which would otherwise be deductible for taxable years beginning on or after January 1, 1994.

SEC. 13212. REDUCTION IN COMPENSATION TAKEN INTO ACCOUNT IN DETERMINING CONTRIBUTIONS AND BENEFITS UNDER QUALIFIED RETIREMENT PLANS.

(a) Qualification Requirement.–

(1) In general.–Section 401(a)(17) is amended–

(A) by striking "$200,000" in the first sentence and inserting "$150,000",

(B) by striking the second sentence, and

(C) by adding at the end the following new subparagraph:

"(B) Cost-of-living adjustment.–

"(i) In general.–If, for any calendar year after 1994, the excess (if any) of–
"(I) $150,000, increased by the cost-of-living adjustment for the calendar year, over
"(II) the dollar amount in effect under subparagraph (A) for taxable years beginning in the calendar year,
is equal to or greater than $10,000, then the $150,000 amount under subparagraph (A) (as previously adjusted under this subparagraph) for any taxable year beginning in any subsequent calendar year shall be increased ***167** by the amount of such excess, rounded to the next lowest multiple of $10,000.
"(ii) Cost-of-living adjustment.–The cost-of-living adjustment for any calendar year shall be the adjustment made under section 415(d) for such calendar year, except that the base period for purposes of section 415(d)(1)(A) shall be the calendar quarter beginning October 1, 1993."

(2) Conforming amendment.–Section 401(a)(17) is amended by striking "(17) A trust" and inserting:

"(17) Compensation limit.–

"(A) In general.–A trust".

(b) Simplified Employee Pensions.–

(1) In general.–Paragraphs (3)(C) and (6)(D)(ii) of section 408(k) are each amended by striking "$200,000" and inserting "$150,000".

(2) Cost-of-living.–Paragraph (8) of section 408(k) is amended to read as follows:

"(8) Cost-of-living adjustment.–The Secretary shall adjust the $300 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the $150,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B)."

(c) Other Related Provisions.–

(1) In general.–Sections 404(l) and 505(b)(7) are each amended–

(A) by striking "$200,000" in the first sentence and inserting "$150,000", and

(B) by striking the second sentence and inserting "The Secretary shall adjust the $150,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B)."

(2) Conforming amendment.–The heading for section 505(b)(7) is amended by striking "$200,000".

(d) Effective Dates.–

(1) In general.–Except as provided in this subsection, the amendments made by this section shall apply to benefits accruing in plan years beginning after December 31, 1993.

(2) Collectively bargained plans.–In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions or benefits pursuant to such agreements for plan years beginning before the earlier of–

(A) the latest of–

(i) January 1, 1994,
(ii) the date on which the last of such collective bargaining agreements terminates (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment), or
(iii) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act, the ***168** date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on such date of enactment, or

(B) January 1, 1997.

(3) Transition rule for state and local plans.–

(A) In general.–In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the dollar limitation under section 401(a)(17) of such Code shall not apply to the extent the amount of compensation which is allowed to be taken into account under the plan would be reduced below the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993.

(B) Eligible participant.–For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the 1st plan year beginning after the earlier of–

(i) the plan year in which the plan is amended to reflect the amendments made by this section, or
(ii) December 31, 1995.

(C) Plan must be amended to incorporate limits.–This paragraph shall not apply to any eligible participant of a plan unless the plan is amended so that the plan incorporates by reference the dollar limitation under section 401(a)(17) of the Internal Revenue Code of 1986, effective with respect to noneligible participants for plan years beginning after December 31, 1995 (or earlier if the plan amendment so provides).

SEC. 13213. MODIFICATIONS TO DEDUCTION FOR MOVING EXPENSES.

(a) Definition of Deductible Expenses.–

(1) In general.–Subsection (b) of section 217 (defining moving expenses) is amended to read as follows:

"(b) Definition of Moving Expenses.–

"(1) In general.–For purposes of this section, the term 'moving expenses' means only the reasonable expenses–

"(A) of moving household goods and personal effects from the former residence to the new residence, and

"(B) of traveling (including lodging) from the former residence to the new place of residence.

Such term shall not include any expenses for meals.

"(2) Individuals other than taxpayer.–In the case of any individual other than the taxpayer, expenses referred to in paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household."

(2) Conforming amendments.–

(A) Section 217 is amended by striking subsection (e).

(B) Subsection (f) of section 217 is amended to read as follows:

***169** "(f) Self-Employed Individual.–For purposes of this section, the term 'self-employed individual' means an individual who performs personal services–

"(1) as the owner of the entire interest in an unincorporated trade or business, or

"(2) as a partner in a partnership carrying on a trade or business."

(C) Paragraph (3) of section 217(g) is amended by inserting "and" at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(D) Subsection (h) of section 217 is amended by striking paragraph (1) and redesignating the following paragraphs accordingly.

(E) Section 1001 is amended by striking subsection (f).

(F) Subsection (e) of section 1016 is amended to read as follows:

"(e) Cross Reference.–

"For treatment of separate mineral interests as one property, see section 614."

(b) Increase in Mileage Requirement.–Paragraph (1) of section 217(c) is amended by striking "35 miles" each place it appears and inserting "50 miles".

(c) Deduction Allowed in Computing Adjusted Gross Income.–

(1) In general.–Subsection (a) of section 62 (defining adjusted gross income) is amended by inserting after paragraph (14) the following new paragraph:

"(15) Moving expenses.–The deduction allowed by section 217."

(2) Conforming amendment.–Subsection (b) of section 67 is amended by striking paragraph (6) and redesignating the following paragraphs accordingly.

(d) Exclusion of Employer Reimbursement for Deductible Expenses.–

(1) In general.–Subsection (a) of section 132 (relating to certain fringe benefits) is amended by striking "or" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", or", and by adding at the end thereof the following new paragraph:

"(6) qualified moving expense reimbursement."

(2) Qualified moving expense reimbursement defined.–Section 132 is amended by redesignating subsections (g), (h), (i), (j), (k), and (l), as subsections (h), (i), (j), (k), (l), and (m), respectively, and by inserting after subsection (f) the following new subsection:

"(g) Qualified moving expense reimbursement.–For purposes of this section, the term 'qualified moving expense reimbursement' means any amount received (directly or indirectly) by an individual from an employer as a payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 if directly paid or incurred by the individual. Such term shall not include any payment for (or reimbursement of) an expense actually deducted by the individual in a prior taxable year."

***170** (3) Conforming amendments.–

(A) Section 82 is amended by striking "There shall" and inserting "Except as provided in section 132(a)(6), there shall".

(B) Subsection (j) of section 132 (as redesignated by paragraph (2)) is amended by striking "subsection (f)" in paragraph (4)(B)(iii) thereof and inserting "subsection (h)".

(C) Subsection (l) of section 132 (as redesignated by paragraph (2)) is amended by striking "subsection (e)" and inserting "subsections (e) and (g)".

(D) Section 4977(c) is amended by striking "section 132(g)(2)" and inserting "section 132(i)(2)".

(e) Effective Date.–The amendments made by this section shall apply to expenses incurred after December 31, 1993; except that the amendments made by subsection (d) shall apply to reimbursements or other payments in respect of expenses incurred after such date.

SEC. 13214. SIMPLIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR BASED ON LAST YEAR'S TAX.

(a) In General.–Paragraph (1) of section 6654(d) (relating to amount of required estimated tax installments) is amended by striking subparagraphs (C), (D), (E), and (F) and by inserting the following new subparagraph:

"(C) Limitation on use of preceding year's tax.–

"(i) In general.–If the adjusted gross income shown on the return of the individual for the preceding taxable year exceeds $150,000, clause (ii) of subparagraph (B) shall be applied by substituting '110 percent' for '100 percent'.
"(ii) Separate returns.–In the case of a married individual (within the meaning of section 7703) who files a separate return for the taxable year for which the amount of the installment is being determined, clause (i) shall be applied by substituting '$75,000' for '$150,000'.
"(iii) Special rule.–In the case of an estate or trust, adjusted gross income shall be determined as provided in section 67(e)."

(b) Conforming Amendments.–

(1) Subparagraph (A) of section 6654(j)(3) is amended by striking "and subsection (d)(1)(C)(iii) shall not apply".

(2) Paragraph (4) of section 6654(l) is amended by striking "paragraphs (1)(C)(iv) and (2)(B)(i) of subsection (d)" and inserting "subsection (d)(2)(B)(i)".

(c) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 13215. SOCIAL SECURITY AND TIER 1 RAILROAD RETIREMENT BENEFITS.

(a) Additional Inclusion for Certain Taxpayers.–

(1) In general.–Subsection (a) of section 86 (relating to social security and tier 1 railroad retirement benefits) is amended by adding at the end the following new paragraph:

"(2) Additional amount.–In the case of a taxpayer with respect to whom the amount determined under subsection ***171** (b)(1)(A) exceeds the adjusted base amount, the amount included in gross income under this section shall be equal to the lesser of–

"(A) the sum of–

"(i) 85 percent of such excess, plus
"(ii) the lesser of the amount determined under paragraph (1) or an amount equal to one-half of the difference between the adjusted base amount and the base amount of the taxpayer, or
"(B) 85 percent of the social security benefits received during the taxable year."

(2) Conforming amendments.–Subsection (a) of section 86 is amended–

(A) by striking "Gross" and inserting:

"(1) In general.–Except as provided in paragraph (2), gross", and

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(b) Adjusted Base Amount.–Section 86(c) (defining base amount) is amended to read as follows:

"(c) Base Amount and Adjusted Base Amount.–For purposes of this section–

"(1) Base amount.–The term 'base amount' means–

"(A) except as otherwise provided in this paragraph, $25,000,

"(B) $32,000 in the case of a joint return, and

"(C) zero in the case of a taxpayer who–

"(i) is married as of the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and
"(ii) does not live apart from his spouse at all times during the taxable year.
"(2) Adjusted base amount.–The term 'adjusted base amount' means–

"(A) except as otherwise provided in this paragraph, $34,000,

"(B) $44,000 in the case of a joint return, and

"(C) zero in the case of a taxpayer described in paragraph (1)(C)."

(c) Transfers to the Hospital Insurance Trust Fund.–

(1) In general.–Paragraph (1) of section 121(e) of the Social Security Amendments of 1983 (Public Law 92–21) is amended by–

(A) striking "There" and inserting:

"(A) There";

(B) inserting "(i)" immediately following "amounts equivalent to"; and

(C) striking the period and inserting the following: ", less (ii) the amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 which is attributable to the amendments to section 86 of such Code made by section 13215 of the Revenue Reconciliation Act of 1993.

***172** "(B) There are hereby appropriated to the hospital insurance trust fund amounts equal to the increase in tax liabilities described in subparagraph (A)(ii). Such appropriated amounts shall be transferred from the general fund of the Treasury on the basis of estimates of such tax liabilities made by the Secretary of the Treasury. Transfers shall be made pursuant to a schedule made by the Secretary of the Treasury that takes into account estimated timing of collection of such liabilities."

(2) Definition.–Paragraph (3) of section 121(e) of such Act is amended by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) Hospital insurance trust fund.–The term 'hospital insurance trust fund' means the fund established pursuant to section 1817 of the Social Security Act.".

(3) Conforming amendment.–Paragraph (2) of section 121(e) of such Act is amended in the first sentence by striking "paragraph (1)" and inserting "paragraph (1)(A)".

(4) Technical amendments.–Paragraph (1)(A) of section 121(e) of such Act, as redesignated and amended by paragraph (1), is amended by striking "1954" and inserting "1986".

(d) Effective Date.–The amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 1993.

PART II–PROVISIONS AFFECTING BUSINESSES

SEC. 13221. INCREASE IN TOP MARGINAL RATE UNDER SECTION 11.

(a) General Rule.–Paragraph (1) of section 11(b) (relating to amount of tax) is amended–

(1) by striking "and" at the end of subparagraph (B),

(2) by striking subparagraph (C) and inserting the following:

"(C) 34 percent of so much of the taxable income as exceeds $75,000 but does not exceed $10,000,000, and

"(D) 35 percent of so much of the taxable income as exceeds $10,000,000.", and

(3) by adding at the end thereof the following new sentence: "In the case of a corporation which has taxable income in excess of $15,000,000, the amount of the tax determined under the foregoing provisions of this paragraph shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) $100,000."

(b) Certain Personal Service Corporations.–Paragraph (2) of section 11(b) is amended by striking "34 percent" and inserting "35 percent".

(c) Conforming Amendments.–

(1) Clause (iii) of section 852(b)(3)(D) is amended by striking "66 percent" and inserting "65 percent".

(2) Subsection (a) of section 1201 is amended by striking "34 percent" each place it appears and inserting "35 percent".

***173** (3) Paragraphs (1) and (2) of section 1445(e) are each amended by striking "34 percent" and inserting "35 percent".

(d) Effective Date.–The amendments made by this section shall apply to taxable years beginning on or after January 1, 1993; except that the amendment made by subsection (c)(3) shall take effect on the date of the enactment of this Act.

SEC. 13222. DENIAL OF DEDUCTION FOR LOBBYING EXPENSES.

(a) Disallowance of Deduction.–Section 162(e) (relating to appearances, etc., with respect to legislation) is amended to read as follows:

"(e) Denial of Deduction for Certain Lobbying and Political Expenditures.–

"(1) In general.–No deduction shall be allowed under subsection (a) for any amount paid or incurred in connection with–

"(A) influencing legislation,

"(B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office,

"(C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or

"(D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official.

"(2) Exception for local legislation.–In the case of any legislation of any local council or similar governing body–

"(A) paragraph (1)(A) shall not apply, and

"(B) the deduction allowed by subsection (a) shall include all ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business–

"(i) in direct connection with appearances before, submission of statements to, or sending communications to the committees, or individual members, of such council or body with respect to legislation or proposed legislation of direct interest to the taxpayer, or

"(ii) in direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to any such legislation or proposed legislation which is of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in clauses (i) and (ii) carried on by such organization.

"(3) Application to dues of tax-exempt organizations.–No deduction shall be allowed under subsection (a) for the portion of dues or other similar amounts paid by the taxpayer to an organization which is exempt from tax under this subtitle which the organization notifies the taxpayer under section ***174** 6033(e)(1)(A)(ii) is allocable to expenditures to which paragraph (1) applies.

"(4) Influencing legislation.–For purposes of this subsection–

"(A) In general.–The term 'influencing legislation' means any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

"(B) Legislation.–The term 'legislation' has the meaning given such term by section 4911(e)(2).

"(5) Other special rules.–

"(A) Exception for certain taxpayers.–In the case of any taxpayer engaged in the trade or business of conducting activities described in paragraph (1), paragraph (1) shall not apply to expenditures of the taxpayer in conducting such activities directly on behalf of another person (but shall apply to payments by such other person to the taxpayer for conducting such activities).

"(B) De minimis exception.–

"(i) In general.–Paragraph (1) shall not apply to any in-house expenditures for any taxable year if such expenditures do not exceed $2,000. In determining whether a taxpayer exceeds the $2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in paragraphs (1)(A) and (D).

"(ii) In-house expenditures.–For purposes of clause (i), the term 'in-house expenditures' means expenditures described in paragraphs (1)(A) and (D) other than–

"(I) payments by the taxpayer to a person engaged in the trade or business of conducting activities described in paragraph (1) for the conduct of such activities on behalf of the taxpayer, or

"(II) dues or other similar amounts paid or incurred by the taxpayer which are allocable to activities described in paragraph (1).

"(C) Expenses incurred in connection with lobbying and political activities.–Any amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) shall be treated as paid or incurred in connection with such activity.

"(6) Covered executive branch official.–For purposes of this subsection, the term 'covered executive branch official' means–

"(A) the President,

"(B) the Vice President,

"(C) any officer or employee of the White House Office of the Executive Office of the President, and the 2 most senior level officers of each of the other agencies in such Executive Office, and

***175** "(D)(i) any individual serving in a position in level I of the Executive Schedule under section 5312 of title 5, United States Code, (ii) any other individual designated by the President as having Cabinet level status, and (iii) any immediate deputy of an individual described in clause (i) or (ii).

"(7) Special rule for indian tribal governments.–For purposes of this subsection, an Indian tribal government shall be treated in the same manner as a local council or similar governing body.

"(8) Cross reference.–

"For reporting requirements and alternative taxes related to this subsection, see section 6033(e)."

(b) Disallowance of Charitable Deduction in Certain Cases.–Section 170(f) (relating to disallowance of deduction in certain cases and special rules), as amended by section 13172, is amended by adding at the end the following new paragraph:

"(9) Denial of deduction where contribution for lobbying activities.–No deduction shall be allowed under this section for a contribution to an organization which conducts activities to which section 162(e)(1) applies on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was to avoid Federal income tax by securing a deduction for such activities under this section which would be disallowed by reason of section 162(e) if the donor had conducted such activities directly. No deduction shall be allowed under section 162(a) for any amount for which a deduction is disallowed under the preceding sentence."

(c) Reporting Requirements.–Section 6033 (relating to returns by exempt organizations) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Special Rules Relating to Lobbying Activities.–

"(1) Reporting requirements.–

"(A) In general.–If this subsection applies to an organization for any taxable year, such organization–

"(i) shall include on any return required to be filed under subsection (a) for such year information setting forth the total expenditures of the organization to which section 162(e)(1) applies and the total amount of the dues or other similar amounts paid to the organization to which such expenditures are allocable, and

"(ii) except as provided in paragraphs (2)(A)(i) and (3), shall, at the time of assessment or payment of such dues or other similar amounts, provide notice to each person making such payment which contains a reasonable estimate of the portion of such dues or other similar amounts to which such expenditures are so allocable.

"(B) Organizations to which subsection applies.–

"(i) In general.–This subsection shall apply to any organization which is exempt from taxation under this subtitle other than an organization described in section 501(c)(3).

***176** "(ii) Special rule for in-house expenditures.–This subsection shall not apply to the in-house expenditures (within the meaning of section 162(e)(5)(B)(ii)) of an organization for a taxable year if such expenditures do not exceed $2,000. In determining whether a taxpayer exceeds the $2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in subparagraphs (A) and (D) of section 162(e)(1).

"(C) Allocation.–For purposes of this paragraph–

"(i) In general.–Expenditures to which section 162(e)(1) applies shall be treated as paid out of dues or other similar amounts to the extent thereof.

"(ii) Carryover of lobbying expenditures in excess of dues.–If expenditures to which section 162(e)(1) applies exceed the dues or other similar amounts for any taxable year, such excess shall be treated as expenditures to which section

162(e)(1) applies which are paid or incurred by the organization during the following taxable year.

"(2) Tax imposed where organization does not notify.–

"(A) In general.–If an organization–

"(i) elects not to provide the notices described in paragraph (1)(A) for any taxable year, or

"(ii) fails to include in such notices the amount allocable to expenditures to which section 162(e)(1) applies (determined on the basis of actual amounts rather than the reasonable estimates under paragraph (1)(A)(ii)),

then there is hereby imposed on such organization for such taxable year a tax in an amount equal to the product of the highest rate of tax imposed by section 11 for the taxable year and the aggregate amount not included in such notices by reason of such election or failure.

"(B) Waiver where future adjustments made.–The Secretary may waive the tax imposed by subparagraph (A)(ii) for any taxable year if the organization agrees to adjust its estimates under paragraph (1)(A)(ii) for the following taxable year to correct any failures.

"(C) Tax treated as income tax.–For purposes of this title, the tax imposed by subparagraph (A) shall be treated in the same manner as a tax imposed by chapter 1 (relating to income taxes).

"(3) Exception where dues generally nondeductible.–Paragraph (1)(A) shall not apply to an organization which establishes to the satisfaction of the Secretary that substantially all of the dues or other similar amounts paid by persons to such organization are not deductible without regard to section 162(e)."

(d) Conforming Amendment.–Section 7871(a)(6) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

***177** (e) Effective Date.–The amendments made by this section shall apply to amounts paid or incurred after December 31, 1993.

SEC. 13223. MARK TO MARKET ACCOUNTING METHOD FOR SECURITIES DEALERS.

(a) General Rule.–Subpart D of part II of subchapter E of chapter 1 (relating to inventories) is amended by adding at the end thereof the following new section:

"SEC. 475. MARK TO MARKET ACCOUNTING METHOD FOR DEALERS IN SECURITIES.

"(a) General Rule.–Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

"(1) Any security which is inventory in the hands of the dealer shall be included in inventory at its fair market value.

"(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year–

"(A) the dealer shall recognize gain or loss as if such security were sold for its fair market value on the last business day of such taxable year, and

"(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

"(b) Exceptions.–

"(1) In general.–Subsection (a) shall not apply to–

"(A) any security held for investment,

"(B)(i) any security described in subsection (c)(2)(C) which is acquired (including originated) by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and (ii) any obligation to acquire a security described in clause (i) if such obligation is entered into in the ordinary course of such trade or business and is not held for sale, and

"(C) any security which is a hedge with respect to–

"(i) a security to which subsection (a) does not apply, or
"(ii) a position, right to income, or a liability which is not a security in the hands of the taxpayer.

To the extent provided in regulations, subparagraph (C) shall not apply to any security held by a person in its capacity as a dealer in securities.

"(2) Identification required.–A security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) Securities subsequently not exempt.–If a security ceases to be described in paragraph (1) at any time after it was ***178** identified as such under paragraph (2), subsection (a) shall apply to any changes in value of the security occurring after the cessation.

"(4) Special rule for property held for investment.–To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

"(c) Definitions.–For purposes of this section–

"(1) Dealer in securities defined.–The term 'dealer in securities' means a taxpayer who–

"(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

"(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

"(2) Security defined.–The term 'security' means any–

"(A) share of stock in a corporation;

"(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

"(C) note, bond, debenture, or other evidence of indebtedness;

"(D) interest rate, currency, or equity notional principal contract;

"(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), or any currency, including any option, forward contract, short position, and any similar financial instrument in such a security or currency; and

"(F) position which–

"(i) is not a security described in subparagraph (A), (B), (C), (D), or (E),
"(ii) is a hedge with respect to such a security, and
"(iii) is clearly identified in the dealer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

Subparagraph (E) shall not include any contract to which section 1256(a) applies.

"(3) Hedge.–The term 'hedge' means any position which reduces the deaer's risk of interest rate or price changes or currency fluctuations, including any position which is reasonably expected to become a hedge within 60 days after the acquisition of the position.

"(d) Special Rules.–For purposes of this section–

"(1) Coordination with certain rules.–The rules of sections 263(g), 263A, and 1256(a) shall not apply to securities to which subsection (a) applies, and section 1091 shall not apply (and section 1092 shall apply) to any loss recognized under subsection (a).

"(2) Improper identification.–If a taxpayer–

***179** "(A) identifies any security under subsection (b)(2) as being described in subsection (b)(1) and such security is not so described, or

"(B) fails under subsection (c)(2)(F)(iii) to identify any position which is described in subsection (c)(2)(F) (without regard to clause (iii) thereof) at the time such identification is required,

the provisions of subsection (a) shall apply to such security or position, except that any loss under this section prior to the disposition of the security or position shall be recognized only to the extent of gain previously recognized under this section (and not previously taken into account under this paragraph) with respect to such security or position.

"(3) Character of gain or loss.–

"(A) In general.–Except as provided in subparagraph (B) or section 1236(b)–

"(i) In general.–Any gain or loss with respect to a security under subsection (a)(2) shall be treated as ordinary income or loss.
"(ii) Special rule for dispositions.–If–
"(I) gain or loss is recognized with respect to a security before the close of the taxable year, and
"(II) subsection (a)(2) would have applied if the security were held as of the close of the taxable year,
such gain or loss shall be treated as ordinary income or loss.

"(B) Exception.–Subparagraph (A) shall not apply to any gain or loss which is allocable to a period during which–

"(i) the security is described in subsection (b)(1)(C) (without regard to subsection (b)(2)),
"(ii) the security is held by a person other than in connection with its activities as a dealer in securities, or
"(iii) the security is improperly identified (within the meaning of subparagraph (A) or (B) of paragraph (2)).

"(e) Regulatory Authority.–The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules–

"(1) to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section, and

"(2) to provide for the application of this section to any security which is a hedge which cannot be identified with a specific security, position, right to income, or liability."

(b) Conforming Amendments.–

(1) Paragraph (1) of section 988(d) is amended–

(A) by striking "section 1256" and inserting "section 475 or 1256", and

(B) by striking "1092 and 1256" and inserting "475, 1092, and 1256".

***180** (2) The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 475. Mark to market accounting method for dealers in securities."

(c) Effective Date.–

(1) In general.–The amendments made by this section shall apply to all taxable years ending on or after December 31, 1993.

(2) Change in method of accounting.–In the case of any taxpayer required by this section to change its method of accounting for any taxable year–

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) except as provided in paragraph (3), the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 5-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

(3) Special rule for floor specialists and market makers.–

(A) In general.–If–

(i) a taxpayer (or any predecessor) used the last-in first-out (LIFO) method of accounting with respect to any qualified securities for the 5-taxable year period ending with its last taxable year ending before December 31, 1993, and
(ii) any portion of the net amount described in paragraph (2)(C) is attributable to the use of such method of accounting,

then paragraph (2)(C) shall be applied by taking such portion into account ratably over the 15-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

(B) Qualified security.–For purposes of this paragraph, the term "qualified security" means any security acquired–

(i) by a floor specialist (as defined in section 1236(d)(2) of the Internal Revenue Code of 1986) in connection with the specialist's duties as a specialist on an exchange, but only if the security is one in which the specialist is registered with the exchange, or
(ii) by a taxpayer who is a market maker in connection with the taxpayer's duties as a market maker, but only if–
(I) the security is included on the National Association of Security Dealers Automated Quotation System,
(II) the taxpayer is registered as a market maker in such security with the National Association of Security Dealers, and
***181** (III) as of the last day of the taxable year preceding the taxpayer's first taxable year ending on or after December 31, 1993, the taxpayer (or any predecessor) has been actively and regularly engaged as a market maker in such security for the 2-year period ending on such date (or, if shorter, the period beginning 61 days after the security was listed in such quotation system and ending on such date).

SEC. 13224. CLARIFICATION OF TREATMENT OF CERTAIN FSLIC FINANCIAL ASSISTANCE.

(a) General Rule.–For purposes of chapter 1 of the Internal Revenue Code of 1986–

(1) any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of any asset shall be taken into account as compensation for such loss for purposes of section 165 of such Code, and

(2) any FSLIC assistance with respect to any debt shall be taken into account for purposes of section 166, 585, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

(b) FSLIC Assistance.–For purposes of this section, the term "FSLIC assistance" means any assistance (or right to assistance) with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).

(c) Effective Date.–

(1) In general.–Except as otherwise provided in this subsection–

(A) The provisions of this section shall apply to taxable years ending on or after March 4, 1991, but only with respect to FSLIC assistance not credited before March 4, 1991.

(B) If any FSLIC assistance not credited before March4, 1991, is with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991, for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991, the provisions of this section shall apply to such assistance for purposes of determining the amount of the net operating loss for the taxable year in which such loss was sustained or debt written off. Except as provided in the preceding sentence, this section shall not apply to any FSLIC assistance with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991.

(2) Exceptions.–The provisions of this section shall not apply to any assistance to which the amendments made by section 1401(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 apply.

***182** SEC. 13225. MODIFICATION OF CORPORATE ESTIMATED TAX RULES.

(a) Increase in Required Installment Based on Current Year Tax.–

(1) In general.–Clause (i) of section 6655(d)(1)(B) (relating to amount of required installment) is amended by striking "91 percent" each place it appears and inserting "100 percent".

(2) Conforming amendments.–

(A) Subsection (d) of section 6655 is amended–

(i) by striking paragraph (3), and
(ii) by striking "91 percent" in the paragraph heading of paragraph (2) and inserting "100 percent".

(B) Clause (ii) of section 6655(e)(2)(B) is amended by striking the table contained therein and inserting the following:

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(C) Clause (i) of section 6655(e)(3)(A) is amended by striking "91 percent" and inserting "100 percent".

(b) Modification of Periods for Applying Annualization.–

(1) Clause (i) of section 6655(e)(2)(A) is amended–

(A) by striking "or for the first 5 months" in subclause (II),

(B) by striking "or for the first 8 months" in subclause (III), and

(C) by striking "or for the first 11 months" in subclause (IV).

(2) Paragraph (2) of section 6655(e) is amended by adding at the end thereof the following new subparagraph:

"(C) Election for different annualization periods.–

"(i) If the taxpayer makes an election under this clause–
"(I) subclause (I) of subparagraph (A)(i) shall be applied by substituting '2 months' for '3 months',
***183** "(II) subclause (II) of subparagraph (A)(i) shall be applied by substituting '4 months' for '3 months',
"(III) subclause (III) of subparagraph (A)(i) shall be applied by substituting '7 months' for '6 months', and
"(IV) subclause (IV) of subparagraph (A)(i) shall be applied by substituting '10 months' for '9 months'.
"(ii) If the taxpayer makes an election under this clause–
"(I) subclause (II) of subparagraph (A)(i) shall be applied by substituting '5 months' for '3 months',
"(II) subclause (III) of subparagraph (A)(i) shall be applied by substituting '8 months' for '6 months', and
"(III) subclause (IV) of subparagraph (A)(i) shall be applied by substituting '11 months' for '9 months'.
"(iii) An election under clause (i) or (ii) shall apply to the taxable year for which made and such an election shall be effective only if made on or before the date required for the payment of the first required installment for such taxable year."

(3) The last sentence of section 6655(g)(3) is amended by striking "and subsection (e)(2)(A)" and inserting "and, except in the case of an election under subsection (e)(2)(C), subsection (e)(2)(A)".

(c) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 13226. MODIFICATIONS OF DISCHARGE OF INDEBTEDNESS PROVISIONS.

(a) Repeal of Stock for Debt Exception in Determining Income From Discharge of Indebtedness.–

(1) In general.–Subsection (e) of section 108 is amended–

(A) by striking paragraph (10) and by redesignating paragraph (11) as paragraph (10), and

(B) by amending paragraph (8) to read as follows:

"(8) Indebtedness satisfied by corporation's stock.–For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock."

(2) Conforming amendments.–

(A) Subparagraph (C) of section 382(l)(5) is amended to read as follows:

"(C) Coordination with section 108.–In applying section 108(e)(8) to any case to which subparagraph (A) applies, there shall not be taken into account any indebtedness for interest described in subparagraph (B)."

(B) Section 108(e)(6) is amended by striking "For" and inserting "Except as provided in regulations, for".

(3) Effective date.–

(A) In general.–Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to stock transferred after December 31, 1994, in satisfaction of any indebtedness.

(B) Exception for title 11 cases.–The amendments made by this subsection shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before December 31, 1993.

(b) Tax Attributes Subject to Reduction.–

***184** (1) Minimum tax credit.–Section 108(b)(2) (relating to tax attributes affected; order of reduction) is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F) and by adding after subparagraph (B) the following new subparagraph:

"(C) Minimum tax credit.–The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge."

(2) Passive activity losses and credits.–Section 108(b)(2), as amended by paragraph (1), is amended by redesignating subparagraph (F) as subparagraph (G) and by adding after subparagraph (E) the following new subparagraph:

"(F) Passive activity loss and credit carryovers.–Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge."

(3) Conforming amendments.–

(A) Subparagraph (B) of section 108(b)(3) is amended to read as follows:

"(B) Credit carryover reduction.–The reductions described in subparagraphs (B), (C), and (G) shall be 33⅓ cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33⅓ cents for each dollar excluded by subsection (a)."

(B) Subparagraph (B) of section 108(b)(4) is amended by striking "(C)" in the text and heading thereof and inserting "(D)".

(C) Subparagraph (C) of section 108(b)(4) is amended by striking "(E)" in the text and heading thereof and inserting "(G)".

(D) Subparagraph (B) of section 108(g)(3) is amended–

(i) by striking "subparagraphs (A), (B), (C), and (E)" and inserting "subparagraphs (A), (B), (C), (D), (F), and (G)",
(ii) by striking "subparagraphs (B) and (E)" and inserting "subparagraphs (B), (C), and (G)", and
(iii) by inserting before the period at the end the following: "and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover".

(4) Effective date.–The amendments made by this subsection shall apply to discharges of indebtedness in taxable years beginning after December 31, 1993.

SEC. 13227. LIMITATION ON SECTION 936 CREDIT.

(a) General Rule.–Subsection (a) of section 936 (relating to Puerto Rico and possession tax credit) is amended–

(1) by striking "as provided in paragraph (3)" in paragraph (1) and inserting "as otherwise provided in this section"; and

(2) by adding at the end thereof the following new paragraph:

***185** "(4) Limitations on credit for active business income.–

"(A) In general.–The amount of the credit determined under paragraph (1) for any taxable year with respect to income referred to in subparagraph (A) thereof shall not exceed the sum of the following amounts:

"(i) 60 percent of the sum of–

"(I) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, plus

"(II) the allocable employee fringe benefit expenses of the possession corporation for the taxable year.

"(ii) The sum of–

"(I) 15 percent of the depreciation allowances for the taxable year with respect to short-life qualified tangible property,

"(II) 40 percent of the depreciation allowances for the taxable year with respect to medium-life qualified tangible property, and

"(III) 65 percent of the depreciation allowances for the taxable year with respect to long-life qualified tangible property.

"(iii) If the possession corporation does not have an election to use the method described in subsection (h)(5)(C)(ii) (relating to profit split) in effect for the taxable year, the amount of qualified possession income taxes for the taxable year allocable to nonsheltered income.

"(B) Election to take reduced credit.–

"(i) In general.–If an election under this subparagraph applies to a possession corporation for any taxable year–

"(I) subparagraph (A), and the provisions of subsection (i), shall not apply to such possession corporation for such taxable year, and

"(II) the credit determined under paragraph (1) for such taxable year with respect to income referred to in subparagraph (A) thereof shall be the applicable percentage of the credit which would otherwise have been determined under such paragraph with respect to such income.

Notwithstanding subclause (I), a possession corporation to which an election under this subparagraph applies shall be entitled to the benefits of subsection (i)(3)(B) for taxes allocable (on a pro rata basis) to taxable income the tax on which is not offset by reason of this subparagraph.

"(ii) Applicable percentage.–The term 'applicable percentage' means the percentage determined in accordance with the following table:

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***186** "(iii) Election.–

"(I) In general.–An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1993, for which it is a possession corporation.

"(II) Period of election.–An election under this subparagraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked.

"(III) Affiliated groups.–If, for any taxable year, an election is not in effect for any possession corporation which is a member of an affiliated group, any election under this subparagraph for any other member of such group is revoked for such taxable year and all subsequent taxable years. For purposes of this subclause, members of an affiliated group shall be determined without regard to the exceptions contained in section 1504(b) and as if the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a). The Secretary may prescribe regulations to prevent the avoidance of this subclause through deconsolidation or otherwise.

"(C) Cross reference.–

"For definitions and special rules applicable to this paragraph, see subsection (i)."

(b) Definitions and Special Rules.–Section 936 is amended by adding at the end thereof the following new subsection:

"(i) Definitions and Special Rules Relating to Limitations of Subsection (a)(4).–

"(1) Qualified possession wages.–For purposes of this section–

"(A) In general.–The term 'qualified possession wages' means wages paid or incurred by the possession corporation during the taxable year in connection with the active conduct of a trade or business within a possession of the United States to any employee for services performed in such possession, but only if such services are performed while the principal place of employment of such employee is within such possession.

"(B) Limitation on amount of wages taken into account.–

"(i) In general.–The amount of wages which may be taken into account under subparagraph (A) with respect to any

employee for any taxable year shall not exceed 85 percent of the contribution and benefit base determined ***187** under section 230 of the Social Security Act for the calendar year in which such taxable year begins.

"(ii) Treatment of part-time employees, etc.–If–

"(I) any employee is not employed by the possession corporation on a substantially full-time basis at all times during the taxable year, or

"(II) the principal place of employment of any employee with the possession corporation is not within a possession at all times during the taxable year,

the limitation applicable under clause (i) with respect to such employee shall be the appropriate portion (as determined by the Secretary) of the limitation which would otherwise be in effect under clause (i).

"(C) Treatment of certain employees.–The term 'qualified possession wages' shall not include any wages paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer is to make employees available for temporary periods to other persons in return for compensation. All possession corporations treated as 1 corporation under paragraph (5) shall be treated as 1 employer for purposes of the preceding sentence.

"(D) Wages.–

"(i) In general.–Except as provided in clause (ii), the term 'wages' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). For purposes of the preceding sentence, such subsection (b) shall be applied as if the term 'United States' included all possessions of the United States.

"(ii) Special rule for agricultural labor and railway labor.–In any case to which subparagraph (A) or (B) of paragraph (1) of section 51(h) applies, the term 'wages' has the meaning given to such term by section 51(h)(2).

"(2) Allocable employee fringe benefit expenses.–

"(A) In general.–The allocable employee fringe benefit expenses of any possession corporation for any taxable year is an amount which bears the same ratio to the amount determined under subparagraph (B) for such taxable year as–

"(i) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, bears to

"(ii) the aggregate amount of the wages paid or incurred by such possession corporation during such taxable year.

In no event shall the amount determined under the preceding sentence exceed 15 percent of the amount referred to in clause (i).

***188** "(B) Expenses taken into account.–For purposes of subparagraph (A), the amount determined under this subparagraph for any taxable year is the aggregate amount allowable as a deduction under this chapter to the possession corporation for such taxable year with respect to–

"(i) employer contributions under a stock bonus, pension, profit-sharing, or annuity plan,

"(ii) employer-provided coverage under any accident or health plan for employees, and

"(iii) the cost of life or disability insurance provided to employees.

Any amount treated as wages under paragraph (1)(D) shall not be taken into account under this subparagraph.

"(3) Treatment of possession taxes.–

"(A) Amount of credit for possession corporations not using profit split.–

"(i) In general.–For purposes of subsection (a)(4)(A)(iii), the amount of the qualified possession income taxes for any taxable year allocable to nonsheltered income shall be an amount which bears the same ratio to the possession income taxes for such taxable year as–

"(I) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A) (without regard to clause (iii) thereof), bears to

"(II) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

"(ii) Limitation on amount of taxes taken into account.–Possession income taxes shall not be taken into account under

clause (i) for any taxable year to the extent that the amount of such taxes exceeds 9 percent of the amount of the taxable income for such taxable year.

"(B) Deduction for possession corporations using profit split.–Notwithstanding subsection (c), if a possession corporation is not described in subsection (a)(4)(A)(iii) for the taxable year, such possession corporation shall be allowed a deduction for such taxable year in an amount which bears the same ratio to the possession income taxes for such taxable year as–

"(i) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A), bears to

"(ii) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

In determining the credit under subsection (a) and in applying the preceding sentence, taxable income shall be determined without regard to the preceding sentence.

***189** "(C) Possession income taxes.–For purposes of this paragraph, the term 'possession income taxes' means any taxes of a possession of the United States which are treated as not being income, war profits, or excess profits taxes paid or accrued to a possession of the United States by reason of subsection (c).

"(4) Depreciation rules.–For purposes of this section–

"(A) Depreciation allowances.–The term 'depreciation allowances' means the depreciation deductions allowable under section 167 to the possession corporation.

"(B) Categories of property.–

"(i) Qualified tangible property.–The term 'qualified tangible property' means any tangible property used by the possession corporation in a possession of the United States in the active conduct of a trade or business within such possession.

"(ii) Short-life qualified tangible property.–The term 'short-life qualified tangible property' means any qualified tangible property to which section 168 applies and which is 3-year property or 5-year property for purposes of such section.

"(iii) Medium-life qualified tangible property.–The term 'medium-life qualified tangible property' means any qualified tangible property to which section 168 applies and which is 7-year property or 10-year property for purposes of such section.

"(iv) Long-life qualified tangible property.–The term 'long-life qualified tangible property' means any qualified tangible property to which section 168 applies and which is not described in clause (ii) or (iii).

"(v) Transitional rule.–In the case of any qualified tangible property to which section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applies, any reference in this paragraph to section 168 shall be treated as a reference to such section as so in effect.

"(5) Election to compute credit on consolidated basis.–

"(A) In general.–Any affiliated group may elect to treat all possession corporations which would be members of such group but for section 1504(b) (3) or (4) as 1 corporation for purposes of this section. The credit determined under this section with respect to such 1 corporation shall be allocated among such possession corporations in such manner as the Secretary may prescribe.

"(B) Election.–An election under subparagraph (A) shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

"(6) Possession corporation.–The term 'possession corporation' means a domestic corporation for which the election provided in subsection (a) is in effect."

(c) Minimum Tax Treatment.–

***190** (1) In general.–Subclause (I) of section 56(g)(4)(C)(ii) (relating to special rule for certain dividends) is amended by striking "sections 936 and 921" and inserting "sections 936 (including subsections (a)(4) and (i) thereof) and 921".

(2) Treatment of foreign taxes.–Clause (iii) of section 56(g)(4)(C) is amended by adding at the end thereof the following subclauses:

"(IV) Separate application of foreign tax credit limitations.–In determining the alternative minimum foreign tax credit, section 904(d) shall be applied as if dividends from a corporation eligible for the credit provided by section 936 were a separate category of income referred to in a subparagraph of section 904(d)(1).
"(V) Coordination with limitation on 936 credit.–Any reference in this clause to a dividend received from a corporation eligible for the credit provided by section 936 shall be treated as a reference to the portion of any such dividend for which the dividends received deduction is disallowed under clause (i) after the application of clause (ii)(I)."

(d) Conforming Amendment.–Paragraph (4) of section 904(b) is amended by inserting before the period at the end thereof the following: "(without regard to subsections (a)(4) and (i) thereof)".

(e) Increase in Limitation on Cover Over.–Paragraph (1) of section 7652(f) is amended to read as follows:

"(1) $10.50 ($11.30 in the case of distilled spirits brought into the United States during the 5-year period beginning on October 1, 1993), or."

(f) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1993; except that the amendment made by subsection (e) shall take effect on October 1, 1993.

SEC. 13228. MODIFICATION TO LIMITATION ON DEDUCTION FOR CERTAIN INTEREST.

(a) General Rule.–Paragraph (3) of section 163(j) (defining disqualified interest) is amended to read as follows:

"(3) Disqualified interest.–For purposes of this subsection, the term 'disqualified interest' means–

"(A) any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest, and

"(B) any interest paid or accrued by the taxpayer with respect to any indebtedness to a person who is not a related person if–

"(i) there is a disqualified guarantee of such indebtedness, and
"(ii) no gross basis tax is imposed by this subtitle with respect to such interest."

(b) Definitions.–Paragraph (6) of section 163(j) is amended by adding at the end thereof the following new subparagraphs:

"(D) Disqualified guarantee.–

***191** "(i) In general.–Except as provided in clause (ii), the term 'disqualified guarantee' means any guarantee by a related person which is–
"(I) an organization exempt from taxation under this subtitle, or
"(II) a foreign person.
"(ii) Exceptions.–The term 'disqualified guarantee' shall not include a guarantee–
"(I) in any circumstances identified by the Secretary by regulation, where the interest on the indebtedness would have been subject to a net basis tax if the interest had been paid to the guarantor, or
"(II) if the taxpayer owns a controlling interest in the guarantor.
For purposes of subclause (II), except as provided in regulations, the term 'a controlling interest' means direct or indirect ownership of at least 80 percent of the total voting power and value of all classes of stock of a corporation, or 80 percent of the profit and capital interests in any other entity. For purposes of the preceding sentence, the rules of paragraphs (1) and (5) of section 267(c) shall apply; except that such rules shall also apply to interest in entities other than corporations.
"(iii) Guarantee.–Except as provided in regulations, the term 'guarantee' includes any arrangement under which a person (directly or indirectly through an entity or otherwise) assures, on a conditional or unconditional basis, the payment of

another person's obligation under any indebtedness.

"(E) Gross basis and net basis taxation.–

"(i) Gross basis tax.–The term 'gross basis tax' means any tax imposed by this subtitle which is determined by reference to the gross amount of any item of income without any reduction for any deduction allowed by this subtitle.

"(ii) Net basis tax.–The term 'net basis tax' means any tax imposed by this subtitle which is a not a gross basis tax."

(c) Conforming Amendments.–

(1) Subparagraph (B) of section 163(j)(5) is amended by striking "to a related person".

(2) The subsection heading for subsection (j) of section 163 is amended to read as follows:

"(j) Limitation on Deduction for Interest on Certain Indebtedness.–".

(d) Effective Date.–The amendments made by this section shall apply to interest paid or accrued in taxable years beginning after December 31, 1993.

***192** PART III–FOREIGN TAX PROVISIONS

Subpart A–Current Taxation of Certain Earnings of Controlled Foreign Corporations

SEC. 13231. EARNINGS INVESTED IN EXCESS PASSIVE ASSETS.

(a) General Rule.–Paragraph (1) of section 951(a) (relating to amounts included in gross income of United States shareholders) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting "; and", and by adding at the end thereof the following new subparagraph:

"(C) the amount determined under section 956A with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(3))."

(b) Amount of Inclusion.–Subpart F of part III of subchapter N of chapter 1 is amended by inserting after section 956 the following new section:

"SEC. 956A. EARNINGS INVESTED IN EXCESS PASSIVE ASSETS.

"(a) General Rule.–In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of–

"(1) the excess (if any) of–

"(A) such shareholder's pro rata share of the amount of the controlled foreign corporation's excess passive assets for such taxable year, over

"(B) the amount of earnings and profits described in section 959(c)(1)(B) with respect to such shareholder, or

"(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation determined after the application of section 951(a)(1)(B).

"(b) Applicable Earnings.–For purposes of this section, the term 'applicable earnings' means, with respect to any controlled foreign corporation, the sum of–

"(1) the amount referred to in section 316(a)(1) to the extent such amount was accumulated in taxable years beginning after

September 30, 1993, and

"(2) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year and reduced by the earnings and profits described in section 959(c)(1) to the extent that the earnings and profits so described were accumulated in taxable years beginning after September 30, 1993.

"(c) Excess Passive Assets.–For purposes of this section–

"(1) In general.–The excess passive assets of any controlled foreign corporation for any taxable year is the excess (if any) of–

"(A) the average of the amounts of passive assets held by such corporation as of the close of each quarter of such taxable year, over

"(B) 25 percent of the average of the amounts of total assets held by such corporation as of the close of each quarter of such taxable year.

***193** For purposes of the preceding sentence, the amount taken into account with respect to any asset shall be its adjusted basis as determined for purposes of computing earnings and profits.

"(2) Passive asset.–

"(A) In general.–Except as otherwise provided in this section, the term 'passive asset' means any asset held by the controlled foreign corporation which produces passive income (as defined in section 1296(b)) or is held for the production of such income.

"(B) Coordination with section 956.–The term 'passive asset' shall not include any United States property (as defined in section 956).

"(3)Certain rules to apply.–For purposes of this subsection, the rules of the following provisions shall apply:

"(A) Section 1296(c) (relating to look-thru rules).

"(B) Section 1297(d) (relating to leasing rules).

"(C) Section 1297(e) (relating to intangible property).

"(d) Treatment of Certain Groups of Controlled Foreign Corporations.–

"(1) In general.–For purposes of applying subsection (c)–

"(A) all controlled foreign corporations which are members of the same CFC group shall be treated as 1 controlled foreign corporation, and

"(B) the amount of the excess passive assets determined with respect to such 1 corporation shall be allocated among the controlled foreign corporations which are members of such group in proportion to their respective amounts of applicable earnings.

"(2) CFC group.–For purposes of paragraph (1), the term 'CFC group' means 1 or more chains of controlled foreign corporations connected through stock ownership with a top tier corporation which is a controlled foreign corporation, but only if–

"(A) the top tier corporation owns directly more than 50 percent (by vote or value) of the stock of at least 1 of the other controlled foreign corporations, and

"(B) more than 50 percent (by vote or value) of the stock of each of the controlled foreign corporations (other than the top tier corporation) is owned (directly or indirectly) by one or more other members of the group.

"(e) Special Rule Where Corporation Ceases To Be Controlled Foreign Corporation During Taxable Year.–If any foreign corporation ceases to be a controlled foreign corporation during any taxable year–

"(1) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation, and

"(2) the amount of such corporation's excess passive assets for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

"(3) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of ***194** section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation.

"(f) Regulations.–The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisions of this section through reorganizations or otherwise."

(c) Previously Taxed Income Rules.–

(1) In general.–Subsection (a) of section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by striking "or" at the end of paragraph (1), by adding "or" at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

"(3) such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of,".

(2) Allocation rules.–

(A) Subsection (a) of section 959 is amended by adding at the end thereof the following new sentence: "The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraphs (2) and (3) of this subsection.".

(B) Section 959 is amended by adding at the end thereof the following new subsection:

"(f) Allocation Rules for Certain Inclusions.–

"(1) In general.–For purposes of this section–

"(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

"(B) amounts that would be included under subparagraph (C) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent the earnings so described were accumulated in taxable years beginning after September 30, 1993, and then to earnings described in subsection (c)(3).

"(2) Treatment of distributions.–In applying this section, actual distributions shall be taken into account before amounts

that would be included under subparagraphs (B) and (C) of section 951(a)(1) (determined without regard to this section)."

(C) Paragraph (1) of section 959(c) is amended to read as follows:

"(1) first to the aggregate of–

"(A) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section), and

"(B) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(C) (or which would have been included except for subsection (a)(3) of this section),

***195** with any distribution being allocated between earnings and profits described in subparagraph (A) and earnings and profits described in subparagraph (B) proportionately on the basis of the respective amounts of such earnings and profits,".

(3) Coordination with pfic inclusions.–Subsection (c) of section 1293 is amended by adding at the end thereof the following new sentence: "If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).".

(4) Conforming amendments.–

(A) Subsections (a) and (b) of section 959 are each amended by striking "earnings and profits for a taxable year" and inserting "earnings and profits".

(B) Paragraph (2) of section 959(c) is amended to read as follows:

"(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under subparagraph (B) or (C) of section 951(a)(1) because of the exclusions in paragraphs (2) and (3) of subsection (a) of this section), and"

(C) Subsection (b) of section 989 is amended by striking "section 951(a)(1)(B)" and inserting "subparagraph (B) or (C) of section 951(a)(1)".

(d) Modifications to Passive Foreign Investment Company Rules.–

(1) Adjusted basis used in certain determinations.–Subsection (a) of section 1296 is amended by striking the material following paragraph (2) and inserting the following:

"In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary."

(2) Treatment of certain subpart f inclusions.–Subsection (b) of section 1297 is amended by adding at the end thereof the following new paragraph:

"(9) Treatment of certain subpart f inclusions.–Any amount included in gross income under subparagraph (B) or (C) of section 951(a)(1) shall be treated as a distribution received with respect to the stock."

(3) Treatment of certain dealers in securities.–Subsection (b) of section 1296 is amended by adding at the end thereof the following new paragraph:

"(3) Treatment of certain dealers in securities.–

"(A) In general.–In the case of any foreign corporation which is a controlled foreign corporation (as defined in section 957(a)), the term 'passive income' does not include any income derived in the active conduct of a securities business by such corporation if such corporation is registered ***196** as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act. To the extent provided in regulations, such term shall not include any income derived in the active conduct of a securities business by a controlled foreign corporation which is not so registered.

"(B) Application of look-thru rules.–For purposes of paragraph (2)(C), rules similar to the rules of subparagraph (A) of this paragraph shall apply in determining whether any income of a related person (whether or not a corporation) is passive income.

"(C) Limitation.–The preceding provisions of this paragraph shall only apply in the case of persons who are United States shareholders (as defined in section 951(b)) in the controlled foreign corporation."

(4) Leasing and intangible asset rules.–Section 1297 is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsections:

"(d) Treatment of Certain Leased Property.–For purposes of this part–

"(1) In general.–Any tangible personal property with respect to which a foreign corporation is the lessee under a lease with a term of at least 12 months shall be treated as an asset actually held by such corporation.

"(2) Determination of adjusted basis.–

"(A) In general.–The adjusted basis of any asset to which paragraph (1) applies shall be the unamortized portion (as determined under regulations prescribed by the Secretary) of the present value of the payments under the lease for the use of such property.

"(B) Present value.–For purposes of subparagraph (A), the present value of payments described in subparagraph (A) shall be determined in the manner provided in regulations prescribed by the Secretary–

"(i) as of the beginning of the lease term, and
"(ii) except as provided in such regulations, by using a discount rate equal to the applicable Federal rate determined under section 1274(d)–
"(I) by substituting the lease term for the term of the debt instrument, and
"(II) without regard to paragraph (2) or (3) thereof.
"(3) Exceptions.–This subsection shall not apply in any case where–

"(A) the lessor is a related person (as defined in section 954(d)(3)) with respect to the foreign corporation, or

"(B) a principal purpose of leasing the property was to avoid the provisions of this part or section 956A.

"(e)Special Rules For Certain Intangibles.–

"(1) Research expenditures.–The adjusted basis of the total assets of a controlled foreign corporation shall be increased by the research or experimental expenditures (within ***197** the meaning of section 174) paid or incurred by such foreign corporation during the taxable year and the preceding 2 taxable years. Any expenditure otherwise taken into account under the preceding sentence shall be reduced by the amount of any reimbursement received by the controlled foreign corporation with respect to such expenditure.

"(2) Certain licensed intangibles.–

"(A) In general.–In the case of any intangible property (as defined in section 936(h)(3)(B)) with respect to which a controlled foreign corporation is a licensee and which is used by such foreign corporation in the active conduct of a trade or business, the adjusted basis of the total assets of such foreign corporation shall be increased by an amount equal to 300 percent of the payments made during the taxable year by such foreign corporation for the use of such intangible property.

"(B) Exceptions.–Subparagraph (A) shall not apply to–

"(i) any payments to a foreign person if such foreign person is a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation, and

"(ii) any payments under a license if a principal purpose of entering into such license was to avoid the provisions of this part or section 956A.

"(3) Controlled foreign corporation.–For purposes of this subsection, the term 'controlled foreign corporation' has the meaning given such term by section 957(a)."

(e) Effective Date.–The amendments made by this section shall apply to taxable years of foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

SEC. 13232. MODIFICATION TO TAXATION OF INVESTMENT IN UNITED STATES PROPERTY.

(a) General Rule.–Section 956 (relating to investment of earnings in United States property) is amended–

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and

(2) by striking subsection (a) and inserting the following:

"(a) General Rule.–In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of–

"(1) the excess (if any) of–

"(A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of such taxable year, over

"(B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or

"(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation.

The amount taken into account under paragraph (1) with respect to any property shall be its adjusted basis as determined for purposes ***198** of computing earnings and profits, reduced by any liability to which the property is subject.

"(b) Special Rules.–

"(1) Applicable earnings.–For purposes of this section, the term 'applicable earnings' has the meaning given to such term by section 956A(b), except that the provisions of such section excluding earnings and profits accumulated in taxable years beginning before October 1, 1993, shall be disregarded.

"(2) Special rule for u.s. property acquired before corporation is a controlled foreign corporation.–In applying subsection (a) to any taxable year, there shall be disregarded any item of United States property which was acquired by the controlled foreign corporation before the first day on which such corporation was treated as a controlled foreign corporation. The aggregate amount of property disregarded under the preceding sentence shall not exceed the portion of the applicable earnings of such controlled foreign corporation which were accumulated during periods before such first day.

"(3) Special rule where corporation ceases to be controlled foreign corporation.–Rules similar to the rules of section

956A(e) shall apply for purposes of this section."

(b) Regulatory Authority.–Section 956 is amended by adding at the end thereof the following new subsection:

"(e) Regulations.–The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisons of this section through reorganizations or otherwise."

(c) Conforming Amendments.–

(1) Subparagraph (B) of section 951(a)(1) is amended to read as follows:

"(B) the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and"

(2) Subsection (a) of section 951 is amended by striking paragraph (4).

(d) Effective Date.–The amendments made by this section shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.

SEC. 13233. OTHER MODIFICATIONS TO SUBPART F.

(a) Same Country Exception Not To Apply to Certain Dividends.–

(1) In general.–Paragraph (3) of section 954(c) (relating to certain income received from related persons) is amended by adding at the end thereof the following new subparagraph:

"(C) Exception for certain dividends.–Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a ***199** chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i)."

(2) Effective date.–The amendment made by paragraph (1) shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.

(b) Amendments to Section 960(b).–

(1) In general.–Subsection (b) of section 960 is amended–

(A) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and

(B) by striking paragraphs (1) and (2) and inserting the following new paragraphs:

"(1) Increase in section 904 limitation.–In the case of any taxpayer who–

"(A) either (i) chose to have the benefits of subpart A of this part for a taxable year beginning after September 30, 1993, in which he was required under section 951(a) to include any amount in his gross income, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States,

"(B) chooses to have the benefits of subpart A of this part for any taxable year in which he receives 1 or more distributions or amounts which are excludable from gross income under section 959(a) and which are attributable to amounts included in

his gross income for taxable years referred to in subparagraph (A), and

"(C) for the taxable year in which such distributions or amounts are received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distributions or amounts,

the limitation under section 904 for the taxable year in which such distributions or amounts are received shall be increased by the lesser of the amount of such taxes paid, or deemed paid, or accrued with respect to such distributions or amounts or the amount in the excess limitation account as of the beginning of such taxable year.

"(2) Excess limitation account.–

"(A) Establishment of account.–Each taxpayer meeting the requirements of paragraph (1)(A) shall establish an excess limitation account. The opening balance of such account shall be zero.

"(B) Increases in account.–For each taxable year beginning after September 30, 1993, the taxpayer shall increase the amount in the excess limitation account by the excess (if any) of–

"(i) the amount by which the limitation under section 904(a) for such taxable year was increased by reason of the total amount of the inclusions in gross income under section 951(a) for such taxable year, over

***200** "(ii) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for such taxable year and which would not have been allowable but for the inclusions in gross income described in clause (i).

Proper reductions in the amount added to the account under the preceding sentence for any taxable year shall be made for any increase in the credit allowable under section 901 for such taxable year by reason of a carryback if such increase would not have been allowable but for the inclusions in gross income described in clause (i).

"(C) Decreases in account.–For each taxable year beginning after September 30, 1993, for which the limitation under section 904 was increased under paragraph (1), the taxpayer shall reduce the amount in the excess limitation account by the amount of such increase.

"(3) Distributions of income previously taxed in years beginning before october 1, 1993.–If the taxpayer receives a distribution or amount in a taxable year beginning after September 30, 1993, which is excluded from gross income under section 959(a) and is attributable to any amount included in gross income under section 951(a) for a taxable year beginning before October 1, 1993, the limitation under section 904 for the taxable year in which such amount or distribution is received shall be increased by the amount determined under this subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1993."

(2) Effective date.–The amendment made by paragraph (1) shall apply to taxable years beginning after September 30, 1993.

Subpart B–Allocation of Research and Experimental Expenditures

SEC. 13234. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) General Rule.–Subparagraph (B) of section 864(f)(1) (relating to allocation of research and experimental expenditures) is amended by striking "64 percent" each place it appears and inserting "50 percent".

(b) Conforming Amendments.–

(1) Subsection (f) of section 864 is amended by striking paragraph (5) and inserting the following new paragraphs:

"(5) Regulations.–The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this

subsection, including regulations relating to the determination of whether any expenses are attributable to activities conducted in the United States or outside the United States and regulations providing such adjustments to the provisions of this subsection as may be appropriate in the case of cost-sharing arrangements and contract research.

***201** "(6) Applicability.–This subsection shall apply to the taxpayer's first taxable year (beginning on or before August 1, 1994) following the taxpayer's last taxable year to which Revenue Procedure 92–56 applies or would apply if the taxpayer elected the benefits of such Revenue Procedure."

(2) Subparagraph (D) of section 864(f)(4) is amended by striking "subparagraph (C)" and inserting "subparagraph (B) or (C)".

Subpart C–Other Provisions

SEC. 13235. REPEAL OF CERTAIN EXCEPTIONS FOR WORKING CAPITAL.

(a) Provisions Relating to Oil and Gas Income.–

(1) Amendments to section 907.–

(A) Paragraph (1) of section 907(c) is amended by adding at the end thereof the following new flush sentence:

"Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A))."

(B) Paragraph (2) of section 907(c) is amended by adding at the end thereof the following new flush sentence:

"Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A))."

(2) Separate application of foreign tax credit.–Clause (iii) of section 904(d)(2)(A) is amended by inserting "and" at the end of subclause (II), by striking ", and" at the end of subclause (III) and inserting a period, and by striking subclause (IV).

(3) Treatment under subpart f.–

(A) Paragraph (1) of section 954(g) is amended by adding at the end thereof the following new flush sentence:

"Such term shall not include any foreign personal holding company income (as defined in subsection (c))."

(B) Paragraph (8) of section 954(b) is amended by striking "(1),".

(b) Treatment of Shipping Income.–Subsection (f) of section 954 is amended by adding at the end thereof the following new sentence: "Except as provided in paragraph (1), such term shall not include any dividend or interest income which is foreign personal holding company income (as defined in subsection (c))."

(c) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 13236. MODIFICATIONS OF ACCURACY-RELATED PENALTY.

(a) Threshold Requirement.–Clause (ii) of section 6662(e)(1)(B) (relating to substantial valuation misstatement under chapter 1) is amended to read as follows:

"(ii) the net section 482 transfer price adjustment for the taxable year exceeds the lesser of $5,000,000 or 10 percent of

the taxpayer's gross receipts."

(b) Certain Adjustments Excluded in Determining Threshold.–Subparagraph (B) of section 6662(e)(3) is amended to read as follows:

"(B) Certain adjustments excluded in determining threshold.–For purposes of determining whether the ***202** threshold requirements of paragraph (1)(B)(ii) are met, the following shall be excluded:

"(i) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if–

"(I) it is established that the taxpayer determined such price in accordance with a specific pricing method set forth in the regulations prescribed under section 482 and that the taxpayer's use of such method was reasonable,

"(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such a method and which establishes that the use of such method was reasonable, and

"(III) the taxpayer provides such documentation to the Secretary within 30 days of a request for such documentation.

"(ii) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to a redetermination of price where such price was not determined in accordance with such a specific pricing method if–

"(I) the taxpayer establishes that none of such pricing methods was likely to result in a price that would clearly reflect income, the taxpayer used another pricing method to determine such price, and such other pricing method was likely to result in a price that would clearly reflect income,

"(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such other method and which establishes that the requirements of subclause (I) were satisfied, and

"(III) the taxpayer provides such documentation to the Secretary within 30 days of request for such documentation.

"(iii) Any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States."

(c) Coordination With Reasonable Cause Exception.–Paragraph (3) of section 6662(e) is amended by adding at the end thereof the following new subparagraph:

"(D) Coordination with reasonable cause exception.–For purposes of section 6664(c) the taxpayer shall not be treated as having reasonable cause for any portion of an underpayment attributable to a net section 482 transfer price adjustment unless such taxpayer meets the requirements ***203** of clause (i), (ii), or (iii) of subparagraph (B) with respect to such portion."

(d) Conforming Amendment.–Clause (iii) of section 6662(h)(2)(A) is amended to read as follows:

"(iii) in paragraph (1)(B)(ii)–

"(I) '$20,000,000' for '$5,000,000', and

"(II) '20 percent' for '10 percent'."

(e) Effective Date.–The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 13237. DENIAL OF PORTFOLIO INTEREST EXEMPTION FOR CONTINGENT INTEREST.

(a) General Rule.–

(1) Subsection (h) of section 871 (relating to repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments) is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) Portfolio interest not to include certain contingent interest.–For purposes of this subsection–

"(A) In general.–Except as otherwise provided in this paragraph, the term 'portfolio interest' shall not include–

"(i) any interest if the amount of such interest is determined by reference to–
"(I) any receipts, sales or other cash flow of the debtor or a related person,
"(II) any income or profits of the debtor or a related person,
"(III) any change in value of any property of the debtor or a related person, or
"(IV) any dividend, partnership distributions, or similar payments made by the debtor or a related person, or
"(ii) any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of Federal income tax.

"(B) Related person.–The term 'related person' means any person who is related to the debtor within the meaning of section 267(b) or 707(b)(1), or who is a party to any arrangement undertaken for a purpose of avoiding the application of this paragraph.

"(C) Exceptions.–Subparagraph (A)(i) shall not apply to–

"(i) any amount of interest solely by reason of the fact that the timing of any interest or principal payment is subject to a contingency,
"(ii) any amount of interest solely by reason of the fact that the interest is paid with respect to nonrecourse or limited recourse indebtedness,
"(iii) any amount of interest all or substantially all of which is determined by reference to any other amount of interest not described in subparagraph (A) ***204** (or by reference to the principal amount of indebtedness on which such other interest is paid),
"(iv) any amount of interest solely by reason of the fact that the debtor or a related person enters into a hedging transaction to reduce the risk of interest rate or currency fluctuations with respect to such interest,
"(v) any amount of interest determined by reference to–
"(I) changes in the value of property (including stock) that is actively traded (within the meaning of section 1092(d)) other than property described in section 897(c)(1) or (g),
"(II) the yield on property described in subclause (I), other than a debt instrument that pays interest described in subparagraph (A), or stock or other property that represents a beneficial interest in the debtor or a related person, or
"(III) changes in any index of the value of property described in subclause (I) or of the yield on property described in subclause (II), and
"(vi) any other type of interest identified by the Secretary by regulation.

"(D) Exception for certain existing indebtedness.–Subparagraph (A) shall not apply to any interest paid or accrued with respect to any indebtedness with a fixed term–

"(i) which was issued on or before April 7, 1993, or
"(ii) which was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued."

(2) Subsection (c) of section 881 is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) Portfolio interest not to include certain contingent interest.–For purposes of this subsection, the term 'portfolio interest' shall not include any interest which is treated as not being portfolio interest under the rules of section 871(h)(4)."

(b) Estate Tax Treatment.–Subsection (b) of section 2105 is amended–

(1) by striking "this subchapter" in the material preceding paragraph (1) and inserting "this subchapter, the following shall not be deemed property within the United States", and

(2) by striking paragraph (3) and all that follows down through the period at the end thereof and inserting the following:

"(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(5) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death.

***205** Notwithstanding the preceding sentence, if any portion of the interest on an obligation referred to in paragraph (3) would not be eligible for the exemption referred to in paragraph (3) by reason of section 871(h)(4) if the interest were received by the decedent at the time of his death, then an appropriate portion (as determined in a manner prescribed by the Secretary) of the value (as determined for purposes of this chapter) of such debt obligation shall be deemed property within the United States."

(c) Conforming Amendments.–

(1) Clause (ii) of section 871(h)(2)(B) is amended by striking "paragraph (4)" and inserting "paragraph (5)".

(2) Clause (ii) of section 881(c)(2)(B) is amended by striking "section 871(h)(4)" and inserting "section 871(h)(5)".

(3) Paragraph (6) of section 881(c) (as redesignated by subsection (a)) is amended by striking "section 871(h)(5)" each place it appears and inserting "section 871(h)(6)".

(4) Paragraph (9) of section 1441(c) is amended by striking "section 871(h)(3)" and inserting "section 871(h) (3) or (4)".

(5) Subsection (a) of section 1442 is amended–

(A) by striking "871(h)(3)" and inserting "871(h) (3) or (4)", and

(B) by striking "881(c)(3)" and inserting "881(c) (3) or (4)".

(d) Effective Date.–The amendments made by this section shall apply to interest received after December 31, 1993; except that the amendments made by subsection (b) shall apply to the estates of decedents dying after December 31, 1993.

SEC. 13238. REGULATIONS DEALING WITH CONDUIT ARRANGEMENTS.

Section 7701 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) Regulations Relating to Conduit Arrangements.–The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title."

SEC. 13239. TREATMENT OF EXPORT OF CERTAIN SOFTWOOD LOGS.

(a) Foreign Sales Corporations.–Paragraph (2) of section 927(a) (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding at the end the following:

"(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(b) Domestic International Sales Corporations.–Paragraph (2) of section 993(c) (relating to exclusion of certain property) is amended–

(1) by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding after subparagraph (D) the following new subparagraph:

***206** "(E) any unprocessed timber which is a softwood.", and

(2) by adding at the end the following new sentence: "For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(c) Source Rule.–Subsection (b) of section 865 (relating to source rules for personal property sales) is amended by adding at the end the following: "Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term 'unprocessed timber' means any log, cant, or similar form of timber."

(d) Elimination of Deferral.–Subsection (d) of section 954 is amended by adding at the end the following new paragraph:

"(4) Special rule for certain timber products.–For purposes of subsection (a)(2), the term 'foreign base company sales income' includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with–

"(A) the sale of any unprocessed timber referred to in section 865(b), or

"(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph."

(e) Effective Date.–The amendments made by this section shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act.

PART IV–TRANSPORTATION FUELS PROVISIONS

Subpart A–Transportation Fuels Tax

SEC. 13241. TRANSPORTATION FUELS TAX.

(a) Gasoline.–Clause (iii) of section 4081(a)(2)(B) (relating to rates of tax) is amended to read as follows:

"(iii) the deficit reduction rate is 6.8 cents per gallon."

(b) Diesel Fuel and Noncommercial Aviation Fuel.–

(1) Diesel fuel.–Paragraph (4) of section 4091(b) (relating to rate of tax) is amended by striking "2.5 cents" and inserting "6.8 cents".

(2) Aviation fuel.–

(A) Gasoline in noncommercial aviation.–Paragraph (3) of section 4041(c) is amended to read as follows:

"(3) Rate of tax.–The rate of tax imposed by paragraph (2) on any gasoline is 1 cent per gallon."

(B) Fuel other than gasoline.–

(i) Clause (ii) of section 4091(b)(1)(A) is amended by inserting "and the aviation fuel deficit reduction rate" after "financing rate".

***207** (ii) Subsection (b) of section 4091 is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) Aviation fuel deficit reduction rate.–For purposes of paragraph (1), the aviation fuel deficit reduction rate is 4.3 cents per gallon."

(iii) Paragraph (1) of section 4041(c) is amended–
(I) by striking "of 17.5 cents a gallon", and
(II) by inserting before the last sentence the following new sentence:
"The rate of the tax imposed by this paragraph shall be the sum of the Airport and Airway Trust Fund financing rate and the aviation fuel deficit reduction rate in effect under section 4091 at the time of such sale or use."

(c) Certain Alcohol Fuels.–Section 4041(m)(1)(A) is amended to read as follows:

"(A) under subsection (a)(2)–

"(i) the Highway Trust Fund financing rate shall be 5.75 cents per gallon, and
"(ii) the deficit reduction rate shall be 5.55 cents per gallon."
(d) Fuel Used in Commercial Transportation on Inland Waterways.–

(1) In general.–Section 4042(b)(1) (relating to amount of tax) is amended–

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting ", and", and

(C) by adding at the end thereof the following new subparagraph:

"(C) the deficit reduction rate."

(2) Rate.–Section 4042(b)(2) (relating to rates) is amended by adding at the end the following new subparagraph:

"(C) The deficit reduction rate is 4.3 cents per gallon."

(e) Compressed Natural Gas.–

(1) In general.–Subsection (a) of section 4041 is amended by adding at the end thereof the following new paragraph:

"(3) Compressed natural gas.–

"(A) In general.–There is hereby imposed a tax on compressed natural gas–

"(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or
"(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such gas under clause (i).
The rate of the tax imposed by this paragraph shall be 48.54 cents per MCF (determined at standard temperature and pressure).

"(B) Bus uses.–No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2) (relating to school bus and intracity transportation).

***208** "(C) Administrative provisions.–For purposes of applying this title with respect to the taxes imposed by this subsection, references to any liquid subject to tax under this subsection shall be treated as including references to compressed natural gas subject to tax under this paragraph, and references to gallons shall be treated as including references to MCF with respect to such gas."

(2) Exemption from leaking underground storage tank trust fund tax.–Paragraph (1) of section 4041(d) is amended by striking "subsection (a)" the second place it appears in the text and inserting "subsection (a)(1) or (2)".

(f) Conforming Amendments.–

(1) Paragraph (3) of section 4041(f) is hereby repealed.

(2) Subsection (g) of section 4041 is amended by striking the last sentence.

(3) Subparagraphs (A) and (B) of section 4093(c)(2) are amended to read as follows:

"(A) No exemption from certain taxes on fuel used in diesel-powered trains.–In the case of fuel sold for use in a diesel-powered train, paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate and the diesel fuel deficit reduction rate imposed under such section. The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

"(B) No exemption from leaking underground storage tank trust fund taxes on fuel used in commercial aviation.–In the case of fuel sold for use in commercial aviation (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) also shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section. For purposes of the preceding sentence, the term 'commercial aviation' means any use of an aircraft other than in noncommercial aviation (as defined in section 4041(c)(4))."

(4) Section 4093(d) is amended by inserting "and the aviation fuel deficit reduction rate" after "rate".

(5) Section 6420 is amended by striking subsection (h).

(6) Paragraph (3) of section 6421(f) is amended by inserting "and at the deficit reduction rate" after "financing rate", and by inserting "and deficit reduction tax" after "tax" in the heading.

(7) Section 6421 is amended by striking subsection (i).

(8) Paragraph (2) of section 6427(b) is amended–

(A) by striking "3.1 cents" in subparagraph (A) and inserting "7.4 cents", and

(B) by striking "3-cent reduction" in the paragraph heading and inserting "Reduction".

(9) Section 6427(l) is amended by striking paragraphs (3) and (4) and inserting the following new paragraphs:

***209** "(3) No refund of certain taxes on fuel used in diesel-powered trains.–In the case of fuel used in a diesel-powered train, paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate and the diesel fuel deficit reduction rate imposed by such section. The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

"(4) No refund of leaking underground storage tank trust fund taxes on fuel used in commercial aviation.–In the case of fuel used in commercial aviation (as defined in section 4093(c)(2)(B)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section."

(10) Section 6427 is amended by striking subsections (m) and (o).

(g) Effective Date.–The amendments made by this section shall take effect on October 1, 1993.

(h) Floor Stocks Taxes.–

(1) Imposition of tax.–In the case of gasoline, diesel fuel, and aviation fuel on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before October 1, 1993, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 4.3 cents per gallon on such gasoline, diesel fuel, and aviation fuel.

(2) Liability for tax and method of payment.–

(A) Liability for tax.–A person holding gasoline, diesel fuel, or aviation fuel on October 1, 1993, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) Method of payment.–The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) Time for payment.–The tax imposed by paragraph (1) shall be paid on or before November 30, 1993.

(3) Definitions.–For purposes of this subsection–

(A) Held by a person.–Gasoline, diesel fuel, and aviation fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) Gasoline.–The term "gasoline" has the meaning given such term by section 4082 of such Code.

(C) Diesel fuel.–The term "diesel fuel" has the meaning given such term by section 4092 of such Code.

(D) Aviation fuel.–The term "aviation fuel" has the meaning given such term by section 4092 of such Code.

(E) Secretary.–The term "Secretary" means the Secretary of the Treasury or his delegate.

(4) Exception for exempt uses.–The tax imposed by paragraph (1) shall not apply to gasoline, diesel fuel, or aviation fuel held by any person exclusively for any use to the extent ***210** a credit or refund of the tax imposed by section 4081 or 4091 of such Code, as the case may be, is allowable for such use.

(5) Exception for fuel held in vehicle tank.–No tax shall be imposed by paragraph (1) on gasoline or diesel fuel held in the tank of a motor vehicle or motorboat.

(6) Exception for certain amounts of fuel.–

(A) In general.–No tax shall be imposed by paragraph (1)–

(i) on gasoline held on October 1, 1993, by any person if the aggregate amount of gasoline held by such person on such date does not exceed 4,000 gallons, and
(ii) on diesel fuel or aviation fuel held on October 1, 1993, by any person if the aggregate amount of diesel fuel or aviation fuel held by such person on such date does not exceed 2,000 gallons.

The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) Exempt fuel.–For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

(C) Controlled groups.–For purposes of this paragraph–

(i) Corporations.–
(I) In general.–All persons treated as a controlled group shall be treated as 1 person.
(II) Controlled group.–The term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase

"at least 80 percent" each place it appears in such subsection.

(ii) Nonincorporated persons under common control.–Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(7) Other law applicable.–All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code in the case of gasoline and section 4091 of such Code in the case of diesel fuel and aviation fuel shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091.

***211** Subpart B–Modifications to Tax on Diesel Fuel

SEC. 13242. MODIFICATIONS TO TAX ON DIESEL FUEL.

(a) In General.–Subparts A and B of part III of subchapter A of chapter 32 (relating to manufacturers excise taxes), as amended by subpart A, are amended to read as follows:

"Subpart A–Gasoline and Diesel Fuel

"Sec. 4081. Imposition of tax.

"Sec. 4082. Exemptions for diesel fuel.

"Sec. 4083. Definitions; special rule; administrative authority.

"Sec. 4084. Cross references.

"SEC. 4081. IMPOSITION OF TAX.

"(a) Tax Imposed.–

"(1) Tax on removal, entry, or sale.–

"(A) In general.–There is hereby imposed a tax at the rate specified in paragraph (2) on–

"(i) the removal of a taxable fuel from any refinery,

"(ii) the removal of a taxable fuel from any terminal,

"(iii) the entry into the United States of any taxable fuel for consumption, use, or warehousing, and

"(iv) the sale of a taxable fuel to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such fuel under clause (i), (ii), or (iii).

"(B) Exemption for bulk transfers to registered terminals or refineries.–The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk to a terminal or refinery if the person removing or entering the taxable fuel and the operator of such terminal or refinery are registered under section 4101.

"(2) Rates of tax.–

"(A) In general.–The rate of the tax imposed by this section is–

"(i) in the case of gasoline, 18.3 cents per gallon, and

"(ii) in the case of diesel fuel, 24.3 cents per gallon.

"(B) Leaking underground storage tank trust fund tax.–The rates of tax specified in subparagraph (A) shall each be increased by 0.1 cent per gallon. The increase in tax under this subparagraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

"(b) Treatment of Removal or Subsequent Sale by Blender.–

"(1) In general.–There is hereby imposed a tax at the rate determined under subsection (a) on taxable fuel removed or sold by the blender thereof.

"(2) Credit for tax previously paid.–If–

"(A) tax is imposed on the removal or sale of a taxable fuel by reason of paragraph (1), and

***212** "(B) the blender establishes the amount of the tax paid with respect to such fuel by reason of subsection (a),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

"(c) Taxable Fuels Mixed With Alcohol.–Under regulations prescribed by the Secretary–

"(1) In general.–The rate of tax under subsection (a) shall be the alcohol mixture rate in the case of the removal or entry of any qualified alcohol mixture.

"(2) Tax prior to mixing.–

"(A) In general.–In the case of the removal or entry of any taxable fuel for use in producing at the time of such removal or entry a qualified alcohol mixture, the rate of tax under subsection (a) shall be the applicable fraction of the alcohol mixture rate. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing a qualified alcohol mixture after the time of such removal or entry.

"(B) Applicable fraction.–For purposes of subparagraph (A), the applicable fraction is–

"(i) in the case of a qualified alcohol mixture which contains gasoline, the fraction the numerator of which is 10 and the denominator of which is–
"(I) 9 in the case of 10 percent gasohol,
"(II) 9.23 in the case of 7.7 percent gasohol, and
"(III) 9.43 in the case of 5.7 percent gasohol, and
"(ii) in the case of a qualified alcohol mixture which does not contain gasoline, $^{10}/_{9}$.

"(3) Alcohol; qualified alcohol mixture.–For purposes of this subsection–

"(A) Alcohol.–The term 'alcohol' includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal (including peat). Such term does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

"(B) Qualified alcohol mixture.–The term 'qualified alcohol mixture' means–

"(i) any mixture of gasoline with alcohol if at least 5.7 percent of such mixture is alcohol, and
"(ii) any mixture of diesel fuel with alcohol if at least 10 percent of such mixture is alcohol.

"(4) Alcohol mixture rates for gasoline mixtures.–For purposes of this subsection–

"(A) In general.–The alcohol mixture rate for a qualified alcohol mixture which contains gasoline is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over–

"(i) 5.4 cents per gallon for 10 percent gasohol,
"(ii) 4.158 cents per gallon for 7.7 percent gasohol, and
"(iii) 3.078 cents per gallon for 5.7 percent gasohol.

***213** In the case of a mixture none of the alcohol in which consists of ethanol, clauses (i), (ii), and (iii) shall be applied by

substituting '6 cents' for '5.4 cents', '4.62 cents' for '4.158 cents', and '3.42 cents' for '3.078 cents'.

"(B) 10 percent gasohol.–The term '10 percent gasohol' means any mixture of gasoline with alcohol if at least 10 percent of such mixture is alcohol.

"(C) 7.7 percent gasohol.–The term '7.7 percent gasohol' means any mixture of gasoline with alcohol if at least 7.7 percent, but not 10 percent or more, of such mixture is alcohol.

"(D) 5.7 percent gasohol.–The term '5.7 percent gasohol' means any mixture of gasoline with alcohol if at least 5.7 percent, but not 7.7 percent or more, of such mixture is alcohol.

"(5) Alcohol mixture rate for diesel fuel mixtures.–The alcohol mixture rate for a qualified alcohol mixture which does not contain gasoline is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over 5.4 cents per gallon (6 cents per gallon in the case of a qualified alcohol mixture none of the alcohol in which consists of ethanol).

"(6) Limitation.–In no event shall any alcohol mixture rate determined under this subsection be less than 4.3 cents per gallon.

"(7) Later separation of fuel from qualified alcohol mixture.–If any person separates the taxable fuel from a qualified alcohol mixture on which tax was imposed under subsection (a) at a rate determined under paragraph (1) or (2) (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

"(8) Termination.–Paragraphs (1) and (2) shall not apply to any removal, entry, or sale after September 30, 2000.

"(d) Termination.–

"(1) In general.–On and after October 1, 1999, each rate of tax specified in subsection (a)(2)(A) shall be 4.3 cents per gallon.

"(2) Leaking underground storage tank trust fund financing rate.–The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after December 31, 1995.

"(e) Refunds in Certain Cases.–Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

***214** "SEC. 4082. EXEMPTIONS FOR DIESEL FUEL.

"(a) In General.–The tax imposed by section 4081 shall not apply to diesel fuel–

"(1) which the Secretary determines is destined for a nontaxable use,

"(2) which is indelibly dyed in accordance with regulations which the Secretary shall prescribe, and

"(3) which meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

Such regulations shall allow an individual choice of dye color approved by the Secretary or chosen from any list of approved dye colors that the Secretary may publish.

"(b) Nontaxable Use.–For purposes of this section, the term 'nontaxable use' means–

"(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax,

"(2) any use in a train, and

"(3) any use described in section 6427(b)(1) (after the application of section 6427(b)(3)).

"(c) Regulations.–The Secretary shall prescribe such regulations as may be necessary to carry out this section, including regulations requiring the conspicuous labeling of retail diesel fuel pumps and other delivery facilities to assure that persons are aware of which fuel is available only for nontaxable uses.

"(d) Cross Reference.–

"For tax on train and certain bus uses of fuel purchased tax-free, see section 4041(a)(1).

"SEC. 4083. DEFINITIONS; SPECIAL RULE; ADMINISTRATIVE AUTHORITY.

"(a) Taxable Fuel.–For purposes of this subpart–

"(1) In general.–The term 'taxable fuel' means–

"(A) gasoline, and

"(B) diesel fuel.

"(2) Gasoline.–The term 'gasoline' includes, to the extent prescribed in regulations–

"(A) gasoline blend stocks, and

"(B) products commonly used as additives in gasoline.

For purposes of subparagraph (A), the term 'gasoline blend stock' means any petroleum product component of gasoline.

"(3) Diesel fuel.–The term 'diesel fuel' means any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, a diesel-powered train, or a diesel-powered boat.

"(b) Certain Uses Defined as Removal.–If any person uses taxable fuel (other than in the production of gasoline, diesel fuel, or special fuels referred to in section 4041), such use shall for the purposes of this chapter be considered a removal.

"(c) Administrative Authority.–

"(1) In general.–In addition to the authority otherwise granted by this title, the Secretary may in administering compliance with this subpart, section 4041, and penalties and other administrative provisions related thereto–

"(A) enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of–

***215** "(i) examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel, and

"(ii) taking and removing samples of such fuel, and

"(B) detain, for the purposes referred in subparagraph (A), any container which contains or may contain any taxable fuel.

"(2) Inspection sites.–The Secretary may establish inspection sites for purposes of carrying out the Secretary's authority under paragraph (1)(B).

"(3) Penalty for refusal of entry.–The penalty provided by section 7342 shall apply to any refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), except that section 7342 shall be applied by substituting '$1,000' for '$500' for each such refusal.

"SEC. 4084. CROSS REFERENCES.

"(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

"(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

"(3) For provisions to relieve purchasers from excise tax in the case of taxable fuel not used for taxable purposes, see section 6427.

"Subpart B–Aviation Fuel

"Sec. 4091. Imposition of tax.

"Sec. 4092. Exemptions.

"Sec. 4093. Definitions.

"SEC. 4091. IMPOSITION OF TAX.

"(a) Tax on Sale.–

"(1) In general.–There is hereby imposed a tax on the sale of aviation fuel by the producer or the importer thereof or by any producer of aviation fuel.

"(2) Use treated as sale.–For purposes of paragraph (1), if any producer uses aviation fuel (other than for a nontaxable use as defined in section 6427(l)(2)(B)) on which no tax has been imposed under such paragraph, then such use shall be considered a sale.

"(b) Rate of Tax.–

"(1) In general.–The rate of the tax imposed by subsection (a) shall be 21.8 cents per gallon.

"(2) Leaking underground storage tank trust fund tax.–The rate of tax specified in paragraph (1) shall be increased by 0.1 cent per gallon. The increase in tax under this paragraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

"(3) Termination.–

"(A) On and after January 1, 1996, the rate of tax specified in paragraph (1) shall be 4.3 cents per gallon.

"(B) The Leaking Underground Storage Tank Fund financing rate shall not apply during any period during ***216** which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) Reduced Rate of Tax for Aviation Fuel in Alcohol Mixture, Etc.–Under regulations prescribed by the Secretary–

"(1) In general.–The rate of tax under subsection (a) shall be reduced by 13.4 cents per gallon in the case of the sale of any mixture of aviation fuel if–

"(A) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(B) the aviation fuel in such mixture was not taxed under paragraph (2).

In the case of such a mixture none of the alcohol in which is ethanol, the preceding sentence shall be applied by substituting '14 cents' for '13.4 cents'.

"(2) Tax prior to mixing.–In the case of the sale of aviation fuel for use (at the time of such sale) in producing a mixture described in paragraph (1), the rate of tax under subsection (a) shall be $^{10}/_{9}$ of the rate which would (but for this paragraph) have been applicable to such mixture had such mixture been created prior to such sale.

"(3) Later separation.–If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which tax was imposed under subsection (a) at a rate determined under paragraph (1) or (2) (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such aviation fuel. The amount of tax imposed on any sale of such aviation fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel.

"(4) Limitation.–In no event shall any rate determined under paragraph (1) be less than 4.3 cents per gallon.

"(5) Termination.–Paragraphs (1) and (2) shall not apply to any sale after September 30, 2000.

"SEC. 4092. EXEMPTIONS.

"(a) Nontaxable Uses.–No tax shall be imposed by section 4091 on aviation fuel sold by a producer or importer for use by the purchaser in a nontaxable use (as defined in section 6427(l)(2)(B)).

"(b) No Exemption From Certain Taxes on Fuel Used in Commercial Aviation.–In the case of fuel sold for use in commercial aviation (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), subsection (a) shall not apply to so much of the tax imposed by section 4091 as is attributable to–

"(1) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

"(2) in the case of fuel sold after September 30, 1995, 4.3 cents per gallon of the rate specified in section 4091(b)(1).

For purposes of the preceding sentence, the term 'commercial aviation' means any use of an aircraft other than in noncommercial aviation (as defined in section 4041(c)(4)).

"(c) Sales to Producer.–Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply to aviation fuel sold to a producer of such fuel.

***217** "SEC. 4093. DEFINITIONS.

"(a) Aviation Fuel.–For purposes of this subpart, the term 'aviation fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in an aircraft.

"(b) Producer.–For purposes of this subpart–

"(1) Certain persons treated as producers.–

"(A) In general.–The term 'producer' includes any person described in subparagraph (B) and registered under section 4101

with respect to the tax imposed by section 4091.

"(B) Persons described.–A person is described in this subparagraph if such person is–

"(i) a refiner, blender, or wholesale distributor of aviation fuel, or
"(ii) a dealer selling aviation fuel exclusively to producers of aviation fuel.

"(C) Reduced rate purchasers treated as producers.–Any person to whom aviation fuel is sold at a reduced rate under this subpart shall be treated as the producer of such fuel.

"(2) Wholesale distributor.–For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells aviation fuel to producers, retailers, or to users who purchase in bulk quantities and accept delivery into bulk storage tanks. Such term does not include any person who (excluding the term 'wholesale distributor' from paragraph (1)) is a producer or importer."

(b) Civil Penalty for Using Reduced-Rate Fuel for Taxable Use, Etc.–

(1) In general.–Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6714. DYED FUEL SOLD FOR USE OR USED IN TAXABLE USE, ETC.

"(a) Imposition of Penalty.–If–

"(1) any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel,

"(2) any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed, or

"(3) any person willfully alters, or attempts to alter, the strength or composition of any dye or marking done pursuant to section 4082 in any dyed fuel,

then such person shall pay a penalty in addition to the tax (if any).

"(b) Amount of Penalty.–

"(1) In general.–Except as provided in paragraph (2), the amount of the penalty under subsection (a) on each act shall be the greater of–

"(A) $1,000, or

"(B) $10 for each gallon of the dyed fuel involved.

"(2) Multiple violations.–In determining the penalty under subsection (a) on any person, paragraph (1) shall be applied by increasing the amount in paragraph (1)(A) by the product ***218** of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

"(c) Definitions.–For purposes of this section–

"(1) Dyed fuel.–The term 'dyed fuel' means any dyed diesel fuel, whether or not the fuel was dyed pursuant to section 4082.

"(2) Nontaxable use.–The term 'nontaxable use' has the meaning given such term by section 4082(b).

"(d) Joint and Several Liability of Certain Officers and Employees.–If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty."

(2) Clerical amendment.–The table of sections for such part I is amended by adding at the end thereof the following new item:

"Sec. 6714. Dyed fuel sold for use or used in taxable use, etc."

(c) Registered Vendors To Administer Claims for Certain Refunds of Diesel Fuel.–

(1) In general.–Section 6427(l) (relating to nontaxable uses of diesel fuel and aviation fuel) is amended by adding at the end the following new paragraph:

"(5) Registered vendors to administer claims for refund of diesel fuel sold to farmers and state and local governments.–

"(A) In general.–Paragraph (1) shall not apply to diesel fuel used–

"(i) on a farm for farming purposes (within the meaning of section 6420(c)), or
"(ii) by a State or local government.

"(B) Payment to ultimate, registered vendor.–The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor–

"(i) is registered under section 4101, and
"(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1)."

(2) Special refund rules.–

(A) Subsection (i) of section 6427 is amended by adding at the end thereof the following new paragraph:

"(5) Special rule for vendor refunds.–

"(A) In general.–A claim may be filed under subsection (l)(5) by any person with respect to fuel sold by such person for any period–

"(i) for which $200 or more is payable under subsection (l)(5), and
"(ii) which is not less than 1 week.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

"(B) Time for filing claim.–No claim filed under this paragraph shall be allowed unless filed on or before ***219** the last day of the first quarter following the earliest quarter included in the claim."

(B) Paragraph (1) of section 6427(i) is amended by striking "provided in paragraphs (2), (3), and (4)" and inserting "otherwise provided in this subsection".

(C) Paragraph (2) of section 6427(k) is amended by striking "or (4)" and inserting "(4), or (5)".

(D) Paragraph (3) of section 6427(i) is amended by adding at the end thereof the following new subparagraph:

"(C) Time for filing claim.–No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim."

(d) Technical and Conforming Amendments.–

(1) Sections 4101(a) and 4103 are each amended by striking "4081" and inserting "4041(a)(1), 4081,".

(2) Section 4102 is amended by striking "gasoline" and inserting "any taxable fuel (as defined in section 4083)".

(3) Paragraph (1) of section 4041(a), as amended by subchapter A, is amended to read as follows:

"(1) Tax on diesel fuel in certain cases.–

"(A) In general.–There is hereby imposed a tax on any liquid other than gasoline (as defined in section 4083)–

"(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, a diesel-powered train, or a diesel-powered boat for use as a fuel in such vehicle, train, or boat, or
"(ii) used by any person as a fuel in a diesel-powered highway vehicle, a diesel-powered train, or a diesel-powered boat unless there was a taxable sale of such fuel under clause (i).

"(B) Exemption for previously taxed fuel.–No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

"(C) Rate of tax.–

"(i) In general.–Except as otherwise provided in this subparagraph, the rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on diesel fuel which is in effect at the time of such sale or use.
"(ii) Rate of tax on trains.–In the case of any sale for use, or use, of diesel fuel in a train, the rate of tax imposed by this paragraph shall be–
"(I) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,
"(II) 5.55 cents per gallon after September 30, 1995, and before October 1, 1999, and
"(III) 4.3 cents per gallon after September 30, 1999.
"(iii) Rate of tax on certain buses.–
"(I) In general.–Except as provided in subclause (II), in the case of fuel sold for use or ***220** used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)), the rate of tax imposed by this paragraph shall be 7.3 cents per gallon (4.3 cents per gallon after September 30, 1999).
"(II) School bus and intracity transportation.–No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2).

"(D) Diesel fuel used in motorboats.–In the case of any sale for use, or use, of fuel in a diesel-powered motorboat–

"(i) effective during the period after September 30, 1999, and before January 1, 2000, the rate of tax imposed by this paragraph is 24.3 cents per gallon, and
"(ii) the termination of the tax under subsection (d) shall not occur before January 1, 2000."

(4) Paragraph (2) of section 4041(a) is amended–

(A) by striking "or paragraph (1) of this subsection", and

(B) by striking the last sentence and inserting the following new flush sentence:

"The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on gasoline which is in effect at the time of such sale or use."

(5)(A) Subparagraph (B) of section 4041(b)(1) is amended by striking "paragraph (1)(B) or (2)(B)" and inserting "paragraph (1)(B), (2)(B), or (3)(A)(ii)" and by inserting before the period "(if any)".

(B) Subparagraph (C) of section 4041(b)(1) is amended by inserting before the period "; except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train".

(C) Clause (i) of section 4041(b)(2)(A) is amended by striking "Highway Trust Fund financing".

(6) Paragraph (1) of section 4041(c), as amended by subpart A, is amended by striking the next to the last sentence and

inserting the following new flush sentence:

"The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4091(b)(1) which is in effect at the time of such sale or use."

(7) Paragraph (2) of section 4041(c) is amended by striking "any product taxable under section 4081" and inserting "gasoline (as defined in section 4083)".

(8) Paragraph (5) of section 4041(c) is amended by adding at the end thereof the following: "The termination under the preceding sentence shall not apply to so much of the tax imposed by paragraph (1) as does not exceed 4.3 cents per gallon.".

(9) Subsection (d) of section 4041 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(10) Paragraph (2) of section 4041(d), as redesignated by the preceding paragraph, is amended by striking "(other than ***221** any product taxable under section 4081)" and inserting "(other than gasoline (as defined in section 4083))".

(11) Subparagraph (A) of section 4041(k)(1) is amended–

(A) by striking "Highway Trust Fund financing", and

(B) by striking "sections 4081(c) and 4091(c), as the case may be" and inserting "section 4081(c)".

(12) Subparagraph (B) of section 4041(k)(1) is amended by striking "4091(d)" and inserting "4091(c)".

(13) Subparagraphs (A) and (B) of section 4041(m)(1) are amended to read as follows:

"(A) the rate of the tax imposed by subsection (a)(2) shall be–

"(i) 11.3 cents per gallon after September 30, 1993, and before October 1, 1999, and
"(ii) 4.3 cents per gallon after September 30, 1999, and

"(B) the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(c)(1)."

(14) Section 6206 is amended by striking "4041 or 4091" and inserting "4041, 4081, or 4091".

(15) The heading for subsection (f) of section 6302 is amended by inserting "and Diesel Fuel" after "Gasoline".

(16) Paragraph (1) of section 6412(a) is amended by striking "gasoline" each place it appears (including the heading) and inserting "taxable fuel".

(17)(A) Subparagraph (A) of section 6416(a)(4) is amended by striking "product" each place it appears and inserting "gasoline".

(B) Subparagraph (B) of section 6416(a)(4) is amended–

(i) by striking "section 4092(b)(2)" and inserting "section 4093(b)(2)", and

(ii) by striking all that follows "substituting" and inserting "'any gasoline taxable under section 4081' for 'aviation fuel' therein)."

(18) The material following the first sentence of section 6416(b)(2) is amended by inserting "any tax imposed under section 4041(a)(1) or 4081 on diesel fuel and" after "This paragraph shall not apply in the case of".

(19)(A) Subparagraph (A) of section 6416(b)(3) is amended by striking "gasoline taxable under section 4081 and other than any fuel taxable under section 4091" and inserting "any fuel taxable under section 4081 or 4091".

(B) Subparagraph (B) of section 6416(b)(3) is amended by striking "gasoline taxable under section 4081 or any fuel taxable under section 4091, such gasoline or fuel" and inserting "any fuel taxable under section 4081 or 4091, such fuel".

(20) Sections 6420(c)(5) and 6421(e)(1) are each amended by striking "section 4082(b)" and inserting "section 4083(a)".

(21) Subsections (a) and (c) of section 6427 are each amended by striking "section 4041(a) or (c)" and inserting "paragraph (2) or (3) of section 4041(a) or section 4041(c)".

(22) Subsection (c) of section 6421 is amended by adding at the end thereof the following: "The preceding sentence shall ***222** apply notwithstanding paragraphs (2)(A) and (3) of subsection (f)."

(23) Subparagraph (B) of section 6421(f)(2) is amended by inserting before the period "and, in the case of fuel purchased after September 30, 1995, at so much of the rate specified in section 4081(a)(2)(A) as does not exceed 4.3 cents per gallon".

(24) Paragraph (3) of section 6421(f), as amended by subpart A, is amended to read as follows:

"(3) Gasoline used in trains.–In the case of gasoline used as a fuel in a train, this section shall not apply with respect to–

"(A) the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, and

"(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed–

"(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,
"(ii) 5.55 cents per gallon after September 30, 1995, and before October 1, 1999, and
"(iii) 4.3 cents per gallon after September 30, 1999."

(25) Subsection (b) of section 6427 is amended–

(A) by striking "if any fuel" in paragraph (1) and inserting "if any fuel other than gasoline (as defined in section 4083(a))", and

(B) by striking "4091" each place it appears and inserting "4081".

(26)(A) Paragraph (1) of section 6427(f) is amended by striking ", 4091(c)(1)(A), or 4091(d)(1)(A)" and inserting "or 4091(c)(1)(A)".

(B) Paragraph (2) of section 6427(f) is amended to read as follows:

"(2) Definitions.–For purposes of paragraph (1)–

"(A) Regular tax rate.–The term 'regular tax rate' means–

"(i) in the case of gasoline or diesel fuel, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof, and
"(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

"(B) Incentive tax rate.–The term 'incentive tax rate' means–

"(i) in the case of gasoline or diesel fuel, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(2) thereof, and
"(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in

subsection (c)(2) thereof."

(27) Subsection (h) of section 6427 is amended by striking "section 4082(b)" and inserting "section 4083(a)(2)".

(28) Paragraph (3) of section 6427(i) is amended–

(A) by striking "gasohol" in the heading and inserting "alcohol mixture", and

***223** (B) by striking "gasoline used to produce gasohol (as defined in section 4081(c)(1))" in subparagraph (A) and inserting "gasoline or diesel fuel used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))".

(29) Paragraph (1) of section 6427(j) is amended by striking "section 4041" and inserting "sections 4041, 4081, and 4091".

(30) The heading of paragraph (4) of section 6427(i) is amended by inserting "4081 or" before "4091".

(31) So much of subsection (l) of section 6427, as previously amended by this part, as precedes paragraph (5) is amended to read as follows:

"(l) Nontaxable Uses of Diesel Fuel and Aviation Fuel.–

"(1) In general.–Except as otherwise provided in this subsection and in subsection (k), if–

"(A) any diesel fuel on which tax has been imposed by section 4041 or 4081, or

"(B) any aviation fuel on which tax has been imposed by section 4091,

is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041, 4081, or 4091, as the case may be.

"(2) Nontaxable use.–For purposes of this subsection, the term 'nontaxable use' means–

"(A) in the case of diesel fuel, any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax, and

"(B) in the case of aviation fuel, any use which is exempt from the tax imposed by section 4041(c)(1) other than by reason of a prior imposition of tax.

"(3) Refund of certain taxes on fuel used in diesel-powered trains.–For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply with respect to–

"(A) the Leaking Underground Storage Tank Trust Fund financing rate under sections 4041 and 4081, and

"(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed–

"(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,
"(ii) 5.55 cents per gallon after September 30, 1995, and before October 1, 1999, and
"(iii) 4.3 cents per gallon after September 30, 1999.

The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

"(4) No refund of certain taxes on fuel used in commercial aviation.–In the case of fuel used in commercial aviation (as defined in section 4092(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to–

"(A) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

***224** "(B) in the case of fuel purchased after September 30, 1995, so much of the rate of tax specified in section 4091(b)(1) as does not exceed 4.3 cents per gallon."

(32) Section 9502 is amended by adding at the end thereof the following new subsection:

"(f) Definition of Airport and Airway Trust Fund Financing Rate.–For purposes of this section–

"(1) In general.–Except as otherwise provided in this subsection, the Airport and Airway Trust Fund financing rate is–

"(A) in the case of fuel used in an aircraft in noncommercial aviation (as defined in section 4041(c)(4)), 17.5 cents per gallon, and

"(B) in the case of fuel used in an aircraft other than in noncommercial aviation (as so defined), zero.

"(2) Alcohol fuels.–If the rate of tax on any fuel is determined under section 4091(c), the Airport and Airway Trust Fund financing rate is the excess (if any) of the rate of tax determined under section 4091(c) over 4.4 cents per gallon ($^{10}/_{9}$ of 4.4 cents per gallon in the case of a rate of tax determined under section 4091(c)(2)).

"(3) Termination.–Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate is zero with respect to tax received after December 31, 1995."

(33) Paragraph (2) of section 9502(b) is amended by striking "(to the extent attributable to the Highway Trust Fund financing rate and the deficit reduction rate)" and inserting "(to the extent of 14 cents per gallon)".

(34) Paragraph (1) of section 9503(b) is amended–

(A) by striking "gasoline)," in subparagraph (E) and inserting "gasoline and diesel fuel), and",

(B) by striking subparagraph (F), and

(C) by redesignating subparagraph (G) as subparagraph (F).

(35)(A) Subparagraph (B) of section 9503(b)(4) is amended by striking ", 4081, and 4091" and inserting "and 4081" and by striking "rates under such sections" and inserting "rate".

(B) Subparagraph (C) of section 9503(b)(4), as amended by subchapter A, is amended by striking "4091" and inserting "4081".

(36) Paragraph (5) of section 9503(b) is amended by striking ", (E), and (F)" and inserting "and (E)".

(37) Subparagraph (D) of section 9503(c)(6) is amended by striking ", 4081, and 4091" and inserting "and 4081".

(38) Subparagraph (D) of section 9503(c)(4) is amended by striking "rates under such sections" and inserting "rate".

(39) Subparagraph (B) of section 9503(c)(5) is amended by striking "rate under such section" and inserting "rate".

(40) Paragraph (2) of section 9503(e) is amended–

(A) by striking ", 4081, and 4091" and inserting "and 4081", and

(B) by striking ", 4081, or 4091" and inserting "or 4081".

***225** (41) Section 9503 is amended by adding at the end thereof the following new subsection:

"(f) Definition of Highway Trust Fund Financing Rate.–For purposes of this section–

"(1) In general.–Except as otherwise provided in this subsection, the Highway Trust Fund financing rate is–

"(A) in the case of gasoline and special motor fuels, 11.5 cents per gallon (14 cents per gallon after September 30, 1995), and

"(B) in the case of diesel fuel, 17.5 cents per gallon (20 cents per gallon after September 30, 1995).

"(2) Certain uses.–

"(A) Trains.–In the case of fuel used in a train, the Highway Trust Fund financing rate is zero.

"(B) Certain buses.–In the case of diesel fuel used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)), the Highway Trust Fund financing rate is 3 cents per gallon.

"(C) Certain boats.–In the case of diesel fuel used in a boat described in clause (iv) of section 6421(e)(2)(B), the Highway Trust Fund financing rate is zero.

"(D) Compressed natural gas.–In the case of the tax imposed by section 4041(a)(3), the Highway Trust Fund financing rate is zero.

"(E) Certain other nonhighway uses.–In the case of gasoline and special motor fuels used as described in paragraph (4)(D), (5)(B), or (6)(D) of subsection (c), the Highway Trust Fund financing rate is 11.5 cents per gallon; and, in the case of diesel fuel used as described in subsection (c)(6)(D), the Highway Trust Fund financing rate is 17.5 cents per gallon.

"(3) Alcohol fuels.–

"(A) In general.–If the rate of tax on any fuel is determined under section 4041(b)(2)(A), 4041(k), or 4081(c), the Highway Trust Fund financing rate is the excess (if any) of the rate so determined over–

"(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1999,
"(ii) 4.3 cents per gallon after September 30, 1999.

In the case of a rate of tax determined under section 4081(c), the preceding sentence shall be applied by increasing the rates specified in clauses (i) and (ii) by 0.1 cent.

"(B) Fuels used to produce mixtures.–In the case of a rate of tax determined under section 4081(c)(2), subparagraph (A) shall be applied by substituting rates which are $^{10}/_{9}$ of the rates otherwise applicable under clauses (i) and (ii) of subparagraph (A).

"(C) Partially exempt methanol or ethanol fuel.–In the case of a rate of tax determined under section 4041(m), the Highway Trust Fund financing rate is the excess (if any) of the rate so determined over–

"(i) 5.55 cents per gallon after September 30, 1993, and before October 1, 1995, and
"(ii) 4.3 cents per gallon after September 30, 1995.

***226** "(4) Termination.–Notwithstanding the preceding provisions of this subsection, the Highway Trust Fund financing rate is zero with respect to taxes received in the Treasury after June 30, 2000."

(42) Subsection (b) of section 9508 is amended–

(A) by inserting "and diesel fuel" after "gasoline" in paragraph (2),

(B) by striking "diesel fuel and" in paragraph (3), and

(C) by striking "4091" in the last sentence, as added by subtitle A, and inserting "4081".

(43) The table of subparts for part III of subchapter A of chapter 32 is amended by striking the items relating to subparts A and B and inserting the following new items:

"Subpart A. Gasoline and diesel fuel.

"Subpart B. Aviation fuel.

(e) Effective Date.–The amendments made by this section shall take effect on January 1, 1994.

SEC. 13243. FLOOR STOCKS TAX.

(a) In General.–There is hereby imposed a floor stocks tax on diesel fuel held by any person on January 1, 1994, if–

(1) no tax was imposed on such fuel under section 4041(a) or 4091 of the Internal Revenue Code of 1986 as in effect on December 31, 1993, and

(2) tax would have been imposed by section 4081 of such Code, as amended by this Act, on any prior removal, entry, or sale of such fuel had such section 4081 applied to such fuel for periods before January 1, 1994.

(b) Rate of Tax.–The rate of the tax imposed by subsection (a) shall be the amount of tax which would be imposed under section 4081 of the Internal Revenue Code of 1986 if there were a taxable sale of such fuel on such date.

(c) Liability and Payment of Tax.–

(1) Liability for tax.–A person holding the diesel fuel on January 1, 1994, to which the tax imposed by this section applies shall be liable for such tax.

(2) Method of payment.–The tax imposed by this section shall be paid in such manner as the Secretary shall prescribe.

(3) Time for payment.–The tax imposed by this section shall be paid on or before July 31, 1994.

(d) Definitions.–For purposes of this section–

(1) Diesel fuel.–The term "diesel fuel" has the meaning given such term by section 4083(a) of such Code.

(2) Secretary.–The term "Secretary" means the Secretary of the Treasury or his delegate.

(e) Exceptions.–

(1) Persons entitled to credit or refund.–The tax imposed by this section shall not apply to fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 is allowable for such use.

(2) Compliance with dyeing required.–Paragraph (1) shall not apply to the holder of any fuel if the holder of such fuel fails to comply with any requirement imposed by the Secretary with respect to dyeing and marking such fuel.

***227** (f) Other Laws Applicable.–All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this section, apply with respect to the floor stock taxes imposed by this section to the same extent as if such taxes were imposed by such section 4081.

Subpart C–Other Provisions

SEC. 13244. INCREASED DEPOSITS INTO MASS TRANSIT ACCOUNT.

(a) In General.–Paragraph (2) of section 9503(e) is amended by striking "1.5 cents" and inserting "2 cents".

(b) Effective Date.–The amendment made by this section shall apply to amounts attributable to taxes imposed on or after October 1, 1995.

SEC. 13245. FLOOR STOCKS TAX ON COMMERCIAL AVIATION FUEL HELD ON OCTOBER 1, 1995.

(a) Imposition of Tax.–In the case of commercial aviation fuel on which tax was imposed under section 4091 of the Internal Revenue Code of 1986 before October 1, 1995, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 4.3 cents per gallon.

(b) Liability for Tax and Method of Payment.–

(1) Liability for tax.–A person holding aviation fuel on October 1, 1995, to which the tax imposed by subsection (a) applies shall be liable for such tax.

(2) Method of payment.–The tax imposed by subsection (a) shall be paid in such manner as the Secretary shall prescribe.

(3) Time for payment.–The tax imposed by subsection (a) shall be paid on or before April 30, 1996.

(c) Definitions.–For purposes of this subsection–

(1) Held by a person.–Aviation fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(2) Commercial aviation fuel.–The term "commercial aviation fuel" means aviation fuel (as defined in section 4093 of such Code) which is held on October 1, 1995, for sale or use in commercial aviation (as defined in section 4092(b) of such Code).

(3) Secretary.–The term "Secretary" means the Secretary of the Treasury or his delegate.

(d) Exception for Exempt Uses.–The tax imposed by subsection (a) shall not apply to aviation fuel held by any person exclusively for any use for which a credit or refund of the entire tax imposed by section 4091 of such Code is allowable for aviation fuel purchased after September 30, 1995, for such use.

(e) Exception for Certain Amounts of Fuel.–

(1) In general.–No tax shall be imposed by subsection (a) on aviation fuel held on October 1, 1995, by any person if the aggregate amount of commercial aviation fuel held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) ***228** such information as the Secretary shall require for purposes of this paragraph.

(2) Exempt fuel.–For purposes of paragraph (1), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by subsection (a) by reason of subsection (d).

(3) Controlled groups.–For purposes of this subsection–

(A) Corporations.–

(i) In general.–All persons treated as a controlled group shall be treated as 1 person.
(ii) Controlled group.–The term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(B) Nonincorporated persons under common control.–Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(f) Other law applicable.–All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this section, apply with respect to the floor stock taxes imposed by subsection (a) to the same extent as if such taxes were imposed by such section 4091.

PART V–COMPLIANCE PROVISIONS

SEC. 13251. MODIFICATIONS TO SUBSTANTIAL UNDERSTATEMENT PENALTY.

(a) Reasonable Basis Required.–Clause (ii) of section 6662(d)(2)(B) (relating to reduction for understatement due to position of taxpayer or disclosed item) is amended to read as follows:

"(ii) any item if–
"(I) the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return, and
"(II) there is a reasonable basis for the tax treatment of such item by the taxpayer."

(b) Effective Date.–The amendment made by this section shall apply to returns the due dates for which (determined without regard to extensions) are after December 31, 1993.

SEC. 13252. RETURNS RELATING TO THE CANCELLATION OF INDEBTEDNESS BY CERTAIN FINANCIAL ENTITIES.

(a) In General.–Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

***229** "SEC. 6050P. RETURNS RELATING TO THE CANCELLATION OF INDEBTEDNESS BY CERTAIN FINANCIAL ENTITIES.

"(a) In General.–Any applicable financial entity which discharges (in whole or in part) the indebtedness of any person during any calendar year shall make a return (at such time and in such form as the Secretary may by regulations prescribe) setting forth–

"(1) the name, address, and TIN of each person whose indebtedness was discharged during such calendar year,

"(2) the date of the discharge and the amount of the indebtedness discharged, and

"(3) such other information as the Secretary may prescribe.

"(b) Exception.–Subsection (a) shall not apply to any discharge of less than $600.

"(c) Definitions and Special Rules.–For purposes of this section–

"(1) Applicable financial entity.–The term 'applicable financial entity' means–

"(A) any financial institution described in section 581 or 591(a) and any credit union,

"(B) the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, and any other Federal executive agency (as defined in section 6050M), and any successor or subunit of any of the foregoing, and

"(C) any other corporation which is a direct or indirect subsidiary of an entity referred to in subparagraph (A) but only if, by virtue of being affiliated with such entity, such other corporation is subject to supervision and examination by a Federal or State agency which regulates entities referred to in subparagraph (A).

"(2) Governmental units.–In the case of an entity described in paragraph (1)(B), any return under this section shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(d) Statements To Be Furnished to Persons With Respect to Whom Information Is Required To Be Furnished.–Every applicable financial entity required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing–

"(1) the name and address of the entity required to make such return, and

"(2) the information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made."

(b) Penalties.–

(1) Returns.–Subparagraph (B) of section 6724(d)(1) is amended by inserting after clause (vii) the following new clause (and by redesignating the following clauses accordingly):

"(viii) section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities),".

***230** (2) Statements.–Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (P) through (S) as subparagraphs (Q) through (T), respectively, and by inserting after subparagraph (O) the following new subparagraph:

"(P) section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities),".

(c) Clerical Amendment.–The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6050P. Returns relating to the cancellation of indebtedness by certain financial entities."

(d) Effective Date.–

(1) In general.–Except as provided in paragraph (2), the amendments made by this section shall apply to discharges of indebtedness after December 31, 1993.

(2) Governmental entities.–In the case of an entity referred to in section 6050P(c)(1)(B) of the Internal Revenue Code of 1986 (as added by this section), the amendments made by this section shall apply to discharges of indebtedness after the date of the enactment of this Act.

PART VI–TREATMENT OF INTANGIBLES

SEC. 13261. AMORTIZATION OF GOODWILL AND CERTAIN OTHER INTANGIBLES.

(a) General Rule.–Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is

amended by adding at the end thereof the following new section:

"SEC. 197. AMORTIZATION OF GOODWILL AND CERTAIN OTHER INTANGIBLES.

"(a) General Rule.–A taxpayer shall be entitled to an amortization deduction with respect to any amortizable section 197 intangible. The amount of such deduction shall be determined by amortizing the adjusted basis (for purposes of determining gain) of such intangible ratably over the 15-year period beginning with the month in which such intangible was acquired.

"(b) No Other Depreciation or Amortization Deduction Allowable.–Except as provided in subsection (a), no depreciation or amortization deduction shall be allowable with respect to any amortizable section 197 intangible.

"(c) Amortizable Section 197 Intangible.–For purposes of this section–

"(1) In general.–Except as otherwise provided in this section, the term 'amortizable section 197 intangible' means any section 197 intangible–

"(A) which is acquired by the taxpayer after the date of the enactment of this section, and

"(B) which is held in connection with the conduct of a trade or business or an activity described in section 212.

"(2) Exclusion of self-created intangibles, etc.–The term 'amortizable section 197 intangible' shall not include any section 197 intangible–

***231** "(A) which is not described in subparagraph (D), (E), or (F) of subsection (d)(1), and

"(B) which is created by the taxpayer.

This paragraph shall not apply if the intangible is created in connection with a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

"(3) Anti-churning rules.–

"For exclusion of intangibles acquired in certain transactions, see subsection (f)(9).

"(d) Section 197 Intangible.–For purposes of this section–

"(1) In general.–Except as otherwise provided in this section, the term 'section 197 intangible' means–

"(A) goodwill,

"(B) going concern value,

"(C) any of the following intangible items:

"(i) workforce in place including its composition and terms and conditions (contractual or otherwise) of its employment,
"(ii) business books and records, operating systems, or any other information base (including lists or other information with respect to current or prospective customers),
"(iii) any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item,
"(iv) any customer-based intangible,
"(v) any supplier-based intangible, and
"(vi) any other similar item,

"(D) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof,

"(E) any covenant not to compete (or other arrangement to the extent such arrangement has substantially the same effect as a covenant not to compete) entered into in connection with an acquisition (directly or indirectly) of an interest in a trade or business or substantial portion thereof, and

"(F) any franchise, trademark, or trade name.

"(2) Customer-based intangible.–

"(A) In general.–The term 'customer-based intangible' means–

"(i) composition of market,
"(ii) market share, and
"(iii) any other value resulting from future provision of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with customers.

"(B) Special rule for financial institutions.–In the case of a financial institution, the term 'customer-based intangible' includes deposit base and similar items.

"(3) Supplier-based intangible.–The term 'supplier-based intangible' means any value resulting from future acquisitions of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer.

***232** "(e) Exceptions.–For purposes of this section, the term 'section 197 intangible' shall not include any of the following:

"(1) Financial interests.–Any interest–

"(A) in a corporation, partnership, trust, or estate, or

"(B) under an existing futures contract, foreign currency contract, notional principal contract, or other similar financial contract.

"(2) Land.–Any interest in land.

"(3) Computer software.–

"(A) In general.–Any–

"(i) computer software which is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified, and
"(ii) other computer software which is not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

"(B) Computer software defined.–For purposes of subparagraph (A), the term 'computer software' means any program designed to cause a computer to perform a desired function. Such term shall not include any data base or similar item unless the data base or item is in the public domain and is incidental to the operation of otherwise qualifying computer software.

"(4) Certain interests or rights acquired separately.–Any of the following not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade business or substantial portion thereof:

"(A) Any interest in a film, sound recording, video tape, book, or similar property.

"(B) Any right to receive tangible property or services under a contract or granted by a governmental unit or agency or instrumentality thereof.

"(C) Any interest in a patent or copyright.

"(D) To the extent provided in regulations, any right under a contract (or granted by a governmental unit or an agency or instrumentality thereof) if such right–

"(i) has a fixed duration of less than 15 years, or
"(ii) is fixed as to amount and, without regard to this section, would be recoverable under a method similar to the unit-of-production method.

"(5) Interests under leases and debt instruments.–Any interest under–

"(A) an existing lease of tangible property, or

"(B) except as provided in subsection (d)(2)(B), any existing indebtedness.

"(6) Treatment of sports franchises.–A franchise to engage in professional football, basketball, baseball, or other professional sport, and any item acquired in connection with such a franchise.

"(7) Mortgage servicing.–Any right to service indebtedness which is secured by residential real property unless such right is acquired in a transaction (or series of related transactions) ***233** involving the acquisition of assets (other than rights described in this paragraph) constituting a trade or business or substantial portion thereof.

"(8) Certain transaction costs.–Any fees for professional services, and any transaction costs, incurred by parties to a transaction with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

"(f) Special Rules.–

"(1) Treatment of certain dispositions, etc.–

"(A) In general.–If there is a disposition of any amortizable section 197 intangible acquired in a transaction or series of related transactions (or any such intangible becomes worthless) and one or more other amortizable section 197 intangibles acquired in such transaction or series of related transactions are retained–

"(i) no loss shall be recognized by reason of such disposition (or such worthlessness), and
"(ii) appropriate adjustments to the adjusted bases of such retained intangibles shall be made for any loss not recognized under clause (i).

"(B) Special rule for covenants not to compete.–In the case of any section 197 intangible which is a covenant not to compete (or other arrangement) described in subsection (d)(1)(E), in no event shall such covenant or other arrangement be treated as disposed of (or becoming worthless) before the disposition of the entire interest described in such subsection in connection with which such covenant (or other arrangement) was entered into.

"(C) Special rule.–All persons treated as a single taxpayer under section 41(f)(1) shall be so treated for purposes of this paragraph.

"(2) Treatment of certain transfers.–

"(A) In general.–In the case of any section 197 intangible transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of applying this section with respect to so much of the adjusted basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor.

"(B) Transactions covered.–The transactions described in this subparagraph are–

"(i) any transaction described in section 332, 351, 361, 721, 731, 1031, or 1033, and
"(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

"(3) Treatment of amounts paid pursuant to covenants not to compete, etc.–Any amount paid or incurred pursuant to a

covenant or arrangement referred to in subsection (d)(1)(E) shall be treated as an amount chargeable to capital account.

"(4) Treatment of franchises, etc.–

"(A) Franchise.–The term 'franchise' has the meaning given to such term by section 1253(b)(1).

***234** "(B) Treatment of renewals.–Any renewal of a franchise, trademark, or trade name (or of a license, a permit, or other right referred to in subsection (d)(1)(D)) shall be treated as an acquisition. The preceding sentence shall only apply with respect to costs incurred in connection with such renewal.

"(C) Certain amounts not taken into account.–Any amount to which section 1253(d)(1) applies shall not be taken into account under this section.

"(5) Treatment of certain reinsurance transactions.–In the case of any amortizable section 197 intangible resulting from an assumption reinsurance transaction, the amount taken into account as the adjusted basis of such intangible under this section shall be the excess of–

"(A) the amount paid or incurred by the acquirer under the assumption reinsurance transaction, over

"(B) the amount required to be capitalized under section 848 in connection with such transaction.

Subsection (b) shall not apply to any amount required to be capitalized under section 848.

"(6) Treatment of certain subleases.–For purposes of this section, a sublease shall be treated in the same manner as a lease of the underlying property involved.

"(7) Treatment as depreciable.–For purposes of this chapter, any amortizable section 197 intangible shall be treated as property which is of a character subject to the allowance for depreciation provided in section 167.

"(8) Treatment of certain increments in value.–This section shall not apply to any increment in value if, without regard to this section, such increment is properly taken into account in determining the cost of property which is not a section 197 intangible.

"(9) Anti-churning rules.–For purposes of this section–

"(A) In general.–The term 'amortizable section 197 intangible' shall not include any section 197 intangible which is described in subparagraph (A) or (B) of subsection (d)(1) (or for which depreciation or amortization would not have been allowable but for this section) and which is acquired by the taxpayer after the date of the enactment of this section, if–

"(i) the intangible was held or used at any time on or after July 25, 1991, and on or before such date of enactment by the taxpayer or a related person,
"(ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before such date of enactment, and, as part of the transaction, the user of such intangible does not change, or
"(iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before such date of enactment.

***235** For purposes of this subparagraph, the determination of whether the user of property changes as part of a transaction shall be determined in accordance with regulations prescribed by the Secretary. For purposes of this subparagraph, deductions allowable under section 1253(d) shall be treated as deductions allowable for amortization.

"(B) Exception where gain recognized.–If–

"(i) subparagraph (A) would not apply to an intangible acquired by the taxpayer but for the last sentence of subparagraph (C)(i), and
"(ii) the person from whom the taxpayer acquired the intangible elects, notwithstanding any other provision of this title–

"(I) to recognize gain on the disposition of the intangible, and

"(II) to pay a tax on such gain which, when added to any other income tax on such gain under this title, equals such gain multiplied by the highest rate of income tax applicable to such person under this title,

then subparagraph (A) shall apply to the intangible only to the extent that the taxpayer's adjusted basis in the intangible exceeds the gain recognized under clause (ii)(I).

"(C) Related person defined.–For purposes of this paragraph–

"(i) Related person.–A person (hereinafter in this paragraph referred to as the 'related person') is related to any person if–

"(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

"(II) the related person and such person are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)).

For purposes of subclause (I), in applying section 267(b) or 707(b)(1), '20 percent' shall be substituted for '50 percent'.

"(ii) Time for making determination.–A person shall be treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

"(D) Acquisitions by reason of death.–Subparagraph (A) shall not apply to the acquisition of any property by the taxpayer if the basis of the property in the hands of the taxpayer is determined under section 1014(a).

"(E) Special rule for partnerships.–With respect to any increase in the basis of partnership property under section 732, 734, or 743, determinations under this paragraph shall be made at the partner level and each partner shall be treated as having owned and used such partner's proportionate share of the partnership assets.

***236** "(F) Anti-abuse rules.–The term 'amortizable section 197 intangible' does not include any section 197 intangible acquired in a transaction, one of the principal purposes of which is to avoid the requirement of subsection (c)(1) that the intangible be acquired after the date of the enactment of this section or to avoid the provisions of subparagraph (A).

"(g) Regulations.–The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including such regulations as may be appropriate to prevent avoidance of the purposes of this section through related persons or otherwise."

(b) Modifications to Depreciation Rules.–

(1) Treatment of certain property excluded from section 197.–Section 167 (relating to depreciation deduction) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) Treatment of Certain Property Excluded From Section 197.–

"(1) Computer software.–

"(A) In general.–If a depreciation deduction is allowable under subsection (a) with respect to any computer software, such deduction shall be computed by using the straight line method and a useful life of 36 months.

"(B) Computer software.–For purposes of this section, the term 'computer software' has the meaning given to such term by section 197(e)(3)(B); except that such term shall not include any such software which is an amortizable section 197 intangible.

"(2) Certain interests or rights acquired separately.–If a depreciation deduction is allowable under subsection (a) with respect to any property described in subparagraph (B), (C), or (D) of section 197(e)(4), such deduction shall be computed in accordance with regulations prescribed by the Secretary.

"(3) Mortgage servicing rights.–If a depreciation deduction is allowable under subsection (a) with respect to any right described in section 197(e)(7), such deduction shall be computed by using the straight line method and a useful life of 108 months."

(2) Allocation of basis in case of leased property.–Subsection (c) of section 167 is amended to read as follows:

"(c) Basis for Depreciation.–

"(1) In general.–The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011, for the purpose of determining the gain on the sale or other disposition of such property.

"(2) Special rule for property subject to lease.–If any property is acquired subject to a lease–

"(A) no portion of the adjusted basis shall be allocated to the leasehold interest, and

***237** "(B) the entire adjusted basis shall be taken into account in determining the depreciation deduction (if any) with respect to the property subject to the lease."

(c) Amendments to Section 1253.–Subsection (d) of section 1253 is amended by striking paragraphs (2), (3), (4), and (5) and inserting the following:

"(2) Other payments.–Any amount paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name to which paragraph (1) does not apply shall be treated as an amount chargeable to capital account.

"(3) Renewals, etc.–For purposes of determining the term of a transfer agreement under this section, there shall be taken into account all renewal options (and any other period for which the parties reasonably expect the agreement to be renewed)."

(d) Amendment to Section 848.–Subsection (g) of section 848 is amended by striking "this section" and inserting "this section or section 197".

(e) Amendments to Section 1060.–

(1) Paragraph (1) of section 1060(b) is amended by striking "goodwill or going concern value" and inserting "section 197 intangibles".

(2) Paragraph (1) of section 1060(d) is amended by striking "goodwill or going concern value (or similar items)" and inserting "section 197 intangibles".

(f) Technical and Conforming Amendments.–

(1) Subsection (g) of section 167 (as redesignated by subsection (b)) is amended to read as follows:

"(g) Cross References.–

"(1) For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

"(2) For amortiztion of goodwill and certain other intangibles, see section 197."

(2) Subsection (f) of section 642 is amended by striking "section 169" and inserting "sections 169 and 197".

(3) Subsection (a) of section 1016 is amended by striking paragraph (19) and by redesignating the following paragraphs accordingly.

(4) Subparagraph (C) of section 1245(a)(2) is amended by striking "193, or 1253(d) (2) or (3)" and inserting "or 193".

(5) Paragraph (3) of section 1245(a) is amended by striking "section 185 or 1253(d) (2) or (3)".

(6) The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 197. Amortization of goodwill and certain other intangibles."

(g) Effective Date.–

(1) In general.–Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to property acquired after the date of the enactment of this Act.

***238** (2) Election to have amendments apply to property acquired after July 25, 1991.–

(A) In general.–If an election under this paragraph applies to the taxpayer–

(i) the amendments made by this section shall apply to property acquired by the taxpayer after July 25, 1991,
(ii) subsection (c)(1)(A) of section 197 of the Internal Revenue Code of 1986 (as added by this section) (and so much of subsection (f)(9)(A) of such section 197 as precedes clause (i) thereof) shall be applied with respect to the taxpayer by treating July 25, 1991, as the date of the enactment of such section, and
(iii) in applying subsection (f)(9) of such section, with respect to any property acquired by the taxpayer on or before the date of the enactment of this Act, only holding or use on July 25, 1991, shall be taken into account.

(B) Election.–An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe. Such an election by any taxpayer, once made–

(i) may be revoked only with the consent of the Secretary, and
(ii) shall apply to the taxpayer making such election and any other taxpayer under common control with the taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of such Code) at any time after August 2, 1993, and on or before the date on which such election is made.

(3) Elective binding contract exception.–

(A) In general.–The amendments made by this section shall not apply to any acquisition of property by the taxpayer if–

(i) such acquisition is pursuant to a written binding contract in effect on the date of the enactment of this Act and at all times thereafter before such acquisition,
(ii) an election under paragraph (2) does not apply to the taxpayer, and
(iii) the taxpayer makes an election under this paragraph with respect to such contract.

(B) Election.–An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made–

(i) may be revoked only with the consent of the Secretary, and
(ii) shall apply to all property acquired pursuant to the contract with respect to which such election was made.

***239** SEC. 13262. TREATMENT OF CERTAIN PAYMENTS TO RETIRED OR DECEASED PARTNER.

(a) Section 736(b) Not To Apply in Certain Cases.–Subsection (b) of section 736 (relating to payments for interest in partnership) is amended by adding at the end thereof the following new paragraph:

"(3) Limitation on application of paragraph (2).–Paragraph (2) shall apply only if–

"(A) capital is not a material income-producing factor for the partnership, and

"(B) the retiring or deceased partner was a general partner in the partnership."

(b) Limitation on Definition of Unrealized Receivables.–

(1) In general.–Subsection (c) of section 751 (defining unrealized receivables) is amended–

(A) by striking "sections 731, 736, and 741" each place they appear and inserting ", sections 731 and 741 (but not for purposes of section 736)", and

(B) by striking "section 731, 736, or 741" each place it appears and inserting "section 731 or 741".

(2) Technical amendments.–

(A) Subsection (e) of section 751 is amended by striking "sections 731, 736, and 741" and inserting "sections 731 and 741".

(B) Section 736 is amended by striking subsection (c).

(c) Effective Date.–

(1) In general.–The amendments made by this section shall apply in the case of partners retiring or dying on or after January 5, 1993.

(2) Binding contract exception.–The amendments made by this section shall not apply to any partner retiring on or after January 5, 1993, if a written contract to purchase such partner's interest in the partnership was binding on January 4, 1993, and at all times thereafter before such purchase.

PART VII–MISCELLANEOUS PROVISIONS

SEC. 13271. DISALLOWANCE OF INTEREST ON CERTAIN OVERPAYMENTS OF TAX.

(a) General Rule.–Subsection (e) of section 6611 is amended to read as follows:

"(e) Disallowance of Interest on Certain Overpayments.–

"(1) Refunds within 45 days after return is filed.–If any overpayment of tax imposed by this title is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

"(2) Refunds after claim for credit or refund.–If–

"(A) the taxpayer files a claim for a credit or refund for any overpayment of tax imposed by this title, and

***240** "(B) such overpayment is refunded within 45 days after such claim is filed,

no interest shall be allowed on such overpayment from the date the claim is filed until the day the refund is made.

"(3) IRS initiated adjustments.–If an adjustment initiated by the Secretary, results in a refund or credit of an overpayment, interest on such overpayment shall be computed by subtracting 45 days from the number of days interest would otherwise be allowed with respect to such overpayment."

(b) Effective Dates.–

(1) Paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply in the case of returns the due date for which (determined without regard to extensions) is on or after January 1, 1994.

(2) Paragraph (2) of section 6611(e) of such Code (as so amended) shall apply in the case of claims for credit or refund of any overpayment filed on or after January 1, 1995, regardless of the taxable period to which such refund relates.

(3) Paragraph (3) of section 6611(e) of such Code (as so amended) shall apply in the case of any refund paid on or after January 1, 1995, regardless of the taxable period to which such refund relates.

SEC. 13272. DENIAL OF DEDUCTION RELATING TO TRAVEL EXPENSES.

(a) In General.–Section 274(m) (relating to additional limitations on travel expenses) is amended by adding at the end thereof the following new paragraph:

"(3) Travel expenses of spouse, dependent, or others.–No deduction shall be allowed under this chapter (other than section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless–

"(A) the spouse, dependent, or other individual is an employee of the taxpayer,

"(B) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and

"(C) such expenses would otherwise be deductible by the spouse, dependent, or other individual."

(b) Effective Date.–The amendment made by this section shall apply to amounts paid or incurred after December 31, 1993.

SEC. 13273. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS.

If an employer elects under Treasury Regulation 31.3402 (g)–1to determine the amount to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 28 percent. The preceding sentence shall apply to payments made after December 31, 1993.

***241** SUBCHAPTER C–EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, RURAL DEVELOPMENT INVESTMENT AREAS, ETC.

PART I–EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND RURAL DEVELOPMENT INVESTMENT AREAS

SEC. 13301. DESIGNATION AND TREATMENT OF EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND RURAL DEVELOPMENT INVESTMENT AREAS.

(a) In General.–Chapter 1 (relating to normal taxes and surtaxes) is amended by inserting after subchapter T the following new subchapter:

"Subchapter U–Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas

"Part I. Designation.

"Part II. Tax-exempt facility bonds for empowerment zones and enterprise communities.

"PART I–DESIGNATION

"SEC. 1391. DESIGNATION PROCEDURE.

"(a) In General.–From among the areas nominated for designation under this section, the appropriate Secretaries may designate empowerment zones and enterprise communities.

"(b) Number of Designations.–

"(1) Enterprise communities.–The appropriate Secretaries may designate in the aggregate 95 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 65 may be designated in urban areas and not more than 30 may be designated in rural areas.

"(2) Empowerment zones.–The appropriate Secretaries may designate in the aggregate 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 6 may be designated in urban areas and not more than 3 may be designated in rural areas. If 6 empowerment zones are designated in urban areas, no less than 1 shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than 1 shall be a nominated area which includes areas in 2 States and which has a population of 50,000 or less. The Secretary of Housing and Urban Development shall designate empowerment zones located in urban areas in such a manner that the aggregate population of all such zones does not exceed 750,000.

***242** "(c) Period Designations May Be Made.–A designation may be made under this section only after 1993 and before 1996.

"(d) Period for Which Designation Is In Effect.–

"(1) In general.–Any designation under this section shall remain in effect during the period beginning on the date of the designation and ending on the earliest of–

"(A) the close of the 10th calendar year beginning on or after such date of designation,

"(B) the termination date designated by the State and local governments as provided for in their nomination, or

"(C) the date the appropriate Secretary revokes the designation.

"(2) Revocation of designation.–The appropriate Secretary may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which it is located–

"(A) has modified the boundaries of the area, or

"(B) is not complying substantially with, or fails to make progress in achieving the benchmarks set forth in, the strategic plan under subsection (f)(2).

"(e) Limitations on Designations.–No area may be designated under subsection (a) unless–

"(1) the area is nominated by 1 or more local governments and the State or States in which it is located for designation under this section,

"(2) such State or States and the local governments have the authority–

"(A) to nominate the area for designation under this section, and

"(B) to provide the assurances described in paragraph (3),

"(3) such State or States and the local governments provide written assurances satisfactory to the appropriate Secretary that the strategic plan described in the application under subsection (f)(2) for such area will be implemented,

"(4) the appropriate Secretary determines that any information furnished is reasonably accurate, and

"(5) such State or States and local governments certify that no portion of the area nominated is already included in an empowerment zone or in an enterprise community or in an area otherwise nominated to be designated under this section.

"(f) Application.–No area may be designated under subsection (a) unless the application for such designation–

"(1) demonstrates that the nominated area satisfies the eligibility criteria described in section 1392,

"(2) includes a strategic plan for accomplishing the purposes of this subchapter that–

"(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area,

"(B) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions ***243** and organizations have contributed to the planning process,

"(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities,

"(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities,

"(E) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and

"(F) does not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if–

"(i) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and

"(ii) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation, and

"(3) includes such other information as may be required by the appropriate Secretary.

"SEC. 1392. ELIGIBILITY CRITERIA.

"(a) In General.–A nominated area shall be eligible for designation under section 1391 only if it meets the following criteria:

"(1) Population.–The nominated area has a maximum population of–

"(A) in the case of an urban area, the lesser of–

"(i) 200,000, or
"(ii) the greater of 50,000 or 10 percent of the population of the most populous city located within the nominated area, and
"(B) in the case of a rural area, 30,000.

"(2) Distress.–The nominated area is one of pervasive poverty, unemployment, and general distress.

"(3) Size.–The nominated area–

"(A) does not exceed 20 square miles if an urban area or 1,000 square miles if a rural area,

"(B) has a boundary which is continuous, or, except in the case of a rural area located in more than 1 State, consists of not more than 3 noncontiguous parcels,

"(C)(i) in the case of an urban area, is located entirely within no more than 2 contiguous States, and

***244** "(ii) in the case of a rural area, is located entirely within no more than 3 contiguous States, and

"(D) does not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each population census tract in such district is not less than 35 percent (30 percent in the case of an enterprise community).

"(4) Poverty rate.–The poverty rate–

"(A) for each population census tract within the nominated area is not less than 20 percent,

"(B) for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent, and

"(C) for at least 50 percent of the population census tracts within the nominated area is not less than 35 percent.

"(b) Special Rules Relating to Determination of Poverty Rate.–For purposes of subsection (a)(4)–

"(1) Treatment of census tracts with small populations.–

"(A) Tracts with no population.–In the case of a population census tract with no population–

"(i) such tract shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4), but
"(ii) such tract shall be treated as having a zero poverty rate for purposes of applying subparagraph (C) thereof.
"(B) Tracts with populations of less than 2,000.–A population census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4) if more than 75 percent of such tract is zoned for commercial or industrial use.

"(2) Discretion to adjust requirements for enterprise communities.–In determining whether a nominated area is eligible for designation as an enterprise community, the appropriate Secretary may, where necessary to carry out the purposes of this subchapter, reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the population census tracts (or, if fewer, 5 population census tracts) in the nominated area:

"(A) The 20 percent threshold in subsection (a)(4)(A).

"(B) The 25 percent threshold in subsection (a)(4)(B).

"(C) The 35 percent threshold in subsection (a)(4)(C).

If the appropriate Secretary elects to reduce the threshold under subparagraph (C), such Secretary may (in lieu of applying the preceding sentence) reduce by 10 percentage points the threshold under subparagraph (C) for 3 population census tracts.

"(3) Each noncontiguous area must satisfy poverty rate rule.–A nominated area may not include a noncontiguous parcel unless such parcel separately meets (subject to ***245** paragraphs (1) and (2)) the criteria set forth in subsection (a)(4).

"(4) Areas not within census tracts.–In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates.

"(c) Factors To Consider.–From among the nominated areas eligible for designation under section 1391 by the appropriate Secretary, such appropriate Secretary shall make designations of empowerment zones and enterprise communities on the basis of–

"(1) the effectiveness of the strategic plan submitted pursuant to section 1391(f)(2) and the assurances made pursuant to section 1391(e)(3), and

"(2) criteria specified by the appropriate Secretary.

"SEC. 1393. DEFINITIONS AND SPECIAL RULES.

"(a) In General.–For purposes of this subchapter–

"(1) Appropriate secretary.–The term 'appropriate Secretary' means–

"(A) the Secretary of Housing and Urban Development in the case of any nominated area which is located in an urban area, and

"(B) the Secretary of Agriculture in the case of any nominated area which is located in a rural area.

"(2) Rural area.–The term 'rural area' means any area which is–

"(A) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

"(B) determined by the Secretary of Agriculture, after consultation with the Secretary of Commerce, to be a rural area.

"(3) Urban area.–The term 'urban area' means an area which is not a rural area.

"(4) Special rules for indian reservations.–

"(A) In general.–No empowerment zone or enterprise community may include any area within an Indian reservation.

"(B) Indian reservation defined.–The term 'Indian reservation' has the meaning given such term by section 168(j)(6).

"(5) Local government.–The term 'local government' means–

"(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

"(B) any combination of political subdivisions described in subparagraph (A) recognized by the appropriate Secretary.

"(6) Nominated area.–The term 'nominated area' means an area which is nominated by 1 or more local governments and the State or States in which it is located for designation under section 1391.

"(7) Governments.–If more than 1 State or local government seeks to nominate an area under this part, any reference ***246** to, or requirement of, this subchapter shall apply to all such governments.

"(8) Special rule.–An area shall be treated as nominated by a State and a local government if it is nominated by an economic development corporation chartered by the State.

"(9) Use of census data.–Population and poverty rate shall be determined by the most recent decennial census data available.

"(b) Empowerment Zone; Enterprise Community.–For purposes of this title, the terms 'empowerment zone' and 'enterprise community' mean areas designated as such under section 1391.

"PART II–TAX-EXEMPT FACILITY BONDS FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

"Sec. 1394. Tax-exempt enterprise zone facility bonds.

"SEC. 1394. TAX-EXEMPT ENTERPRISE ZONE FACILITY BONDS.

"(a) In General.–For purposes of part IV of subchapter B of this chapter (relating to tax exemption requirements for State and local bonds), the term 'exempt facility bond' includes any bond issued as part of an issue 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide any enterprise zone facility.

"(b) Enterprise Zone Facility.–For purposes of this section–

"(1) In general.–The term 'enterprise zone facility' means any qualified zone property the principal user of which is an enterprise zone business, and any land which is functionally related and subordinate to such property.

"(2) Qualified zone property.–The term 'qualified zone property' has the meaning given such term by section 1397C; except that the references to empowerment zones shall be treated as including references to enterprise communities.

"(3) Enterprise zone business.–The term 'enterprise zone business' has the meaning given to such term by section 1397B, except that–

"(A) references to empowerment zones shall be treated as including references to enterprise communities, and

"(B) such term includes any trades or businesses which would qualify as an enterprise zone business (determined after the modification of subparagraph (A)) if such trades or businesses were separately incorporated.

"(c) Limitation on Amount of Bonds.–

"(1) In general.–Subsection (a) shall not apply to any issue if the aggregate amount of outstanding enterprise zone facility bonds allocable to any person (taking into account such issue) exceeds–

"(A) $3,000,000 with respect to any 1 empowerment zone or enterprise community, or

"(B) $20,000,000 with respect to all empowerment zones and enterprise communities.

***247** "(2) Aggregate enterprise zone facility bond benefit.–For purposes of subparagraph (A), the aggregate amount of outstanding enterprise zone facility bonds allocable to any person shall be determined under rules similar to the rules of section 144(a)(10), taking into account only bonds to which subsection (a) applies.

"(d) Acquisition of Land and Existing Property Permitted.–The requirements of sections 147(c)(1)(A) and 147(d) shall not apply to any bond described in subsection (a).

"(e) Penalty for Ceasing to Meet Requirements.–

"(1) Failures corrected.–An issue which fails to meet 1 or more of the requirements of subsections (a) and (b) shall be treated as meeting such requirements if–

"(A) the issuer and any principal user in good faith attempted to meet such requirements, and

"(B) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered.

"(2) Loss of deductions where facility ceases to be qualified.–No deduction shall be allowed under this chapter for interest on any financing provided from any bond to which subsection (a) applies with respect to any facility to the extent such interest accrues during the period beginning on the first day of the calendar year which includes the date on which–

"(i) substantially all of the facility with respect to which the financing was provided ceases to be used in an empowerment zone or enterprise community, or

"(ii) the principal user of such facility ceases to be an enterprise zone business (as defined in subsection (b)).

"(3) Exception if zone ceases.–Paragraphs (1) and (2) shall not apply solely by reason of the termination or revocation of a designation as an empowerment zone or an enterprise community.

"(4) Exception for bankruptcy.–Paragraphs (1) and (2) shall not apply to any cessation resulting from bankruptcy.

"PART III–ADDITIONAL INCENTIVES FOR EMPOWERMENT ZONES

"SUBPART A. Empowerment zone employment credit.

"SUBPART B. Additional expensing.

"SUBPART C. General provisions.

"Subpart A–Empowerment Zone Employment Credit

"Sec. 1396. Empowerment zone employment credit.

"Sec. 1397. Other definitions and special rules.

"SEC. 1396. EMPOWERMENT ZONE EMPLOYMENT CREDIT.

"(a) Amount of Credit.–For purposes of section 38, the amount of the empowerment zone employment credit determined under this section with respect to any employer for any taxable year ***248** is the applicable percentage of the qualified zone wages paid or incurred during the calendar year which ends with or within such taxable year.

"(b) Applicable Percentage.–For purposes of this section, the term 'applicable percentage' means the percentage determined in accordance with the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

"(c) Qualified Zone Wages.–

"(1) In general.–For purposes of this section, the term 'qualified zone wages' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified zone employee.

"(2) Only first $15,000 of wages per year taken into account.–With respect to each qualified zone employee, the amount of qualified zone wages which may be taken into account for a calendar year shall not exceed $15,000.

"(3) Coordination with targeted jobs credit.–

"(A) In general.–The term 'qualified zone wages' shall not include wages taken into account in determining the credit under section 51.

"(B) Coordination with paragraph (2).–The $15,000 amount in paragraph (2) shall be reduced for any calendar year by the amount of wages paid or incurred during such year which are taken into account in determining the credit under section 51.

"(d) Qualified Zone Employee.–For purposes of this section–

"(1) In general.–Except as otherwise provided in this subsection, the term 'qualified zone employee' means, with respect to any period, any employee of an employer if–

"(A) substantially all of the services performed during such period by such employee for such employer are performed within an empowerment zone in a trade or business of the employer, and

"(B) the principal place of abode of such employee while performing such services is within such empowerment zone.

"(2) Certain individuals not eligible.–The term 'qualified zone employee' shall not include–

"(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

"(B) any 5-percent owner (as defined in section 416(i)(1)(B)),

"(C) any individual employed by the employer for less than 90 days,

"(D) any individual employed by the employer at any facility described in section 144(c)(6)(B), and

"(E) any individual employed by the employer in a trade or business the principal activity of which is farming ***249** (within the meaning of subparagraphs (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the taxable year, the sum of–

"(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the employer which are used in such a trade or business, and
"(ii) the aggregate value of assets leased by the employer which are used in such a trade or business (as determined under regulations prescribed by the Secretary),

exceeds $500,000.

"(3) Special rules related to termination of employment.–

"(A) In general.–Paragraph (2)(C) shall not apply to–

"(i) a termination of employment of an individual who before the close of the period referred to in paragraph (2)(C) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

"(ii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

"(B) Changes in form of business.–For purposes of paragraph (2)(C), the employment relationship between the taxpayer and an employee shall not be treated as terminated–

"(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

"(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

"SEC. 1397. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) Wages.–For purposes of this subpart–

"(1) In general.–The term 'wages' has the same meaning as when used in section 51.

"(2) Certain training and educational benefits.–

"(A) In general.–The following amounts shall be treated as wages paid to an employee:

"(i) Any amount paid or incurred by an employer which is excludable from the gross income of an employee under section 127, but only to the extent paid or incurred to a person not related to the employer.

"(ii) In the case of an employee who has not attained the age of 19, any amount paid or incurred by an employer for any youth training program operated by such employer in conjunction with local education officials.

***250** "(B) Related person.–A person is related to any other person if the person bears a relationship to such other person specified in section 267(b) or 707(b)(1), or such person and such other person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.

"(b) Controlled Groups.–For purposes of this subpart–

"(1) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer for purposes of this subpart, and

"(2) the credit (if any) determined under section 1396 with respect to each such employer shall be its proportionate share of the wages giving rise to such credit.

"(c) Certain Other Rules Made Applicable.–For purposes of this subpart, rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

"Subpart B–Additional Expensing

"Sec. 1397A. Increase in expensing under section 179.

"SEC. 1397A. INCREASE IN EXPENSING UNDER SECTION 179.

"(a) General Rule.–In the case of an enterprise zone business, for purposes of section 179–

"(1) the limitation under section 179(b)(1) shall be increased by the lesser of–

"(A) $20,000, or

"(B) the cost of section 179 property which is qualified zone property placed in service during the taxable year, and

"(2) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified zone property shall be 50 percent of the cost thereof.

"(b) Recapture.–Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified zone property which ceases to be used in an empowerment zone by an enterprise zone business.

"Subpart C–General Provisions

"Sec. 1397B. Enterprise zone business defined.

"Sec. 1398C. Qualified zone property defined.

"SEC. 1397B. ENTERPRISE ZONE BUSINESS DEFINED.

"(a) In General.–For purposes of this part, the term 'enterprise zone business' means–

"(1) any qualified business entity, and

"(2) any qualified proprietorship.

"(b) Qualified Business Entity.–For purposes of this section, the term 'qualified business entity' means, with respect to any taxable year, any corporation or partnership if for such year–

"(1) every trade or business of such entity is the active conduct of a qualified business within an empowerment zone,

***251** "(2) at least 80 percent of the total gross income of such entity is derived from the active conduct of such business,

"(3) substantially all of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone,

"(4) substantially all of the intangible property of such entity is used in, and exclusively related to, the active conduct of any such business,

"(5) substantially all of the services performed for such entity by its employees are performed in an empowerment zone,

"(6) at least 35 percent of its employees are residents of an empowerment zone,

"(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

"(8) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.

"(c) Qualified Proprietorship.–For purposes of this section, the term 'qualified proprietorship' means, with respect to any taxable year, any qualified business carried on by an individual as a proprietorship if for such year–

"(1) at least 80 percent of the total gross income of such individual from such business is derived from the active conduct of such business in an empowerment zone,

"(2) substantially all of the use of the tangible property of such individual in such business (whether owned or leased) is within an empowerment zone,

"(3) substantially all of the intangible property of such business is used in, and exclusively related to, the active conduct of such business,

"(4) substantially all of the services performed for such individual in such business by employees of such business are performed in an empowerment zone,

"(5) at least 35 percent of such employees are residents of an empowerment zone,

"(6) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

"(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to nonqualified financial property.

For purposes of this subsection, the term 'employee' includes the proprietor.

"(d) Qualified Business.–For purposes of this section–

"(1) In general.–Except as otherwise provided in this subsection, the term 'qualified business' means any trade or business.

***252** "(2) Rental of real property.–The rental to others of real property located in an empowerment zone shall be treated as a qualified business if and only if–

"(A) the property is not residential rental property (as defined in section 168(e)(2)), and

"(B) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses.

"(3) Rental of tangible personal property.–The rental to others of tangible personal property shall be treated as a qualified business if and only if substantially all of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

"(4) Treatment of business holding intangibles.–The term 'qualified business' shall not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

"(5) Certain businesses excluded.–The term 'qualified business' shall not include–

"(A) any trade or business consisting of the operation of any facility described in section 144(c)(6)(B), and

"(B) any trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of–

"(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer which are used in such a trade or business, and
"(ii) the aggregate value of assets leased by the taxpayer which are used in such a trade or business,
exceeds $500,000

For purposes of subparagraph (B), rules similar to the rules of section 1397(b) shall apply.

"(e) Nonqualified Financial Property.–For purposes of this section, the term 'nonqualified financial property' means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations; except that such term shall not include–

"(1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less, or

"(2) debt instruments described in section 1221(4).

"SEC. 1397C. QUALIFIED ZONE PROPERTY DEFINED.

"(a) General Rule.–For purposes of this part–

"(1) In general.–The term 'qualified zone property' means any property to which section 168 applies (or would apply but for section 179) if–

"(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the empowerment zone took effect,

"(B) the original use of which in an empowerment zone commences with the taxpayer, and

***253** "(C) substantially all of the use of which is in an empowerment zone and is in the active conduct of a qualified business by the taxpayer in such zone.

"(2) Special rule for substantial renovations.–In the case of any property which is substantially renovated by the taxpayer, the requirements of subparagraphs (A) and (B) of paragraph (1) shall be treated as satisfied. For purposes of the preceding sentence, property shall be treated as substantially renovated by the taxpayer if, during any 24-month period beginning after the date on which the designation of the empowerment zone took effect, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of (i) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (ii) $5,000.

"(b) Special Rules for Sale-Leasebacks.–For purposes of subsection (a)(1)(B), if property is sold and leased back by the taxpayer within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback.

"PART IV–REGULATIONS

"Sec. 1397D. Regulations.

"SEC. 1397D. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of parts II and III, including–

"(1) regulations limiting the benefit of parts II and III in circumstances where such benefits, in combination with benefits provided under other Federal programs, would result in an activity being 100 percent or more subsidized by the Federal Government,

"(2) regulations preventing abuse of the provisions of parts II and III, and

"(3) regulations dealing with inadvertent failures of entities to be enterprise zone businesses."

(b) Clerical Amendment.–The table of subchapters for chapter 1 is amended by inserting after the item relating to subchapter T the following new item:

"Subchapter U. Designation and treatment of empowerment zones, enterprise communities, and rural development

investment areas."

SEC. 13302. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Empowerment Zone Employment Credit Part of General Business Credit.–

(1) Subsection (b) of section 38 (relating to current year business credit) is amended by striking "plus" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ", and", and by adding at the end the following new paragraph:

"(9) the empowerment zone employment credit determined under section 1396(a)."

***254** (2) Subsection (d) of section 39 is amended by adding at the end the following new paragraph:

"(4) Empowerment zone employment credit.–No portion of the unused business credit which is attributable to the credit determined under section 1396 (relating to empowerment zone employment credit) may be carried to any taxable year ending before January 1, 1994."

(b) Denial of Deduction for Portion of Wages Equal to Empowerment Zone Employment Credit.–

(1) Subsection (a) of section 280C (relating to rule for targeted jobs credit) is amended–

(A) by striking "the amount of the credit determined for the taxable year under section 51(a)" and inserting "the sum of the credits determined for the taxable year under sections 51(a) and 1396(a)", and

(B) by striking "Targeted Jobs Credit" in the subsection heading and inserting "Employment Credits".

(2) Subsection (c) of section 196 (relating to deduction for certain unused business credits) is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end the following new paragraph:

"(6) the empowerment zone employment credit determined under section 1396(a)."

(c) Empowerment Zone Employment Credit May Offset 25 Percent of Minimum Tax.–

(1) In general.–Section 38(c) (relating to limitation based on amount of tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) Empowerment zone employment credit may offset 25 percent of minimum tax.–

"(A) In general.–In the case of the empowerment zone employment credit credit–

"(i) this section and section 39 shall be applied separately with respect to such credit, and
"(ii) for purposes of applying paragraph (1) to such credit–
"(I) 75 percent of the tentative minimum tax shall be substituted for the tentative minimum tax under subparagraph (A) thereof, and
"(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the empowerment zone employment credit).

"(B) Empowerment zone employment credit.–For purposes of this paragraph, the term 'empowerment zone employment credit' means the portion of the credit under subsection (a) which is attributable to the credit determined under section 1396 (relating to empowerment zone employment credit)."

(d) Amendment of Targeted Jobs Credit.–Subparagraph (A) of section 51(i)(1) is amended by inserting ", or, if the taxpayer ***255** is an entity other than a corporation, to any individual who owns, directly or indirectly, more than 50 percent

of the capital and profits interests in the entity," after "of the corporation".

(e) Carryovers.–Subsection (c) of section 381 (relating to carryovers in certain corporate acquisitions) is amended by adding at the end the following new paragraph:

"(26) Enterprise zone provisions.–The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subchapter U, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter U in respect of the distributor or transferor corporation."

SEC. 13303. EFFECTIVE DATE.

The amendments made by this part shall take effect on the date of the enactment of this Act.

PART II–CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS

SEC. 13311. CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS.

(a) In General.–For purposes of section 38 of the Internal Revenue Code of 1986, the current year business credit shall include the credit determined under this section.

(b) Determination of Credit.–The credit determined under this section for each taxable year in the credit period with respect to any qualified CDC contribution made by the taxpayer is an amount equal to 5 percent of such contribution.

(c) Credit Period.–For purposes of this section, the credit period with respect to any qualified CDC contribution is the period of 10 taxable years beginning with the taxable year during which such contribution was made.

(d) Qualified CDC Contribution.–For purposes of this section–

(1) In general.–The term "qualified CDC contribution" means any transfer of cash–

(A) which is made to a selected community development corporation during the 5-year period beginning on the date such corporation was selected for purposes of this section,

(B) the amount of which is available for use by such corporation for at least 10 years,

(C) which is to be used by such corporation for qualified low-income assistance within its operational area, and

(D) which is designated by such corporation for purposes of this section.

(2) Limitations on amount designated.–The aggregate amount of contributions to a selected community development corporation which may be designated by such corporation shall not exceed $2,000,000.

(e) Selected Community Development Corporations.–

***256** (1) In general.–For purposes of this section, the term "selected community development corporation" means any corporation–

(A) which is described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code,

(B) the principal purposes of which include promoting employment of, and business opportunities for, low-income individuals who are residents of the operational area, and

(C) which is selected by the Secretary of Housing and Urban Development for purposes of this section.

(2) Only 20 corporations may be selected.–The Secretary of Housing and Urban Development may select 20 corporations for purposes of this section, subject to the availability of eligible corporations. Such selections may be made only before July 1, 1994. At least 8 of the operational areas of the corporations selected must be rural areas (as defined by section 1393(a)(3) of such Code).

(3) Operational areas must have certain characteristics.–A corporation may be selected for purposes of this section only if its operational area meets the following criteria:

(A) The area meets the size requirements under section 1392(a)(3).

(B) The unemployment rate (as determined by the appropriate available data) is not less than the national unemployment rate.

(C) The median family income of residents of such area does not exceed 80 percent of the median gross income of residents of the jurisdiction of the local government which includes such area.

(f) Qualified Low-Income Assistance.–For purposes of this section, the term "qualified low-income assistance" means assistance–

(1) which is designed to provide employment of, and business opportunities for, low-income individuals who are residents of the operational area of the community development corporation, and

(2) which is approved by the Secretary of Housing and Urban Development.

Part III–Investment in Indian Reservations

SEC. 13321. ACCELERATED DEPRECIATION FOR PROPERTY ON INDIAN RESERVATIONS.

(a) In General.–Section 168 is amended by adding at the end the following new subsection:

"(j) Property on Indian Reservations.–

"(1) In general.–For purposes of subsection (a), the applicable recovery period for qualified Indian reservation property shall be determined in accordance with the table contained in paragraph (2) in lieu of the table contained in subsection (c).

"(2) Applicable recovery period for indian reservation property.–For purposes of paragraph (1)–

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

***257** "(3) Deduction allowed in computing minimum tax.–For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for property to which paragraph (1) applies shall be determined under this section without regard to any adjustment under section 56.

"(4) Qualified indian reservation property defined.–For purposes of this subsection–

"(A) In general.–The term 'qualified Indian reservation property' means property which is property described in the table in paragraph (2) and which is–

"(i) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation,
"(ii) not used or located outside the Indian reservation on a regular basis,
"(iii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and

"(iv) not property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703)).

"(B) Exception for alternative depreciation property.–The term 'qualified Indian reservation property' does not include any property to which the alternative depreciation system under subsection (g) applies, determined–

"(i) without regard to subsection (g)(7) (relating to election to use alternative depreciation system), and

"(ii) after the application of section 280F(b) (relating to listed property with limited business use).

"(C) Special rule for reservation infrastructure investment.–

"(i) In general.–Subparagraph (A)(ii) shall not apply to qualified infrastructure property located outside of the Indian reservation if the purpose of such property is to connect with qualified infrastructure property located within the Indian reservation.

"(ii) Qualified infrastructure property.–For purposes of this subparagraph, the term 'qualified infrastructure property' means qualified Indian reservation property (determined without regard to subparagraph (A)(ii)) which–

"(I) benefits the tribal infrastructure,

"(II) is available to the general public, and

***258** "(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

Such term includes, but is not limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

"(5) Real estate rentals.–For purposes of this subsection, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business within an Indian reservation.

"(6) Indian reservation defined.–For purposes of this subsection, the term 'Indian reservation' means a reservation, as defined in–

"(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

"(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

"(7) Coordination with nonrevenue laws.–Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.

"(8) Termination.–This subsection shall not apply to property placed in service after December 31, 2003."

(b) Effective Date.–The amendment made by this section shall apply to property placed in service after December 31, 1993.

SEC. 13322. INDIAN EMPLOYMENT CREDIT.

(a) Allowance of Indian Employment Credit.–Section 38(b) (relating to general business credits) is amended by striking "plus" at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting ", plus", and by adding after paragraph (9) the following new paragraph:

"(10) the Indian employment credit as determined under section 45A(a)."

(b) Amount of Indian Employment Credit.–Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 45A. INDIAN EMPLOYMENT CREDIT.

"(a) Amount of Credit.–For purposes of section 38, the amount of the Indian employment credit determined under this

section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of –

"(1) the sum of–

"(A) the qualified wages paid or incurred during such taxable year, plus

"(B) qualified employee health insurance costs paid or incurred during such taxable year, over

"(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

***259** "(b) Qualified Wages; Qualified Employee Health Insurance Costs.–For purposes of this section–

"(1) Qualified wages.–

"(A) In general.–The term 'qualified wages' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

"(B) Coordination with targeted jobs credit.–The term 'qualified wages' shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51.

"(2) Qualified employee health insurance costs.–

"(A) In general.–The term 'qualified employee health insurance costs' means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

"(B) Exception for amounts paid under salary reduction arrangements.–No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

"(3) Limitation.–The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed $20,000.

"(c) Qualified Employee.–For purposes of this section–

"(1) In general.–Except as otherwise provided in this subsection, the term 'qualified employee' means, with respect to any period, any employee of an employer if–

"(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

"(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

"(C) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

"(2) Individuals receiving wages in excess of $30,000 not eligible.–An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000.

"(3) Inflation adjustment.–The Secretary shall adjust the $30,000 amount under paragraph (2) for years beginning after

1994 at the same time and in the same manner as under section 415(d).

"(4) Employment must be trade or business employment.–An employee shall be treated as a qualified employee ***260** for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2).

"(5) Certain employees not eligible.–The term 'qualified employee' shall not include–

"(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

"(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

"(C) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

"(6) Indian tribe defined.–The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(7) Indian reservation defined.–The term 'Indian reservation' has the meaning given such term by section 168(j)(6).

"(d) Early Termination of Employment by Employer.–

"(1) In general.–If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer–

"(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

"(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

"(2) Carrybacks and carryovers adjusted.–In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

"(3) Subsection not to apply in certain cases.–

"(A) In general.–Paragraph (1) shall not apply to–

"(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,
"(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before ***261** the close of such period and the taxpayer fails to offer reemployment to such individual, or
"(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

"(B) Changes in form of business.–For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated–

"(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring

corporation, or

"(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

"(4) Special rule.–Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of–

"(A) determining the amount of any credit allowable under this chapter, and

"(B) determining the amount of the tax imposed by section 55.

"(e) Other Definitions and Special Rules.–For purposes of this section–

"(1) Wages.–The term 'wages' has the same meaning given to such term in section 51.

"(2) Controlled groups.–

"(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

"(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

"(3) Certain other rules made applicable.–Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

"(4) Coordination with nonrevenue laws.–Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the enactment of this paragraph.

"(5) Special rule for short taxable years.–For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

"(f) Termination.–This section shall not apply to taxable years beginning after December 31, 2003."

(c) Denial of Deduction for Portion of Wages Equal to Indian Employment Credit.–

***262** (1) Subsection (a) of section 280C (relating to rule for targeted jobs credit) is amended by striking "51(a)" and inserting "45A(a), 51(a), and".

(2) Subsection (c) of section 196 (relating to deduction for certain unused business credits) is amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", and", and by adding at the end the following new paragraph:

"(7) the Indian employment credit determined under section 45A(a)."

(d) Denial of Carrybacks to Preenactment Years.–Subsection (d) of section 39 is amended by adding at the end thereof the following new paragraph:

"(5) No carryback of section 45 credit before enactment.–No portion of the unused business credit for any taxable year which is attributable to the Indian employment credit determined under section 45A may be carried to a taxable year ending before the date of the enactment of section 45A."

(e) Clerical Amendment.–The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding

at the end thereof the following:

"Sec. 45A. Indian employment credit."

(f) Effective Date.–The amendments made by this section shall apply to wages paid or incurred after December 31, 1993.

Subchapter D–Other Provisions

PART I–DISCLOSURE PROVISIONS

SEC. 13401. DISCLOSURE OF RETURN INFORMATION FOR ADMINISTRATION OF CERTAIN VETERANS PROGRAMS.

(a) General Rule.–Subparagraph (D) of section 6103(l)(7) (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended by striking "September 30, 1997" in the second sentence following clause (viii) and inserting "September 30, 1998".

(b) Effective Date.–The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 13402. DISCLOSURE OF RETURN INFORMATION TO CARRY OUT INCOME CONTINGENT REPAYMENT OF STUDENT LOANS.

(a) General Rule.–Subsection (l) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end thereof the following new paragraph:

"(13) Disclosure of return information to carry out income contingent repayment of student loans.–

"(A) In general.–The Secretary may, upon written request from the Secretary of Education, disclose to officers and employees of the Department of Education return information with respect to a taxpayer who has received an applicable student loan and whose loan repayment amounts are based in whole or in part on the taxpayer's income. Such return information shall be limited to–

***263** "(i) taxpayer identity information with respect to such taxpayer,
"(ii) the filing status of such taxpayer, and
"(iii) the adjusted gross income of such taxpayer.

"(B) Restriction on use of disclosed information.–Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of Education only for the purposes of, and to the extent necessary in, establishing the appropriate income contingent repayment amount for an applicable student loan.

"(C) Applicable student loan.–For purposes of this paragraph, the term 'applicable student loan' means–

"(i) any loan made under the program authorized under part D of title IV of the Higher Education Act of 1965, and
"(ii) any loan made under part B or E of title IV of the Higher Education Act of 1965 which is in default and has been assigned to the Department of Education.

"(D) Termination.–This paragraph shall not apply to any request made after September 30, 1998."

(b) Conforming Amendments.–

(1) So much of paragraph (4) of section 6103(m) as precedes subparagraph (B) thereof is amended to read as follows:

"(4) Individuals who owe an overpayment of federal pell grants or who have defaulted on student loans administered by the department of education.–

"(A) In general.–Upon written request by the Secretary of Education, the Secretary may disclose the mailing address of any taxpayer–

"(i) who owes an overpayment of a grant awarded to such taxpayer under subpart 1 of part A of title IV of the Higher Education Act of 1965, or
"(ii) who has defaulted on a loan–
"(I) made under part B, D, or E of title IV of the Higher Education Act of 1965, or
"(II) made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education,

for use only by officers, employees, or agents of the Department of Education for purposes of locating such taxpayer for purposes of collecting such overpayment or loan."

(2) Subparagraph (B) of section 6103(m)(4) is amended–

(A) in clause (i), by striking "under part B" and inserting "under part B or D"; and

(B) in clause (ii), by striking "under part E" and inserting "under subpart 1 of part A, or part D or E,";

(3) Section 6103(p) is amended–

(A) in paragraph (3)(A), by striking "(11), or (12), (m)" and inserting "(11), (12), or (13), (m)";

(B) in paragraph (4)–

(i) in the matter preceding subparagraph (A), by striking out "(10), or (11)," and inserting "(10), (11), or (13),", and
***264** (ii) in subparagraph (F)(ii), by striking "(11), or (12)," and inserting "(11), (12), or (13),".

(c) Effective Date.–The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 13403. USE OF RETURN INFORMATION FOR INCOME VERIFICATION UNDER CERTAIN HOUSING ASSISTANCE PROGRAMS.

(a) In General.–Subparagraph (D) of section 6103(l)(7) (relating to the disclosure of return information to Federal, State, and local agencies administering certain programs) is amended–

(1) in clause (vii), by striking "and" at the end;

(2) in clause (viii), by striking the period at the end and inserting "; and";

(3) by inserting after clause (viii) the following new clause:

"(ix) any housing assistance program administered by the Department of Housing and Urban Development that involves initial and periodic review of an applicant's or participant's income, except that return information may be disclosed under this clause only on written request by the Secretary of Housing and Urban Development and only for use by officers and employees of the Department of Housing and Urban Development with respect to applicants for and participants in such programs."; and

(4) by adding at the end thereof the following: "Clause (ix) shall not apply after September 30, 1998."

(b) Conforming Amendment.–The heading of paragraph (7) of section 6103(l) is amended by inserting after "code" the following: ", or certain housing assistance programs".

(c) Effective Date.–The amendments made by this section shall take effect on the date of the enactment of this Act.

PART II–PUBLIC DEBT LIMIT

SEC. 13411. INCREASE IN PUBLIC DEBT LIMIT.

(a) General Rule.–Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof "$4,900,000,000,000".

(b) Repeal of Temporary Increase.–Effective on and after the date of the enactment of this Act, section 1 of Public Law 103–12 is hereby repealed.

PART III–VACCINE PROVISIONS

SEC. 13421. EXCISE TAX ON CERTAIN VACCINES MADE PERMANENT.

(a) Tax.–Subsection (c) of section 4131 (relating to tax on certain vaccines) is amended to read as follows:

"(c) Application of Section.–The tax imposed by this section shall apply–

"(1) after December 31, 1987, and before January 1, 1993, and

"(2) during periods after the date of the enactment of the Revenue Reconciliation Act of 1993."

***265** (b) Trust Fund.–Paragraph (1) of section 9510(c) (relating to expenditures from Vaccine Injury Compensation Trust Fund) is amended by striking "and before October 1, 1992,".

(c) Floor Stocks Tax.–

(1) Imposition of tax.–On any taxable vaccine–

(A) which was sold by the manufacturer, producer, or importer on or before the date of the enactment of this Act,

(B) on which no tax was imposed by section 4131 of the Internal Revenue Code of 1986 (or, if such tax was imposed, was credited or refunded), and

(C) which is held on such date by any person for sale or use,

there is hereby imposed a tax in the amount determined under section 4131(b) of such Code.

(2) Liability for tax and method of payment.–

(A) Liability for tax.–The person holding any taxable vaccine to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) Method of payment.–The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) Time for payment.–The tax imposed by paragraph (1) shall be paid on or before the last day of the 6th month beginning after the date of the enactment of this Act.

(3) Definitions.–For purposes of this subsection, terms used in this subsection which are also used in section 4131 of such Code shall have the respective meanings such terms have in such section.

(4) Other laws applicable.–All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4131 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 4131.

SEC. 13422. CONTINUATION COVERAGE UNDER GROUP HEALTH PLANS OF COSTS OF PEDIATRIC VACCINES.

(a) In General.–Paragraph (1) of section 4980B(f) is amended by inserting "the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act) is not reduced below the coverage provided by the plan as of May 1, 1993, and only if" after "only if".

(b) Effective Date.–The amendment made by subsection (a) shall apply with respect to plan years beginning after the date of the enactment of this Act.

PART IV–DISASTER RELIEF PROVISIONS

SEC. 13431. MODIFICATION OF INVOLUNTARY CONVERSION RULES FOR CERTAIN DISASTER-RELATED CONVERSIONS.

(a) In General.–Section 1033 (relating to involuntary conversions) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) Special Rules for Principal Residences Damaged by Presidentially Declared Disasters.–

***266** "(1) In general.–If the taxpayer's principal residence or any of its contents is compulsorily or involuntarily converted as a result of a Presidentially declared disaster–

"(A) Treatment of insurance proceeds.–

"(i) Exclusion for unscheduled personal property.–No gain shall be recognized by reason of the receipt of any insurance proceeds for personal property which was part of such contents and which was not scheduled property for purposes of such insurance.

"(ii) Other proceeds treated as common fund.–In the case of any insurance proceeds (not described in clause (i)) for such residence or contents–

"(I) such proceeds shall be treated as received for the conversion of a single item of property, and

"(II) any property which is similar or related in service or use to the residence so converted (or contents thereof) shall be treated for purposes of subsection (a)(2) as property similar or related in service or use to such single item of property.

"(B) Extension of replacement period.–Subsection (a)(2)(B) shall be applied with respect to any property so converted by substituting '4 years' for '2 years'.

"(2) Presidentially declared disaster.–For purposes of this subsection, the term 'Presidentially declared disaster' means any disaster which, with respect to the area in which the residence is located, resulted in a subsequent determination by the President that such area warrants assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act.

"(3) Principal residence.–For purposes of this subsection, the term 'principal residence' has the same meaning as when used in section 1034, except that such term shall include a residence not treated as a principal residence solely because the taxpayer does not own the residence.".

(b) Effective Date.–The amendment made by subsection (a) shall apply to property compulsorily or involuntarily converted as a result of disasters for which the determination referred to in section 1033(h)(2) of the Internal Revenue Code of 1986

(as added by this section) is made on or after September 1, 1991, and to taxable years ending on or after such date.

PART V–MISCELLANEOUS PROVISIONS

SEC. 13441. INCREASE IN PRESIDENTIAL ELECTION CAMPAIGN FUND CHECK-OFF.

(a) In General.–Section 6096(a) (relating to designation by individuals) is amended–

(1) by striking "$1" each place it appears and inserting "$3", and

(2) by striking "$2" and inserting "$6".

(b) Effective Date.–The amendments made by subsection (a) apply with respect to tax returns required to be filed after December 31, 1993.

***267** SEC. 13442. SPECIAL RULE FOR HOSPITAL SERVICES.

(a) In General.–Section 162 (relating to trade or business deductions), as amended by section 13211, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) Special rule for certain group health plans.–

"(1) In general.–No deduction shall be allowed under this chapter to an employer for any amount paid or incurred in connection with a group health plan if the plan does not reimburse for inpatient hospital care services provided in the State of New York–

"(A) except as provided in subparagraphs (B) and (C), at the same rate as licensed commercial insurers are required to reimburse hospitals for such services when such reimbursement is not through such a plan,

"(B) in the case of any reimbursement through a health maintenance organization, at the same rate as health maintenance organizations are required to reimburse hospitals for such services for individuals not covered by such a plan (determined without regard to any government-supported individuals exempt from such rate), or

"(C) in the case of any reimbursement through any corporation organized under Article 43 of the New York State Insurance Law, at the same rate as any such corporation is required to reimburse hospitals for such services for individuals not covered by such a plan.

"(2) State law exception.–Paragraph (1) shall not apply to any group health plan which is not required under the laws of the State of New York (determined without regard to this subsection or other provisions of Federal law) to reimburse at the rates provided in paragraph (1).

"(3) Group health plan.–For purposes of this subsection, the term 'group health plan' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to any employee, any former employee, the employer, or any other individual associated or formerly associated with the employer in a business relationship, or any member of their family."

(b) Effective Date.–The provisions of this section shall apply to services provided after February 2, 1993, and on or before May 12, 1995.

SEC. 13443. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

(a) In General.–Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45B. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

"(a) General Rule.–For purposes of section 38, the employer social security credit determined under this section for the taxable year is an amount equal to the excess employer social security tax paid or incurred by the taxpayer during the taxable year.

"(b) Excess Employer Social Security Tax.–For purposes of this section–

***268** "(1) In general.–The term 'excess employer social security tax' means any tax paid by an employer under section 3111 with respect to tips received by an employee during any month, to the extent such tips–

"(A) are deemed to have been paid by the employer to the employee pursuant to section 3121(q), and

"(B) exceed the amount by which the wages (excluding tips) paid by the employer to the employee during such month are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (determined without regard to section 3(m) of such Act).

"(2) Only tips received at food and beverage establishments taken into account.–In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the provision of food or beverages for consumption on the premises of an establishment with respect to which the tipping of employees serving food or beverages by customers is customary.

"(c) Denial of Double Benefit.–No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section.

"(d) Election Not To Claim Credit.–This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year."

(b) Credit to be Part of General Business Credit.–

(1) In general.–Subsection (b) of section 38 (relating to current year business credit) is amended by striking "plus" at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting ", plus", and by adding at the end the following new paragraph:

"(11) the employer social security credit determined under section 45B(a)."

(2) Limitation on carrybacks.–Subsection (d) of section 39 (relating to transitional rules) is amended by adding at the end the following new paragraph:

"(6) No carryback of section 45 credit before enactment.–No portion of the unused business credit for any taxable year which is attributable to the employer social security credit determined under section 45B may be carried back to a taxable year ending before the date of the enactment of section 45B."

(c) Clerical Amendment.–The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45B. Credit for portion of employer social security taxes paid with respect to employee cash tips.

(d) Effective Date.–The amendments made by this section shall apply with respect to taxes paid after December 31, 1993.

SEC. 13444. AVAILABILITY AND USE OF DEATH INFORMATION.

(a) Restriction on Disclosure of Tax Return Information.–Subsection (d) of section 6103 is amended by adding at the end thereof the following new paragraph:

***269** "(4) Availability and use of death information.–

"(A) In general.–No returns or return information may be disclosed under paragraph (1) to any agency, body, or commission of any State (or any legal representative thereof) during any period during which a contract meeting the requirements of subparagraph (B) is not in effect between such State and the Secretary of Health and Human Services.

"(B) Contractual requirements.–A contract meets the requirements of this subparagraph if–

"(i) such contract requires the State to furnish the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it, and

"(ii) such contract does not include any restriction on the use of information obtained by such Secretary pursuant to such contract, except that such contract may provide that such information is only to be used by the Secretary (or any other Federal agency) for purposes of ensuring that Federal benefits or other payments are not erroneously paid to deceased individuals.

Any information obtained by the Secretary of Health and Human Services under such a contract shall be exempt from disclosure under section 552 of title 5, United States Code, and from the requirements of section 552a of such title 5.

"(C) Special exception.–The provisions of subparagraph (A) shall not apply to any State which on July 1, 1993, was not, pursuant to a contract, furnishing the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it."

(b) Effective Date.–

(1) In general.–Except as provided in paragraph (2), the amendment made by subsection (a) shall take effect on the date one year after the date of the enactment of this Act.

(2) Special rule.–The amendment made by subsection (a) shall take effect on the date 2 years after the date of the enactment of this Act in the case of any State if it is established to the satisfaction of the Secretary of the Treasury that–

(A) under the law of such State as in effect on the date of the enactment of this Act, it is impossible for such State to enter into an agreement meeting the requirements of section 6103(d)(4)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)), and

(B) it is likely that such State will enter into such an agreement during the extension period under this paragraph.

***270** CHAPTER 2–HEALTH CARE, HUMAN RESOURCES, INCOME SECURITY, AND CUSTOMS AND TRADE PROVISIONS

Subchpater A–Medicare

SEC. 13500. REFERENCES IN SUBCHAPTER; TABLE OF CONTENTS OF SUBCHAPTER.

(a) Amendments to Social Security Act.–Except as otherwise specifically provided, whenever in this subchapter an amendment 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 that section or other provision of the Social Security Act.

(b) References to OBRA.–In this subchapter, the terms "OBRA–1986", "OBRA–1987", "OBRA–1989", and "OBRA–1990" refer to the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509), the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239), and the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), respectively.

(c) Table of Contents of Subchapter.–The table of contents of this subchapter is as follows:

SUBCHAPTER A–MEDICARE

PART I–PROVISIONS RELATING TO PART A

PART II–PROVISIONS RELATING TO PART B

SUBPART A–PHYSICIANS' SERVICES

SUBPART B–OUTPATIENT HOSPITAL SERVICES

SUBPART C–AMBULATORY SURGICAL CENTER SERVICES

SUBPART D–DURABLE MEDICAL EQUIPMENT

SUBPART E–OTHER PROVISIONS

PART III–PROVISIONS RELATING TO PARTS A AND B

PART IV–PROVISION RELATING TO PART B PREMIUM

PART V–PROVISION RELATING TO DATA BANK

***271** PART I–PROVISIONS RELATING TO PART A

SEC. 13501. PAYMENTS FOR PPS HOSPITALS.

(a) Reductions in Payments.–

(1) Reductions in inflation updates.–Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended–

(A) in subclause (IX)–

(i) by inserting “minus 2.5 percentage points” after “market basket percentage increase” the first place it appears, and
(ii) by striking “plus 1.5 percentage points” and inserting “minus 1.0 percentage point”;

(B) in subclause (X)–

(i) by inserting “minus 2.5 percentage points” after “market basket percentage increase”, and
(ii) by striking “and” at the end;

(C) in subclause (XI)–

(i) by striking “and each subsequent fiscal year”,
(ii) by inserting “minus 2.0 percentage points” after “market basket percentage increase”, and
(iii) by striking the period at the end and inserting a comma; and

(D) by adding at the end the following new subclauses:

***272** “(XII) for fiscal year 1997, the market basket percentage increase minus 0.5 percentage point for hospitals in all areas, and

“(XIII) for fiscal year 1998 and each subsequent fiscal year, the market basket percentage increase for hospitals in all

areas.".

(2) Updates for sole community hospitals and medicare-dependent, small rural hospitals.–

(A) In general.–Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)(B)) is amended by adding at the end the following new clause:

"(iv) For purposes of subparagraphs (C) and (D), the 'applicable percentage increase' is–

"(I) for 12-month cost reporting periods beginning during fiscal years 1986 through 1993, the applicable percentage increase specified in clause (ii),

"(II) for fiscal year 1994, the market basket percentage increase minus 2.3 percentage points (taking into account any portion of the 12-month cost reporting period beginning during fiscal year 1993 that occurred during fiscal year 1994),

"(III) for fiscal year 1995, the market basket percentage increase minus 2.2 percentage points, and

"(IV) for fiscal year 1996 and each subsequent fiscal year, the applicable percentage increase under clause (i).".

(B) Conforming amendments.–Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)) is amended–

(i) in subparagraph (B)(ii), by striking ", (C), (D),";
(ii) in subparagraph (C)(i)(II), by striking "or" at the end;
(iii) in clause (ii) of subparagraph (C)–
(I) by striking "period, the target" and inserting "period beginning before fiscal year 1994, the target",
(II) by striking "subparagraph (B)(ii)" and inserting "subparagraph (B)(iv)", and
(III) by striking the period at the end of such clause and inserting a comma;
(iv) in subparagraph (C), by inserting after clause (ii) the following new clauses:
"(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv), or

"(iv) with respect to discharges occurring in fiscal year 1995 and each subsequent fiscal year, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).";

(v) in clause (ii) of subparagraph (D)–
(I) by striking "period, the target" and inserting "period beginning before fiscal year 1994, the target",
(II) by striking "(B)(ii)" and inserting "(B)(iv)", and
(III) by striking the period at the end of such clause and inserting ", and"; and
***273** (vi) in subparagraph (D), by inserting after clause (ii) the following new clause:
"(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv).".

(3) Reduction in federal portion of capital payment rate.–Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)(A)) is amended by adding at the end the following new sentence: "For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on the date of the enactment of the Omnibus Budget Reconciliation Act of 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redetermine which payment methodology is applied to the hospital under such system to take into account such reduction.".

(b) Wage Index Hold Harmless Protection.–

(1) In general.–Section 1886(d)(8)(C) (42 U.S.C. 1395ww(d)(8)(C)) is amended by adding at the end the following new clause:

"(iv) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or of the Secretary under paragraph (1) may not result in a reduction in an urban area's wage index if–

"(I) the urban area has a wage index below the wage index for rural areas in the State in which it is located; or

"(II) the urban area is located in a State that is composed of a single urban area.".

(2) No standardized amount adjustment.–The Secretary of Health and Human Services shall not revise the fiscal year 1992 or fiscal year 1993 standardized amounts pursuant to subsections (d)(3)(B) and (d)(8)(D) of section 1886 of the Social Security Act to account for the amendment made by paragraph (1).

(3) Effective date.–The amendment made by paragraph (1) shall apply to discharges occurring on or after October 1, 1991.

(c) Transition for Hospital Outlier Thresholds.–Section 1886(d)(5)(A) (42 U.S.C. 1395ww(d)(5)(A)) is amended–

(1) in clause (i), by striking "The Secretary" and inserting "For discharges occurring during fiscal years ending on or before September 30, 1997, the Secretary";

(2) in clause (ii), by striking the period at the end and inserting the following: ", or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the applicable DRG prospective payment rate plus a fixed dollar amount determined by the Secretary.";

(3) in clause (iii), by striking "shall approximate" and inserting "shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate"; and

(4) by adding at the end the following new clauses:

"(v) The Secretary shall provide that–

***274** "(I) the day outlier percentage for fiscal year 1995 shall be 75 percent of the day outlier percentage for fiscal year 1994;

"(II) the day outlier percentage for fiscal year 1996 shall be 50 percent of the day outlier percentage for fiscal year 1994; and

"(III) the day outlier percentage for fiscal year 1997 shall be 25 percent of the day outlier percentage for fiscal year 1994.

"(vi) For purposes of this subparagraph, the term 'day outlier percentage' means, for a fiscal year, the percentage of the total additional payments made by the Secretary under this subparagraph for discharges in that fiscal year which are additional payments under clause (i).".

(d) Extension for Regional Referral Centers.–

(1) Extension of classification through fiscal year 1994.–Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act as of September 30, 1992, shall continue to be so classified for cost reporting periods beginning during fiscal year 1993 or fiscal year 1994, unless the area in which the hospital is located is redesignated as a Metropolitan Statistical Area by the Office of Management and Budget for such a fiscal year.

(2) Permitting hospitals to decline reclassification.–If any hospital fails to qualify as a rural referral center under section 1886(d)(5)(C) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993 or fiscal year 1994, the Secretary of Health and Human Services shall–

(A) notify such hospital of such failure to qualify,

(B) provide an opportunity for such hospital to decline such reclassification, and

(C) if the hospital–

(i) declines such reclassification, administer the Social Security Act (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred, or
(ii) fails to decline such reclassification, administer the Social Security Act without regard to paragraph (1).

(3) Requiring lump-sum retroactive payment for hospitals losing classification.–

(A) In general.–In the case of a hospital described in paragraph (1), the Secretary of Health and Human Services shall make a lump sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, the hospital was classified a regional referral center under section 1886(d)(5)(C) of such Act.

***275** (B) Period of applicability.–In subparagraph (A), the "period of applicability" is the period that begins on October 1, 1992, and ends on the date of the enactment of this Act.

(e) Extension for Medicare-Dependent, Small Rural Hospitals.–

(1) Extension of additional payments.–Section 1886(d)(5)(G) (42 U.S.C. 1395ww(d)(5)(G)) is amended–

(A) in clause (i) in the matter preceding subclause (I), by striking "ending on or before March 31, 1993," and all that follows and inserting the following: "before October 1, 1994, in the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).";

(B) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv); and

(C) by inserting after clause (i) the following new clause:

"(ii) The amount determined under this clause is–

"(I) for discharges occurring during the first 3 12-month cost reporting periods that begin on or after April 1, 1990, the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D)) exceeds the amount determined under paragraph (1)(A)(iii); and

"(II) for discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, 50 percent of the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D)) exceeds the amount determined under paragraph (1)(A)(iii).".

(2) Permitting hospitals to decline reclassification.–If any hospital fails to qualify as a medicare-dependent, small rural hospital under section 1886(d)(5)(G)(i) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993 or fiscal year 1994, the Secretary of Health and Human Services shall–

(A) notify such hospital of such failure to qualify,

(B) provide an opportunity for such hospital to decline such reclassification, and

(C) if the hospital declines such reclassification, administer the Social Security Act (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred.

(3) Requiring lump-sum retroactive payment.–

(A) In general.–In the case of a hospital treated as a medicare-dependent, small rural hospital under section 1886(d)(5)(G) of the Social Security Act, the Secretary of Health and Human Services shall make a lump sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection ***276** (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, section 1886(d)(5)(G) of such Act had been applied as if the amendments made by paragraph (1) had been in effect.

(B) Period of applicability.–In subparagraph (A), the "period of applicability" is, with respect to a hospital, the period that begins on the first day of the hospital's first 12-month cost reporting period that begins after April 1, 1992, and ends on the date of the enactment of this Act.

(f) Extension of Regional Floor.–Section 1886(d)(1)(A)(iii) (42 U.S.C. 1395ww(d)(1)(A)(iii)) is amended to read as follows:

"(iii) beginning on or after April 1, 1988, is equal to–

"(I) the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, or

"(II) for discharges occurring during a fiscal year ending on or before September 30, 1996, the sum of 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges and 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph, but only if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same large urban or other area (or, for discharges occurring during a fiscal year ending on or before September 30, 1994, the same rural, large urban, or other urban area) as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area for discharges occurring during such fiscal year.".

SEC. 13502. REDUCTIONS IN PAYMENTS FOR PPS-EXEMPT HOSPITALS.

(a) In General.–Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)(B)), as amended by section 13501(a)(2)(B)(i), is amended–

(1) in clause (ii)–

(A) by striking "and" at the end of subclause (III);

(B) in subclause (IV)–

(i) by striking "subsequent fiscal years" and inserting "a subsequent fiscal year ending on or before September 30, 1993,", and
(ii) by striking the period at the end and inserting a comma; and

(C) by adding at the end the following new subclauses:

"(V) fiscal years 1994 through 1997, is the market basket percentage increase minus the applicable reduction (as defined in clause (v)(II)), or in the case of a hospital for a fiscal year for which the hospital's update adjustment percentage (as defined in clause (v)(I)) is at least 10 percent, the market basket percentage increase, and

"(VI) subsequent fiscal years is the market basket percentage increase."; and

(2) by adding at the end the following new clause:

***277** "(v) For purposes of clause (ii)(V)–

"(I) a hospital's 'update adjustment percentage' for a fiscal year is the percentage by which the hospital's allowable operating costs of inpatient hospital services recognized under this title for the cost reporting period beginning in fiscal year 1990 exceeds the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period, increased for each fiscal year (beginning with fiscal year 1994) by the sum of any of the hospital's applicable reductions under subclause (V) for previous fiscal years; and

"(II) the 'applicable reduction' with respect to a hospital for a fiscal year is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for the fiscal year.".

(b) Effect of Payment Reduction on Exceptions and Adjustments.–Section 1886(b)(4)(A) (42 U.S.C. 1395ww(b)(4)(A)) is amended–

(1) by inserting "(i)" after "(A)", and

(2) by adding at the end the following:

"(ii) The payment reductions under paragraph (3)(B)(ii)(V) shall not be considered by the Secretary in making adjustments pursuant to clause (i).".

SEC. 13503. REDUCTIONS IN PAYMENTS FOR SKILLED NURSING FACILITY SERVICES.

(a) Payments Based on Cost Limits.–

(1) No changes in cost limits.–The Secretary of Health and Human Services may not provide for any change in the limits on per diem routine service costs for extended care services under section 1888 of the Social Security Act for cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendments made by paragraph (3)(A). The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1888(c) of such Act to the payment limits for such services during such fiscal years.

(2) Delay in updates.–The last sentence of section 1888(a) (42 U.S.C. 1395yy(a)) is amended by inserting after "October 1, 1992" the following: ", on or after October 1, 1995,".

(3) Repeal of excess overhead allocations for hospital-based facilities.–

(A) In general.–Section 1888(b) (42 U.S.C. 1395yy(b)) is amended–

(i) by striking "shall recognize" and inserting "may not recognize"; and
(ii) by striking "(as determined by" and all that follows and inserting a period.

(B) Effective date.–The amendments made by subparagraph (A) shall apply to cost reporting periods beginning on or after October 1, 1993.

(b) Payments Determined on Prospective Basis.–The Secretary of Health and Human Services may not change the amount of any prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act for services furnished during cost reporting periods beginning during fiscal years 1994 and ***278** 1995, except as may be necessary to take into account the amendment made by subsection (c)(1)(A).

(c) Elimination of Return on Equity for Proprietary Skilled Nursing Facilities.–

(1) Repeal of requirement for return on equity.–(A) Section 1861(v)(1)(B) (42 U.S.C. 1395x(v)(1)(B)) is amended to read as follows:

"(B) In the case of extended care services, the regulations under subparagraph (A) shall not include provision for specific recognition of a return on equity capital.".

(B) Section 1878(f)(2) (42 U.S.C. 1395***oo***(f)(2)) is amended by striking "the rate of return on equity capital established by regulation pursuant to section 1861(v)(1)(B) and in effect at the time" and inserting "the rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the month in which".

(2) Effective date.–The amendments made by paragraph (1) shall take effect October 1, 1993.

SEC. 13504. REDUCTIONS IN PAYMENTS FOR HOSPICE SERVICES.

Section 1814(i)(1)(C) (42 U.S.C. 1395f(i)(1)(C)) is amended by striking "increased by" and all that follows and inserting the following: "increased by–

"(I) for a fiscal year ending on or before September 30, 1993, the market basket percentage increase (as defined in section 1886(b)(3)(B)(iii)) for the fiscal year;

"(II) for fiscal year 1994, the market basket percentage increase for the fiscal year minus 2.0 percentage points;

"(III) for fiscal year 1995, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

"(IV) for fiscal year 1996, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

"(V) for fiscal year 1997, the market basket percentage increase for the fiscal year minus 0.5 percentage point; and

"(VI) for a subsequent fiscal year, the market basket percentage increase for the fiscal year.".

SEC. 13505. HEMOPHILIA PASS-THROUGH EXTENSION.

Effective as if included in the enactment of OBRA–1989, section 6011(d) of such Act is amended by striking "2 years after the date of enactment of this Act" and inserting "September 30, 1994".

SEC. 13506. GRADUATE MEDICAL EDUCATION PAYMENTS IN HOSPITAL-OWNED COMMUNITY HEALTH CENTERS.

Section 1886(d)(5)(B)(iv) (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amended by inserting after "the hospital" the following: "or providing services at any entity receiving a grant under section 330 of the Public Health Service Act that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents)".

SEC. 13507. EXTENSION OF RURAL HOSPITAL DEMONSTRATION.

Section 4008(i)(1) of OBRA–1990 is amended by adding at the end the following new sentence: "The Secretary shall continue any such demonstration project until at least July 1, 1997.".

***279** SEC. 13508. REDUCTION IN PART A PREMIUM FOR CERTAIN INDIVIDUALS WITH 30 OR MORE QUARTERS OF SOCIAL SECURITY COVERAGE.

(a) In General.–Section 1818(d) (42 U.S.C. 1395i–2(d)) is amended–

(1) in the second sentence of paragraph (2), by striking "Such amount" and inserting "Subject to paragraph (4), the amount

of an individual's monthly premium under this section"; and

(2) by adding at the end the following new paragraph:

"(4)(A) In the case of an individual described in subparagraph (B), the monthly premium for a month shall be reduced by the applicable reduction percent specified in the following table:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

"(B) An individual described in this subparagraph with respect to a month is an individual who establishes to the satisfaction of the Secretary that, as of the last day of the previous month, the individual–

"(i) had at least 30 quarters of coverage under title II;

"(ii) was married (and had been married for the previous 1 year period) to an individual who had at least 30 quarters of coverage under such title;

"(iii) had been married to an individual for a period of at least 1 year (at the time of such individual's death) if at such time the individual had at least 30 quarters of coverage under such title; or

"(iv) is divorced from an individual and had been married to the individual for a period of at least 10 years (at the time of the divorce) if at such time the individual had at least 30 quarters of coverage under such title.".

(b) Effective Date.–The amendments made by this section shall apply to monthly premiums under section 1818 of the Social Security Act for months beginning with January 1, 1994.

PART II–PROVISIONS RELATING TO PART B

Subpart A–Physicians' Services

SEC. 13511. REDUCTION IN DEFAULT UPDATE FOR CONVERSION FACTOR FOR 1994 AND 1995.

(a) In General.–Section 1848 (42 U.S.C. 1395w–4) is amended–

(1) in subsection (d)(3)(A)–

(A) in clause (i), by striking "clause (iii)" and inserting "clauses (iii) through (v)", and

(B) by adding at the end the following new clauses:

"(iv) Adjustment in percentage increase for 1994.–In applying clause (i) for services furnished in ***280** 1994, the percentage increase in the appropriate update index shall be reduced by–

"(I) 3.6 percentage points for services included in the category of surgical services (as defined for purposes of subsection (j)(1)), and

"(II) 2.6 percentage points for other services.

"(v) Adjustment in percentage increase for 1995.–In applying clause (i) for services furnished in 1995, the percentage increase in the appropriate update index shall be reduced by 2.7 percentage points.

"(vi) Exception for category of primary care services.–Clauses (iv) and (v) shall not apply to services included in the category of primary care services (as defined for purposes of subsection (j)(1)).";

and

(2) in subsection (j)(1), by striking "Secretary)" and inserting "Secretary and including anesthesia services), primary care services (as defined in section 1842(i)(4)),".

(b) Effective Dates.–The amendments made by this section shall apply to services furnished on or after January 1, 1994;

except that amendment made by subsection (a)(2) shall not apply–

(1) to volume performance standard rates of increase established under section 1848(f) of the Social Security Act for fiscal years before fiscal year 1994, and

(2) to adjustment in updates in the conversion factors for physicians' services under section 1848(d)(3)(B) of such Act for physicians' services to be furnished in calendar years before 1996.

SEC. 13512. REDUCTION IN PERFORMANCE STANDARD RATE OF INCREASE AND INCREASE IN MAXIMUM REDUCTION PERMITTED IN DEFAULT UPDATE.

(a) Reduction in Performance Standard Factor.–Section 1848(f)(2)(B) (42 U.S.C. 1395w–4(f)(2)(B)) is amended–

(1) by striking "and" at the end of clause (ii), and

(2) by striking clause (iii) and inserting the following:

"(iii) for 1993 is 2 percentage points,
"(iv) for 1994 is 3½ percentage points, and
"(v) for each succeeding year is 4 percentage points.".

(b) Increase in Maximum Reduction Permitted in Default Update.–Section 1848(d)(3)(B)(ii) (42 U.S.C. 1395w–4(d)(3)(B)(ii)) is amended–

(1) in subclause (II), by striking "or 1995", and

(2) in subclause (III), by striking "3" and inserting "5".

SEC. 13513. PRACTICE EXPENSE RELATIVE VALUE UNITS.

Section 1848(c)(2) (42 U.S.C. 1395w–4(c)(2)) is amended by adding at the end the following new subparagraph:

"(E) Reduction in practice expense relative value units for certain services.–

"(i) In general.–Subject to clause (ii), the Secretary shall reduce the practice expense relative value units applied to services described in clause (iii) furnished in–
"(I) 1994, by 25 percent of the number by which the number of practice expense relative ***281** value units (determined for 1994 without regard to this subparagraph) exceeds the number of work relative value units determined for 1994,
"(II) 1995, by an additional 25 percent of such excess, and
"(III) 1996, by an additional 25 percent of such excess.
"(ii) Floor on reductions.–The practice expense relative value units for a physician's service shall not be reduced under this subparagraph to a number less than 128 percent of the number of work relative value units.
"(iii) Services covered.–For purposes of clause (i), the services described in this clause are physicians' services that are not described in clause (iv) and for which–
"(I) there are work relative value units, and
"(II) the number of practice expense relative value units (determined for 1994) exceeds 128 percent of the number of work relative value units (determined for such year).
"(iv) Excluded services.–For purposes of clause (iii), the services described in this clause are services which the Secretary determines at least 75 percent of which are provided under this title in an office setting.".

SEC. 13514. SEPARATE PAYMENT FOR INTERPRETATION OF ELECTROCARDIOGRAMS.

(a) In General.–Paragraph (3) of section 1848(b) (42 U.S.C. 1395w–4(b)) is amended to read as follows:

"(3) Treatment of interpretation of electrocardiograms.–The Secretary–

"(A) shall make separate payment under this section for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician, and

"(B) shall adjust the relative values established for visits and consultations under subsection (c) so as not to include relative value units for interpretations of electrocardiograms in the relative value for visits and consultations.".

(b) Assuring Budget Neutrality.–Section 1848(c)(2) (42 U.S.C. 1395w–4(c)(2)), as amended by section 13513, is further amended by adding at the end the following new subparagraph:

"(F) Budget neutrality adjustments.–The Secretary–

"(i) shall reduce the relative values for all services (other than anesthesia services) established under this paragraph (and, in the case of anesthesia services, the conversion factor established by the Secretary for such services) by such percentage as the Secretary determines to be necessary so that, beginning in 1996, the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in ***282** expenditures under this section that exceed the amount of such expenditures that would have been made if such amendment had not been made, and

"(ii) shall reduce the amounts determined under subsection (a)(2)(B)(ii)(I) by such percentage as the Secretary determines to be required to assure that, taking into account the reductions made under clause (i), the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section in 1994 that exceed the amount of such expenditures that would have been made if such amendment had not been made.".

(c) Conforming Amendments.–Section 1848 (42 U.S.C. 1395w–4) is amended–

(1) in subsection (a)(2)(B)(ii)(I), by inserting "and as adjusted under subsection (c)(2)(F)(ii)" after "for 1994";

(2) in subsection (c)(2)(A)(i), by adding at the end the following: "Such relative values are subject to adjustment under subparagraph (F)(i).."; and

(3) in subsection (i)(1)(B), by adding at the end "including adjustments under subsection (c)(2)(F),".

(d) Effective Date.–The amendments made by this section shall apply to services furnished on or after January 1, 1994.

SEC. 13515. PAYMENTS FOR NEW PHYSICIANS AND PRACTITIONERS.

(a) Equal Treatment of New Physicians and Practitioners.–(1) Section 1848(a) (42 U.S.C. 1395w–4(a)) is amended by striking paragraph (4).

(2) Section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is amended by striking subparagraph (F).

(b) Budget Neutrality Adjustment.–Notwithstanding any other provision of law, the Secretary of Health and Human Services shall reduce the following values and amounts for 1994 (to be applied for that year and subsequent years) by such uniform percentage as the Secretary determines to be required to assure that the amendments made by subsection (a) will not result in expenditures under part B of title XVIII of the Social Security Act in 1994 that exceed the amount of such expenditures that would have been made if such amendments had not been made:

(1) The relative values established under section 1848(c) of such Act for services (other than anesthesia services) and, in the case of anesthesia services, the conversion factor established under section 1848 of such Act for such services.

(2) The amounts determined under section 1848(a)(2)(B)(ii)(I) of such Act.

(3) The prevailing charges or fee schedule amounts to be applied under such part for services of a health care practitioner (as defined in section 1842(b)(4)(F)(ii)(I) of such Act, as in effect before the date of the enactment of this Act).

(c) Conforming Amendments.–Section 1848 (42 U.S.C. 1395w–4), as amended by section 13514(c), is amended–

(1) in subsection (a)(2)(B)(ii)(I), by inserting "and under section 13515(b) of the Omnibus Budget Reconciliation Act of 1993" after "subsection (c)(2)(F)(ii)";

***283** (2) in subsection (c)(2)(A)(i), by inserting "and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993" after "under subparagraph (F)(i)"; and

(3) in subsection (i)(1)(B), by inserting "and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993" after "under subsection (c)(2)(F)".

(d) Effective Date.–The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 13516. PAYMENTS FOR ANESTHESIA.

(a) Payment to a Physician for Medical Direction.–

(1) In general.–Section 1848(a) (42 U.S.C. 1395w–4(a)), as amended by section 13515(a)(1), is amended by adding at the end the following new paragraph:

"(4) Special rule for medical direction.–

"(A) In general.–With respect to physicians' services furnished on or after January 1, 1994, and consisting of medical direction of two, three, or four concurrent anesthesia cases, the fee schedule amount to be applied shall be equal to one-half of the amount described in subparagraph (B).

"(B) Amount.–The amount described in this subparagraph, for a physician's medical direction of the performance of anesthesia services, is the following percentage of the fee schedule amount otherwise applicable under this section if the anesthesia services were personally performed by the physician alone:

"(i) For services furnished during 1994, 120 percent.
"(ii) For services furnished during 1995, 115 percent.
"(iii) For services furnished during 1996, 110 percent.
"(iv) For services furnished during 1997, 105 percent.
"(v) For services furnished after 1997, 100 percent.".

(2) Elimination of reduction for medical direction of multiple nurse anesthetists and establishment of consistent base and time units.–Paragraph (13) of section 1842(b) (42 U.S.C. 1395u(b)) is amended–

(A) by striking subparagraphs (A) and (B) and inserting the following:

"(13)(A) In determining payments under section 1833(l) and section 1848 for anesthesia services furnished on or after January 1, 1994, the methodology for determining the base and time units used shall be the same for services furnished by physicians, for medical direction by physicians of two, three, or four certified registered nurse anesthetists, or for services furnished by a certified registered nurse anesthetist (whether or not medically directed) and shall be based on the methodology in effect, for anesthesia services furnished by physicians, as of the date of the enactment of Omnibus Budget Reconciliation Act of 1993.";

(B) by redesignating subparagraph (C) as subparagraph (B); and

***284** (C) by striking "subparagraph (A) or (B)" in subparagraph (B) (as so redesignated) and inserting "subparagraph (A)".

(b) Payment to a Certified Registered Nurse Anesthetist for Medically Directed Services.–Section 1833(l)(4)(B) (42 U.S.C. 1395*l*(l)(4)(B)) is amended–

(1) in clause (i), by inserting "and before January 1, 1994," after "1991,";

(2) in clause (ii)–

(A) by adding "and" at the end of subclause (II),

(B) by striking the comma at the end of subclause (III) and inserting a period, and

(C) by striking subclauses (IV) through (VII); and

(3) by adding at the end the following new clause:

"(iii) In the case of services of a certified registered nurse anesthetist who is medically directed or medically supervised by a physician which are furnished on or after January 1, 1994, the fee schedule amount shall be one-half of the amount described in section 1848(a)(5)(B) with respect to the physician.".

SEC. 13517. EXTENSION OF PHYSICIAN PAYMENT PROVISIONS TO NONPARTICIPATING SUPPLIERS AND OTHER PERSONS.

(a) In General.–Section 1848 (42 U.S.C. 1395w–4) is amended–

(1) in subsection (a)(3)–

(A) in the heading, by inserting "and suppliers" after "physicians",

(B) by inserting "or a nonparticipating supplier or other person" after "nonparticipating physician", and

(C) by adding at the end the following: "In the case of physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3)) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a participating physician, supplier, or other person.";

(2) in subsection (g)(1)–

(A) by inserting "or nonparticipating supplier or other person (as defined in section 1842(i)(2)) " after "nonparticipating physician",

(B) by inserting "including services which the Secretary excludes pursuant to subsection (j)(3)," after "physician's services (",

(C) by inserting ", supplier, or other person" after "such physician", and

(D) by adding at the end the following: "In applying this subparagraph, any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.";

(3) in subsection (g)(2)(C), by inserting "or for nonparticipating suppliers or other persons" after "nonparticipating physicians";

(4) in subsection (g)(2)(D), by inserting "(or, if payment under this part is made on a basis other than the fee schedule ***285** under this section, 95 percent of the other payment basis)" after "subsection (a)";

(5) in subsection (h)–

(A) by inserting "or nonparticipating supplier or other person furnishing physicians' services (as defined in section 1848(j)(3))" after "physician" the first place it appears,

(B) by inserting ", supplier, or other person" after "physician" the second place it appears, and

(C) by inserting ", suppliers, and other persons" after "physicians" the second place it appears; and

(6) in subsection (j)(3), by inserting ", except for purposes of subsections (a)(3), (g), and (h)" after "tests and".

(b) Conforming Definition.–Section 1842(i)(2) (42 U.S.C. 1395u(i)(2)) is amended–

(1) by striking ", and the term" and inserting "; the term", and

(2) by inserting before the period at the end the following: "; and the term 'nonparticipating supplier or other person' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1))".

(c) Effective Date.–The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 13518. ANTIGENS UNDER PHYSICIAN FEE SCHEDULE.

(a) In General.–Section 1848(j)(3) (42 U.S.C. 1395w–4(j)(3)) is amended by inserting "(2)(G)," after "(2)(D),".

(b) Budget Neutrality Adjustment in 1995.–Notwithstanding any other provision of law, the Secretary of Health and Human Services shall implement the amendment made by subsection (a) in a manner to assure that such amendment will result in expenditures under part B of title XVIII of the Social Security Act in 1995 for services described in such amendment that shall be equal to the amount of expenditures for such services that would have been made if such amendment had not been made.

(c) Effective Date.–The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1995.

Subpart B–Outpatient Hospital Services

SEC. 13521. EXTENSION OF 10 PERCENT REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS OF OUTPATIENT HOSPITAL SERVICES.

Section 1861(v)(1)(S)(ii)(I) (42 U.S.C. 1395x(v)(1)(S)(ii)(I)) is amended by striking "fiscal year 1992, 1993, 1994, or 1995" and inserting "fiscal years 1992 through 1998".

SEC. 13522. EXTENSION OF REDUCTION IN PAYMENTS FOR OTHER COSTS OF OUTPATIENT HOSPITAL SERVICES.

Section 1861(v)(1)(S)(ii)(II) (42 U.S.C. 1395x(v)(1)(S)(ii)(II)) is amended by striking ", 1992, 1993, 1994, or 1995" and inserting "through 1998".

***286** Subpart C–Ambulatory Surgical Center Services

SEC. 13531. AMBULATORY SURGICAL CENTER SERVICES.

The Secretary of Health and Human Services shall not provide for any inflation update in the payment amounts under

subparagraphs (A) and (B) of section 1833(i)(2) of the Social Security Act for fiscal year 1994 or for fiscal year 1995.

SEC. 13532. DESIGNATION OF CERTAIN HOSPITALS AS EYE OR EYE AND EAR HOSPITALS.

(a) In General.–Section 1833(i) (42 U.S.C. 1395*l*(i)) is amended–

(1) in paragraph (3)(B)(ii)–

(A) in the matter preceding subclause (I), by striking "the last sentence of this clause" and inserting "paragraph (4)", and

(B) by striking the last sentence; and

(2) by inserting after paragraph (3) the following new paragraph:

"(4)(A) In the case of a hospital that–

"(i) makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary),

"(ii) receives more than 30 percent of its total revenues from outpatient services, and

"(iii) on October 1, 1987–

"(I) was an eye specialty hospital or an eye and ear specialty hospital, or

"(II) was operated as an eye or eye and ear unit (as defined in subparagraph (B)) of a general acute care hospital which, on the date of the application described in clause (i), operates less than 20 percent of the beds that the hospital operated on October 1, 1987, and has sold or otherwise disposed of a substantial portion of the hospital's other acute care operations,

the cost proportion and ASC proportion in effect under subclauses (I) and (II) of paragraph (3)(B)(ii) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.

"(B) For purposes of this subparagraph (A)(iii)(II), the term 'eye or eye and ear unit' means a physically separate or distinct unit containing separate surgical suites devoted solely to eye or eye and ear services.".

(b) Effective Date.–The amendments made by subsection (a) shall apply to portions of cost reporting periods beginning on or after January 1, 1994.

SEC. 13533. REDUCTION IN PAYMENTS FOR INTRAOCULAR LENSES.

Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act the amount of payment determined under such section for an intraocular lens inserted subsequent to or during cataract surgery in an ambulatory surgical center on or after January 1, 1994, and before January 1, 1999, shall be equal to $150.

***287** Subpart D–Durable Medical Equipment

SEC. 13541. PAYMENT FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1994 AND 1995.

In determining the amount of payment under part B of title XVIII of the Social Security Act with respect to parenteral and enteral nutrients, supplies, and equipment during 1994 and 1995, the charges determined to be reasonable with respect to

such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1993.

SEC. 13542. REVISIONS TO PAYMENT RULES FOR DURABLE MEDICAL EQUIPMENT.

(a) Basing National Payment Limits on Median of Local Payment Amounts.–

(1) Inexpensive and routinely purchased items; items requiring frequent and substantial servicing.–(A) Paragraphs (2)(C)(i)(II) and (3)(C)(i)(II) of section 1834(a) (42 U.S.C. 1395m(a)) are each amended–

(i) by striking "1992" the first place it appears and inserting "1992, 1993, and 1994"; and

(ii) by striking "1992" the second place it appears and inserting "the year".

(B) Paragraphs (2)(C)(ii) and (3)(C)(ii) of section 1834(a) (42 U.S.C. 1395m(a)) are each amended–

(i) by striking "and" at the end of subclause (I);

(ii) by redesignating subclause (II) as subclause (IV); and

(iii) by inserting after subclause (I) the following new subclauses:

"(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,
"(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and".

(2) Miscellaneous devices and items.–Section 1834(a)(8) (42 U.S.C. 1395m(a)(8)) is amended–

(A) in subparagraph (A)(ii)(III), by striking "1992" and inserting "1992, 1993, and 1994"; and

(B) in subparagraph (B)–

(i) by striking "and" at the end of clause (i),
(ii) by redesignating clause (ii) as (iv), and
(iii) by inserting after clause (i) the following new clauses:
"(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased ***288** by the covered item update for such subsequent year;
"(iii) for 1994, the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the median of all local purchase prices computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local purchase prices computed under such subparagraph for the item for the year; and".

(3) Oxygen and oxygen equipment.–Section 1834(a)(9) (42 U.S.C. 1395m(a)(9)) is amended–

(A) in subparagraph (A)(ii)(II), by striking "1991 and 1992" and inserting "1991, 1992, 1993, and 1994"; and

(B) in subparagraph (B)–

(i) by striking "and" at the end of clause (i),
(ii) by redesignating clause (ii) as (iv), and
(iii) by inserting after clause (i) the following new clauses:
"(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

"(iii) for 1994, the local monthly payment rate computed under subparagraph (A)(ii) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year; and".

(b) Effective Date.–The amendments made by this section shall apply to items furnished on or after January 1, 1994.

SEC. 13543. TREATMENT OF NEBULIZERS, ASPIRATORS, AND CERTAIN VENTILATORS.

(a) In General.–Section 1834(a)(3)(A) (42 U.S.C. 1395m(a)(3)(A)) is amended by striking "ventilators, aspirators, IPPB machines, and nebulizers" and inserting "IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices".

(b) Payment for Accessories Relating to Nebulizers, Aspirators, and Certain Ventilators.–Section 1834(a)(2)(A) (42 U.S.C. 1395m(a)) is amended–

(1) by striking "or" at the end of clause (i),

(2) by adding "or" at the end of clause (ii), and

(3) by inserting after clause (ii) the following new clause:

"(iii) which is an accessory used in conjunction with a nebulizer, aspirator, or a ventilator excluded under paragraph (3)(A),".

(c) Effective Date.–The amendments made by this section shall apply to items furnished on or after January 1, 1994.

***289** SEC. 13544. PAYMENT FOR OSTOMY SUPPLIES AND OTHER SUPPLIES.

(a) Ostomy Supplies, Tracheostomy Supplies, and Urologicals.–

(1) In general.–Section 1834(h)(1) (42 U.S.C. 1395m(h)(1)) is amended by adding at the end the following new subparagraph:

"(E) Exception for certain items.–Payment for ostomy supplies, tracheostomy supplies, and urologicals shall be made in accordance with subparagraphs (B) and (C) of section 1834(a)(2).".

(2) Conforming amendment.–Section 1834(h)(1)(B) (42 U.S.C. 1395m(h)(1)(B)) is amended by striking "subparagraph (C)," and inserting "subparagraphs (C) and (E),".

(3) Effective date.–The amendments made by this subsection shall apply to items furnished on or after January 1, 1994.

(b) Surgical Dressings.–

(1) In general.–Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(i) Payment for Surgical Dressings.–

"(1) In general.–Payment under this subsection for surgical dressings (described in section 1861(s)(5)) shall be made in a lump sum amount for the purchase of the item in an amount equal to 80 percent of the lesser of–

"(A) the actual charge for the item; or

"(B) a payment amount determined in accordance with the methodology described in subparagraphs (B) and (C) of subsection (a)(2) (except that in applying such methodology, the national limited payment amount referred to in such

subparagraphs shall be initially computed based on local payment amounts using average reasonable charges for the 12-month period ending December 31, 1992, increased by the covered item updates described in such subsection for 1993 and 1994).

"(2) Exceptions.–Paragraph (1) shall not apply to surgical dressings that are–

"(A) furnished as an incident to a physician's professional service; or

"(B) furnished by a home health agency.".

(2) Conforming amendment.–Section 1833(a)(1) (42 U.S.C. 1395*l*(a)(1)) is amended–

(A) by striking "and" before "(N)";

(B) with respect to the matter inserted by section 4155(b)(2)(B) of OBRA–1990–

(i) by striking "(M)" and inserting ", (O)", and
(ii) by transferring it and inserting it (as amended) immediately before the semicolon at the end; and
(C) by inserting before the semicolon at the end the following: ", and (P) with respect to surgical dressings, the amounts paid shall be the amounts determined under section 1834(i)".

(3) Effective date.–The amendments made by this subsection shall apply to items furnished on or after January 1, 1994.

***290** SEC. 13545. PAYMENTS FOR TENS DEVICES.

(a) In General.–Section 1834(a)(1)(D) (42 U.S.C. 1395m(a)(1)(D)) is amended by striking "15 percent" the second place it appears and inserting "45 percent".

(b) Effective Date.–The amendment made by subsection (a) shall apply to items furnished on or after January 1, 1994.

SEC. 13546. PAYMENTS FOR ORTHOTICS, PROSTHETICS, AND PROSTHETIC DEVICES.

Section 1834(h)(4)(A) (42 U.S.C. 1395m(h)(4)(A)) is amended–

(1) in clause (i), by striking "and";

(2) in clause (ii), by striking "a subsequent year" and inserting "1992 and 1993"; and

(3) by adding at the end the following new clauses:

"(iii) for 1994 and 1995, 0 percent, and
"(iv) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;".

Subpart E–Other Provisions

SEC. 13551. PAYMENTS FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) Update Freeze.–Section 1833(h)(2)(A)(ii) (42 U.S.C. 1395*l*(h)(2)(A)(ii)) is amended–

(1) by striking "and" at the end of subclause (II),

(2) by striking the period at the end of subclause (III) and inserting ", and", and

(3) by adding at the end the following new subclause:

"(IV) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1994 and 1995 shall be 0 percent.".

(b) Lower Cap.–Section 1833(h)(4)(B) (42 U.S.C. 1395*l*(h)(4)(B)) is amended–

(1) by striking "and" at the end of clause (iii),

(2) by striking clause (iv) and inserting the following:

"(iv) after December 31, 1990, and before January 1, 1994, is equal to 88 percent of such median,

"(v) after December 31, 1993, and before January 1, 1995, is equal to 84 percent of such median,

"(vi) after December 31, 1994, and before January 1, 1996, is equal to 80 percent of such median, and

"(vii) after December 31, 1995, is equal to 76 percent of such median.".

SEC. 13552. EXTENSION OF ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

Section 9342 of OBRA–1986, as amended by section 4164(a)(2) of OBRA–1990, is amended–

(1) in subsection (c)(1), by striking "4 years" and inserting "5 years"; and

(2) in subsection (f)–

(A) by striking "$55,000,000" and inserting "$58,000,000", and

***291** (B) by striking "$3,000,000" and inserting "$5,000,000".

SEC. 13553. ORAL CANCER DRUGS.

(a) New Coverage of Certain Self-Administered Anticancer Drugs.–Section 1861(s)(2) (42 U.S.C. 1395(s)(2)) is amended–

(1) by striking "and" at the end of subparagraph (O);

(2) by adding "and" at the end of subparagraph (P); and

(3) by adding at the end the following new subparagraph:

"(Q) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an anticancer chemotherapeutic agent for a given indication, and containing an active ingredient (or ingredients), which is the same indication and active ingredient (or ingredients) as a drug which the carrier determines would be covered pursuant to subparagraph (A) or (B) if the drug could not be self-administered;".

(b) Uniform Coverage of "Off-Label" Anticancer Drugs.–Section 1861(t) (42 U.S.C. 1395x(t)) is amended–

(1) by inserting "(1)" after "(t)";

(2) by striking "(m)(5) of this section" and inserting "(m)(5) and paragraph (2)"; and

(3) by adding at the end the following new paragraph:

"(2)(A) For purposes of paragraph (1), the term 'drugs' also includes any drugs or biologicals used in an anticancer chemotherapeutic regimen for a medically accepted indication (as described in subparagraph (B)).

"(B) In subparagraph (A), the term 'medically accepted indication', with respect to the use of a drug, includes any use which has been approved by the Food and Drug Administration for the drug, and includes another use of the drug if–

"(i) the drug has been approved by the Food and Drug Administration; and

"(ii)(I) such use is supported by one or more citations which are included (or approved for inclusion) in one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, the United States Pharmacopoeia-Drug Information, and other authoritative compendia as identified by the Secretary, unless the Secretary has determined that the use is not medically appropriate or the use is identified as not indicated in one or more such compendia, or

"(II) the carrier involved determines, based upon guidance provided by the Secretary to carriers for determining accepted uses of drugs, that such use is medically accepted based on supportive clinical evidence in peer reviewed medical literature appearing in publications which have been identified for purposes of this subclause by the Secretary.

The Secretary may revise the list of compendia in clause (ii)(I) as is appropriate for identifying medically accepted indications for drugs.".

(c) Effective Date.–The amendments made by subsections (a) and (b) shall apply to items furnished on or after January 1, 1994.

***292** SEC. 13554. CLARIFICATION OF COVERAGE OF CERTIFIED NURSE-MIDWIFE SERVICES PERFORMED OUTSIDE THE MATERNITY CYCLE.

(a) In General.–Section 1861(gg)(2) (42 U.S.C. 1395x(gg)(2)) is amended by striking ", and performs services" and all that follows and inserting a period.

(b) Effective Date.–The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 13555. INCREASE IN ANNUAL CAP ON AMOUNT OF MEDICARE PAYMENT FOR OUTPATIENT PHYSICAL THERAPY AND OCCUPATIONAL THERAPY SERVICES.

(a) Increase in Annual Limitation.–Section 1833(g) (42 U.S.C. 1395*l*(g)) is amended by striking "$750" and inserting "$900" each place it appears.

(b) Effective Date.–The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 13556. RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.

(a) In General.–Paragraph (4) of section 1861(aa) (42 U.S.C. 1395x(aa)) is amended–

(1) by striking "or" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act.".

(b) Effective Date.–The amendments made by subsection (a) shall take effect as if included in the enactment of section 4161(a)(2)(C) of OBRA–1990.

SEC. 13557. EXTENSION OF MUNICIPAL HEALTH SERVICE DEMONSTRATION PROJECTS.

Section 9215 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 6135 of OBRA–1989, is amended–

(1) by striking "December 31, 1993" and inserting "December 31, 1997", and

(2) in the second sentence, by inserting after "beneficiary costs," the following: "costs to the medicaid program and other payers, access to care, outcomes, beneficiary satisfaction, utilization differences among the different populations served by the projects,".

PART III–PROVISIONS RELATING TO PARTS A AND B

SEC. 13561. MEDICARE AS SECONDARY PAYER.

(a) Extension of and Modifications to Data Match Program.–

(1) Section 1862(b)(5)(C)(iii) (42 U.S.C. 1395y(b)(5)(C)(iii)) is amended by striking "1995" and inserting "1998".

(2) Section 6103(l)(12) of the Internal Revenue Code of 1986 is amended–

***293** (A) in subparagraph (B)(i), by inserting ", above an amount (if any) specified by the Secretary of Health and Human Services," after "section 3401(a))";

(B) in subparagraph (B)(ii), in the matter preceding subclause (I) by inserting ", above an amount (if any) specified by the Secretary of Health and Human Services," after "wages"; and

(C) in subparagraph (F)–

(i) in clause (i), by striking "1995" and inserting "1998",
(ii) in clause (ii)(I), by striking "1994" and inserting "1997", and
(iii) in clause (ii)(II), by striking "1995" and inserting "1998".

(b) Extension of Medicare Secondary Payer to Disabled Beneficiaries.–Section 1862(b)(1)(B)(iii) (42 U.S.C. 1395y(b)(1)(B)(iii)) is amended by striking "1995" and inserting "1998".

(c) Extension of 18-month Rule for ESRD Beneficiaries.–Section 1862(b)(1) (42 U.S.C. 1395y(b)(1)) is amended–

(1) in the second sentence of subparagraph (C), by striking "on or before January 1, 1996" and inserting "before October 1, 1998";

(2) in each of subparagraphs (A)(iv) and (B)(ii)–

(A) by striking "Clause (i) shall not apply" and inserting "Subparagraph (C) shall apply instead of clause (i)", and

(B) by inserting "(without regard to entitlement under section 226)" after "individual is, or"; and

(3) in subparagraph (C), by striking "benefits under this title solely by reason of" and inserting "or eligible for benefits under this title under" each place it appears.

(d) Application of Aggregation Rules.–

(1) In general.–Section 1862(b)(1) (42 U.S.C. 1395y(b)(1)) is amended by adding at the end the following new subparagraph:

"(E) General provisions.–For purposes of this subsection:

"(i) Aggregation rules.–
"(I) All employers treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer.
"(II) All employees of the members of an affiliated service group (as defined in section 414(m) of such Code) shall be treated as employed by a single employer.
"(III) Leased employees (as defined in section 414(n)(2) of such Code) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n) of such Code.
In applying sections of the Internal Revenue Code of 1986 under this clause, the Secretary shall rely upon ***294** regulations and decisions of the Secretary of the Treasury respecting such sections.".

(2) Conforming amendment.–Section 5000(b)(2) of the Internal Revenue Code of 1986 (relating to large group health plans) is amended by adding at the end the following: "For purposes of the preceding sentence–

"(A) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer,

"(B) all employees of the members of an affiliated service group (as defined in section 414(m)) shall be treated as employed by a single employer, and

"(C) leased employees (as defined in section 414(n)(2)) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n). ".

(3) The amendments made by this subsection shall take effect 90 days after the date of the enactment of this Act.

(e) Uniform Treatment of Current Employment Status.–

(1) In general.–Section 1862(b)(1) (42 U.S.C. 1395y(b)(1)) is amended–

(A) in subparagraph (A)(i), by amending subclauses (I) and (II) to read as follows:

"(I) may not take into account that an individual (or the individual's spouse) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this title under section 226(a), and
"(II) shall provide that any individual age 65 or over (and the individual's spouse age 65 or older) who is covered under the plan by virtue of the individual's current employment status with an employer shall be entitled to the same benefits under the plan under the same conditions as any such individual (or spouse) under age 65.";

(B) in subparagraph (A)(ii), by striking "unless the plan" and all that follows through "employees" and inserting "unless the plan is a plan of, or contributed to by, an employer or employee organization that has 20 or more individuals in current employment status";

(C) in subparagraph (A)(iii), by striking "by virtue of employment" and all that follows through "calendar year or" and inserting "by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and";

(D) in subparagraph (A)(v), by inserting ", without regard to section 5000(d) of such Code" before the period at the end of each subparagraph;

(E) in the heading of subparagraph (B), by striking "active";

(F) in subparagraph (B)(i), by striking "clause (iv)(II)) may not take into account that an active individual (as defined ***295** in clause (iv)(I))" and inserting "clause (iv)) may not take into account that an individual (or a member of the individual's family) who is covered under the plan by virtue of the individual's current employment status with an employer";

(G) by amending clause (iv) of subparagraph (B) to read as follows:

"(iv) Large group health plan defined.–In this subparagraph, the term 'large group health plan' has the meaning given such term in section 5000(b)(2) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code."; and

(H) by adding at the end of subparagraph (E), as added by subsection (d)(1), the following:

"(ii) Current employment status defined.–An individual has 'current employment status' with an employer if the individual is an employee, is the employer, or is associated with the employer in a business relationship.

"(iii) Treatment of self-employed persons as employers.–The term 'employer' includes a self-employed person.".

(2)(A) Section 5000 of the Internal Revenue Code of 1986 is amended–

(i) in subsection (a), by inserting "(including a self-employed person)" after "employer",

(ii) by amending paragraph (1) of subsection (b) to read as follows:

"(1) Group health plan.–The term 'group health plan' means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.", and

(iii) in subsection (c), by striking "of section 1862(b)(1)" and inserting "of paragraph (1), or with the requirements of paragraph (2), of section 1862(b)".

(B) Section 6103(l)(12)(E)(ii) of such Code is amended to read as follows:

"(ii) Group health plan.–The term 'group health plan' means any group health plan (as defined in section 5000(b)(1)).".

(f) Retroactive Exemption for Certain Situations Involving Religious Orders.–Section 1862(b)(1)(D) of the Social Security Act applies, with respect to items and services furnished before October 1, 1989, to any claims that the Secretary of Health and Human Services had not identified as of that date as subject to the provisions of section 1862(b) of such Act.

SEC. 13562. PHYSICIAN OWNERSHIP AND REFERRAL.

(a) In General.–Section 1877 (42 U.S.C. 1395nn) is amended–

(1) by amending subsections (a) through (e) to read as follows:

***296** "(a) Prohibition of Certain Referrals.–

"(1) In general.–Except as provided in subsection (b), if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then–

"(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this title, and

"(B) the entity may not present or cause to be presented a claim under this title or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

"(2) Financial relationship specified.–For purposes of this section, a financial relationship of a physician (or an immediate family member of such physician) with an entity specified in this paragraph is–

"(A) except as provided in subsections (c) and (d), an ownership or investment interest in the entity, or

"(B) except as provided in subsection (e), a compensation arrangement (as defined in subsection (h)(1)) between the physician (or an immediate family member of such physician) and the entity.

An ownership or investment interest described in subparagraph (A) may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing the designated health service.

"(b) General Exceptions to Both Ownership and Compensation Arrangement Prohibitions.–Subsection (a)(1) shall not apply in the following cases:

"(1) Physicians' services.–In the case of physicians' services (as defined in section 1861(q)) provided personally by (or under the personal supervision of) another physician in the same group practice (as defined in subsection (h)(4)) as the referring physician.

"(2) In-office ancillary services.–In the case of services (other than durable medical equipment (excluding infusion pumps) and parenteral and enteral nutrients, equipment, and supplies)–

"(A) that are furnished–

"(i) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are directly supervised by the physician or by another physician in the group practice, and
"(ii)(I) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of designated health services, or
"(II) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice–
***297** "(aa) for the provision of some or all of the group's clinical laboratory services, or
"(bb) for the centralized provision of the group's designated health services (other than clinical laboratory services),
unless the Secretary determines other terms and conditions under which the provision of such services does not present a risk of program or patient abuse, and
"(B) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member under a billing number assigned to the group practice, or by an entity that is wholly owned by such physician or such group practice,

if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(3) Prepaid plans–In the case of services furnished by an organization–

"(A) with a contract under section 1876 to an individual enrolled with the organization,

"(B) described in section 1833(a)(1)(A) to an individual enrolled with the organization,

"(C) receiving payments on a prepaid basis, under a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization, or

"(D) that is a qualified health maintenance organization (within the meaning of section 1310(d) of the Public Health Service Act) to an individual enrolled with the organization.

"(4) Other permissible exceptions.–In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

"(c) General Exception Related Only to Ownership or Investment Prohibition for Ownership in Publicly Traded Securities and Mutual Funds.–Ownership of the following shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A):

"(1) Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which may be purchased on terms generally available to the public and which are–

"(A)(i) securities listed on the New York Stock Exchange, the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or

"(ii) traded under an automated interdealer quotation system operated by the National Association of Securities Dealers, and

***298** "(B) in a corporation that had, at the end of the corporation's most recent fiscal year, or on average during the previous 3 fiscal years, stockholder equity exceeding $75,000,000.

"(2) Ownership of shares in a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if such company had, at the end of the company's most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding $75,000,000.

"(d) Additional Exceptions Related Only to Ownership or Investment Prohibition.–The following, if not otherwise excepted under subsection (b), shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A):

"(1) Hospitals in Puerto Rico.–In the case of designated health services provided by a hospital located in Puerto Rico.

"(2) Rural provider.–In the case of designated health services furnished in a rural area (as defined in section 1886(d)(2)(D)) by an entity, if substantially all of the designated health services furnished by such entity are furnished to individuals residing in such a rural area.

"(3) Hospital ownership.–In the case of designated health services provided by a hospital (other than a hospital described in paragraph (1)) if–

"(A) the referring physician is authorized to perform services at the hospital, and

"(B) the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

"(e) Exceptions Relating to Other Compensation Arrangements.–The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B):

"(1) Rental of office space; rental of equipment.–

"(A) Office space.–Payments made by a lessee to a lessor for the use of premises if–

"(i) the lease is set out in writing, signed by the parties, and specifies the premises covered by the lease,
"(ii) the space rented or leased does not exceed that which is reasonable and necessary for the legitimate business

purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if such payments do not exceed the lessee's pro rata share of expenses for such space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas,

"(iii) the lease provides for a term of rental or lease for at least 1 year,

"(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

***299** "(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

"(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(B) Equipment.–Payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if–

"(i) the lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease,

"(ii) the equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee,

"(iii) the lease provides for a term of rental or lease of at least 1 year,

"(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

"(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(2) Bona fide employment relationships.–Any amount paid by an employer to a physician (or an immediate family member of such physician) who has a bona fide employment relationship with the employer for the provision of services if–

"(A) the employment is for identifiable services,

"(B) the amount of the remuneration under the employment–

"(i) is consistent with the fair market value of the services, and

"(ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician,

"(C) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the employer, and

"(D) the employment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

Subparagraph (B)(ii) shall not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the physician (or an immediate family member of such physician).

"(3) Personal service arrangements.–

"(A) In general.–Remuneration from an entity under an arrangement (including remuneration for specific physicians' services furnished to a nonprofit blood center) if–

***300** "(i) the arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement,

"(ii) the arrangement covers all of the services to be provided by the physician (or an immediate family member of such physician) to the entity,

"(iii) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement,

"(iv) the term of the arrangement is for at least 1 year,

"(v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in subparagraph (B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(vi) the services to be performed under the arrangement do not involve the counseling or promotion or a business arrangement or other activity that violates any State or Federal law, and

"(vii) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(B) Physician incentive plan exception.–

"(i) In general.–In the case of a physician incentive plan (as defined in clause (ii)) between a physician and an entity, the compensation may be determined in a manner (through a withhold, capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties, if the plan meets the following requirements:

"(I) No specific payment is made directly or indirectly under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity.

"(II) In the case of a plan that places a physician or a physician group at substantial financial risk as determined by the Secretary pursuant to section 1876(i)(8)(A)(ii), the plan complies with any requirements the Secretary may impose pursuant to such section.

"(III) Upon request by the Secretary, the entity provides the Secretary with access to descriptive information regarding the plan, in order to permit the Secretary to determine whether the plan is in compliance with the requirements of this clause.

"(ii) Physician incentive plan defined.–For purposes of this subparagraph, the term 'physician incentive plan' means any compensation arrangement between an entity and a physician or physician group ***301** that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the entity.

"(4) Remuneration unrelated to the provision of designated health services.–In the case of remuneration which is provided by a hospital to a physician if such remuneration does not relate to the provision of designated health services.

"(5) Physician recruitment.–In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if–

"(A) the physician is not required to refer patients to the hospital,

"(B) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

"(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(6) Isolated transactions.–In the case of an isolated financial transaction, such as a one-time sale of property or practice, if–

"(A) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met with respect to the entity in the same manner as they apply to an employer, and

"(B) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(7) Certain group practice arrangements with a hospital.–

"(A) In general.–An arrangement between a hospital and a group under which designated health services are provided by the group but are billed by the hospital if–

"(i) with respect to services provided to an inpatient of the hospital, the arrangement is pursuant to the provision of inpatient hospital services under section 1861(b)(3),
"(ii) the arrangement began before December 19, 1989, and has continued in effect without interruption since such date,
"(iii) with respect to the designated health services covered under the arrangement, substantially all of such services furnished to patients of the hospital are furnished by the group under the arrangement,
"(iv) the arrangement is pursuant to an agreement that is set out in writing and that specifies the services to be provided by the parties and the compensation for services provided under the agreement,
"(v) the compensation paid over the term of the agreement is consistent with fair market value and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account ***302** the volume or value of any referrals or other business generated between the parties,
"(vi) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity, and
"(vii) the arrangement between the parties meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(8) Payments by a physician for items and services.–Payments made by a physician–

"(A) to a laboratory in exchange for the provision of clinical laboratory services, or

"(B) to an entity as compensation for other items or services if the items or services are furnished at a price that is consistent with fair market value.";

(2) by amending subsection (h) to read as follows:

"(h) Definitions and Special Rules.–For purposes of this section:

"(1) Compensation arrangement; remuneration.–(A) The term 'compensation arrangement' means any arrangement involving any remuneration between a physician (or an immediate family member of such physician) and an entity other than an arrangement involving only remuneration described in subparagraph (C).

"(B) The term 'remuneration' includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

"(C) Remuneration described in this subparagraph is any remuneration consisting of any of the following:

"(i) The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.

"(ii) The provision of items, devices, or supplies that are used solely to–

"(I) collect, transport, process, or store specimens for the entity providing the item, device, or supply, or
"(II) order or communicate the results of tests or procedures for such entity.

"(iii) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee for service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-insured plan, if–

"(I) the health services are not furnished, and the payment is not made, pursuant to a contract or other arrangement between the insurer or the plan and the physician,
"(II) the payment is made to the physician on behalf of the covered individual and would otherwise be made directly to such individual,
"(III) the amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals, and
***303** "(IV) the payment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(2) Employee.–An individual is considered to be 'employed by' or an 'employee' of an entity if the individual would be

considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

"(3) Fair market value.–The term 'fair market value' means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

"(4) Group practice.–

"(A) Definition of group practice.–The term 'group practice' means a group of 2 or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association–

"(i) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment and personnel,
"(ii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group,
"(iii) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined,
"(iv) except as provided in subparagraph (B)(i), in which no physician who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician,
"(v) in which members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice, and
"(vi) which meets such other standards as the Secretary may impose by regulation.

"(B) Special rules.–

"(i) Profits and productivity bonuses.–A physician in a group practice may be paid a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share or bonus is not determined in any manner which ***304** is directly related to the volume or value of referrals by such physician.
"(ii) Faculty practice plans.–In the case of a faculty practice plan associated with a hospital, institution of higher education, or medical school with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, subparagraph (A) shall be applied only with respect to the services provided within the faculty practice plan.

"(5) Referral; referring physician.–

"(A) Physicians' services.–Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a 'referral' by a 'referring physician'.

"(B) Other items.–Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the provision of the designated health service constitutes a 'referral' by a 'referring physician'.

"(C) Clarification respecting certain services integral to a consultation by certain specialists.–A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy, if such services are furnished by (or under the supervision of) such pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician does not constitute a 'referral' by a 'referring physician'.

"(6) Designated health services.–The term 'designated health services' means any of the following items or services:

"(A) Clinical laboratory services.

"(B) Physical therapy services.

"(C) Occupational therapy services.

"(D) Radiology or other diagnostic services.

"(E) Radiation therapy services.

"(F) Durable medical equipment.

"(G) Parenteral and enteral nutrients, equipment, and supplies.

"(H) Prosthetics, orthotics, and prosthetic devices.

"(I) Home health services.

"(J) Outpatient prescription drugs.

"(K) Inpatient and outpatient hospital services.";

(3) in subsection (f), by striking "clinical laboratory services" and inserting "designated health services"; and

(4) in paragraph (1) of subsection (g), by striking "clinical laboratory service" and inserting "designated health service".

***305** (b) Effective Dates.–

(1) In general.–Except as provided in paragraph (2), the amendments made by this section shall apply to referrals–

(A) made on or after January 1, 1992, in the case of clinical laboratory services, and

(B) made after December 31, 1994, in the case of other designated health services.

(2) Exceptions.–With respect to referrals made for clinical laboratory services on or before December 31, 1994–

(A) the requirements of clauses (iv) and (v) of section 1877(h)(4)(A) of the Social Security Act, as amended by this section, shall not apply; and

(B) the second sentence of subsection (a)(2), and subsections (b)(2)(B), (c), (d)(2), (e)(1), and (h)(4)(B) of section 1877 of such Act, as in effect on the day before the date of the enactment of this Act, shall apply (instead of the corresponding provision in such section as so amended).

SEC. 13563. DIRECT GRADUATE MEDICAL EDUCATION.

(a) Elimination of Cost-of-Living Update in per Resident Amounts for Direct Medical Education.–Section 1886(h) (42 U.S.C. 1395ww(h)) is amended–

(1) in paragraph (2)(D)–

(A) by striking "For each" and inserting "(i) Except as provided in clause (ii), for each", and

(B) by adding at the end the following new clause:

"(ii) For cost reporting periods beginning during fiscal year 1994 or fiscal year 1995, the approved FTE resident amount for a hospital shall not be updated under clause (i) for a resident who is not a primary care resident (as defined in paragraph (5)(H)) or a resident enrolled in an approved medical residency training program in obstetrics and gynecology."; and

(2) in paragraph (5)–

(A) by redesignating subparagraph (H) as subparagraph (I); and

(B) by inserting after subparagraph (G) the following new subparagraph:

"(H) Primary care resident.–The term 'primary care resident' means a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice.".

(b) Initial Residency Period.–

(1) In general.–Section 1886(h)(5)(F) (42 U.S.C. 1395ww(h)(5)(F)) is amended–

(A) by striking "plus one year", and

(B) in clause (ii), by inserting "or a preventive medicine residency or fellowship program" after "fellowship program".

(2) Effective dates.–The amendments made by paragraphs (1)(A) and (1)(B) shall take effect on July 1, 1995, and the date of the enactment of this Act, respectively.

(c) Adjustment for Publicly-Funded Family Practice Residency Programs.–

***306** (1) In general.–Section 1886(h)(5) (42 U.S.C. 1395ww(h)(5)), as amended by subsection (a), is amended by adding at the end the following new subparagraph:

"(J) Adjustments for certain family practice residency programs.–

"(i) In general.–In the case of an approved medical residency training program (meeting the requirements of clause (ii)) of a hospital which received funds from the United States, a State, or a political subdivision of a State or an instrumentality of such a State or political subdivision (other than payments under this title or a State plan under title XIX) for the program during the cost reporting period that began during fiscal year 1984, the Secretary shall–

"(I) provide for an average amount under paragraph (2)(A) that takes into account the Secretary's estimate of the amount that would have been recognized as reasonable under this title if the hospital had not received such funds, and

"(II) reduce the payment amount otherwise provided under this subsection in an amount equal to the proportion of such program funds received during the cost reporting period involved that is allocable to this title.

"(ii) Additional requirements.–A hospital's approved medical residency program meets the requirements of this clause if–

"(I) the program is limited to training for family and community medicine;

"(II) the program is the only approved medical residency program of the hospital; and

"(III) the average amount determined under paragraph (2)(A) for the hospital (as determined without regard to the increase in such amount described in clause (i)(I)) does not exceed $10,000.".

(2) Effective date.–The amendment made by paragraph (1) shall apply to payments under section 1886(h) of the Social Security Act for cost reporting periods beginning on or after October 1, 1992.

(d) Adjustment in GME Base-year Costs of Federal Insurance Contributions Act.–

(1) In general.–In determining the amount of payment to be made under section 1886(h) of the Social Security Act in the

case of a hospital described in paragraph (2) for cost reporting periods beginning on or after October 1, 1992, the Secretary of Health and Human Services shall redetermine the approved FTE resident amount to reflect the amount that would have been paid the hospital if, during the hospital's base cost reporting period, the hospital had been liable for FICA taxes or for contributions to the retirement system of a State, a political subdivision of a State, or an instrumentality of such a State or political subdivision with respect to interns and residents in its medical residency training program.

***307** (2) Hospitals affected.–A hospital described in this paragraph is a hospital that did not pay FICA taxes with respect to interns and residents in its medical residency training program during the hospital's base cost reporting period, but is required to pay FICA taxes or make contributions to a retirement system described in paragraph (1) with respect to such interns and residents because of the amendments made by section 11332(b) of OBRA–1990.

(3) Definitions.–In this subsection:

(A) The "base cost reporting period" for a hospital is the hospital's cost reporting period that began during fiscal year 1984.

(B) The term "FICA taxes" means, with respect to a hospital, the taxes under section 3111 of the Internal Revenue Code of 1986.

SEC. 13564. REDUCTION IN PAYMENTS FOR HOME HEALTH SERVICES.

(a) In General.–

(1) No changes in cost limits.–The Secretary of Health and Human Services shall not provide for any change in the per visit cost limits for home health services under section 1861(v)(1)(L) of such Act for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, except as may be necessary to take into account the amendment made by subsection (b)(1). The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1861(v)(1)(L)(ii) of such Act to the payment limits for such services during such cost reporting periods.

(2) Delay in updates.–Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by striking "thereafter," and inserting "thereafter (but not for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996),".

(b) Elimination of Add-on for Overhead of Hospital-based Home Health Agencies.–

(1) General rule.–The first sentence of section 1861(v)(1)(L)(ii) (42 U.S.C. 1395x(v)(1)(L)(ii)) is amended by striking ", with appropriate adjustment for administrative and general costs of hospital-based agencies".

(2) Effective date.–The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1993.

SEC. 13565. IMMUNOSUPPRESSIVE DRUG THERAPY.

Section 1861(s)(2)(J) (42 U.S.C. 1395x(s)(2)(J)) is amended by striking "title, within" and all that follows and inserting the following: "title, but only in the case of drugs furnished–

"(i) before 1995, within 12 months after the date of the transplant procedure,

"(ii) during 1995, within 18 months after the date of the transplant procedure,

"(iii) during 1996, within 24 months after the date of the transplant procedure,

"(iv) during 1997, within 30 months after the date of the transplant procedure, and

***308** "(v) during any year after 1997, within 36 months after the date of the transplant procedure;".

SEC. 13566. REDUCTION IN PAYMENTS FOR ERYTHROPOIENTIN.

(a) In General.–Section 1881(b) (42 U.S.C. 1395rr(b)) is amended–

(1) in paragraph (1)(C), by striking "1861(s)(2)(Q)" and inserting "1861(s)(2)(P)"; and

(2) in paragraph (11)(B)(ii)(I)–

(A) by striking "1991" and inserting "1994", and

(B) by striking "$11" and inserting "$10".

(b) Self-administration of Erythropoientin.–Subparagraph (P) of section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended–

(1) by striking "home", and

(2) by moving such subparagraph two ems to the left.

(c) Effective Date.–The amendments made by this section shall apply to erythropoietin furnished on or after January 1, 1994.

SEC. 13567. EXTENSION OF SOCIAL HEALTH MAINTENANCE ORGANIZATION DEMONSTRATIONS.

(a) Extension of Current Waivers.–Section 4018(b) of OBRA–1987, as amended by section 4207(b)(4)(B) of OBRA–1990, is amended–

(1) in paragraph (1) by striking "December 31, 1995" and inserting "December 31, 1997"; and

(2) in paragraph (4) by striking "March 31, 1996" and inserting "March 31, 1998".

(b) Expansion of Demonstrations.–Section 2355 of the Deficit Reduction Act of 1984 is amended–

(1) in the last sentence of subsection (a) by striking "12 months" and inserting "36 months"; and

(2) in subsection (b)(1)(B)–

(A) by striking "or" at the end of clause (iii); and

(B) by redesignating clause (iv) as clause (v) and inserting after clause (iii) the following new clause:

> "(iv) integrating acute and chronic care management for patients with end-stage renal disease through expanded community care case management services (and for purposes of a demonstration project conducted under this clause, any requirement under a waiver granted under this section that a project disenroll individuals who develop end-stage renal disease shall not apply); or".

(c) Expansion of Number of Members Per Site.–The Secretary of Health and Human Services may not impose a limit of less than 12,000 on the number of individuals that may participate in a project conducted under section 2355 of the Deficit Reduction Act of 1984.

(d) Effective Date.–The amendments made by this section shall take effect as if included in the enactment of OBRA–90.

SEC. 13568. TIMING OF CLAIMS PAYMENT.

(a) In General.–Sections 1816(c)(3)(B) (42 U.S.C. 1395h(c)(3)(B)) and 1842(c)(3)(B) (42 U.S.C. 1395u(c)(3)(B)) are each amended by striking clauses (i) and (ii) and inserting the following:

***309** "(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

"(ii) with respect to claims submitted otherwise, 26 days.".

(b) Time Limit of 30 Days for Clean Claims.–Sections 1816(c)(2)(B)(ii) (42 U.S.C. 1395h(c)(2)(B)(ii)) and 1842(c)(2)(B)(ii) (42 U.S.C. 1395u(c)(2)(B)(ii)) are each amended–

(A) in subclause (IV), by striking "period," and inserting "period ending on or before September 30, 1993,", and

(B) by adding at the end the following new subclause:

"(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.".

(c) Effective Date.–The amendments made by this section shall apply to claims received on or after October 1, 1993.

SEC. 13569. EXTENSION OF WAIVER FOR WATTS HEALTH FOUNDATION.

Section 9312(c)(3)(D) of OBRA–1986, as added by section 4018(d) of OBRA–1987 and as amended by section 6212(a)(1) of OBRA–1989, is amended by striking "1994" and inserting "1996".

PART IV–PROVISION RELATING TO PART B PREMIUM

SEC. 13571. PART B PREMIUM.

Section 1839 (42 U.S.C. 1395r) is amended–

(1) in subsection (e)(1)(A), by striking "December 1983 and prior to January 1991 shall be an amount equal to 50 percent" and inserting "after December 1995 and prior to January 1999 shall be an amount equal to 50 percent", and

(2) in subsection (e)(2), by striking "1991" and inserting "1998".

PART V–PROVISION RELATING TO DATA BANK

SEC. 13581. MEDICARE AND MEDICAID COVERAGE DATA BANK.

(a) Establishment of Medicare and Medicaid Coverage Data Bank.–Part A of title XI (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"MEDICARE AND MEDICAID COVERAGE DATA BANK

"Sec. 1144. (a) Establishment of Data Bank.–The Secretary shall establish a Medicare and Medicaid Coverage Data Bank (hereafter in this section referred to as the 'Data Bank') to–

"(1) further the purposes of section 1862(b) in the identification of, and collection from, third parties responsible for payment for health care items and services furnished to medicare beneficiaries, and

"(2) assist in the identification of, and the collection from, third parties responsible for the reimbursement of costs incurred by any State plan under title XIX with respect to medicaid beneficiaries, upon request by the State agency described in section 1902(a)(5) administering such plan.

"(b) Information in Data Bank.–

***310** "(1) In general.–The Data Bank shall contain information obtained pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and subsection (c).

"(2) Disclosure of information in data bank.–The Secretary is authorized until September 30, 1998–

"(A) (subject to the restriction in subparagraph (D)(i) of section 6103(l)(12) of the Internal Revenue Code of 1986) to disclose any information in the Data Bank obtained pursuant to such section solely for the purposes of such section, and

"(B) (subject to the restriction in subsection (c)(7)) to disclose any other information in the Data Bank to any State agency described in section 1902(a)(5), employer, or group health plan solely for the purposes described in subsection (a).

"(c) Requirement That Employers Report Information.–

"(1) Reporting requirement.–

"(A) In general.–Any employer described in paragraph (2) shall report to the Secretary (in such form and manner as the Secretary determines will minimize the burden of such reporting) with respect to each electing individual the information required under paragraph (5) for each calendar year beginning on or after January 1, 1994, and before January 1, 1998.

"(B) Special rule.–To the extent a group health plan provides information required under paragraph (5) in a form and manner specified by the Secretary (in consultation with the Secretary of Labor) on behalf of an employer in accordance with section 101(f) of Employee Retirement Income Security Act of 1974, the employer has complied with the reporting requirement under subparagraph (A) with respect to the reporting of such information.

"(2) Employer described.–An employer is described in this paragraph if such employer has, or contributes to, a group health plan, with respect to which at least 1 employee of such employer is an electing individual.

"(3) Electing individual.–For purposes of this subsection, the term 'electing individual' means an individual associated or formerly associated with the employer in a business relationship who elects coverage under the employer's group health plan.

"(4) Certain individuals excluded.–For purpose of this subsection, an individual providing service referred to in section 3121(a)(7)(B) of the Internal Revenue Code of 1986 shall not be considered an employee or electing individual with respect to an employer.

"(5) Information required.–For purposes of paragraph (1), each employer shall provide the following information:

"(A) The name and TIN of the electing individual.

"(B) The type of group health plan coverage (single or family) elected by the electing individual.

"(C) The name, address, and identifying number of the group health plan elected by such electing individual.

***311** "(D) The name and TIN of each other individual covered under the group health plan pursuant to such election.

"(E) The period during which such coverage is elected.

"(F) The name, address, and TIN of the employer.

"(6) Time of filing.–For purposes of determining the date for filing the report under paragraph (1), such report shall be treated as a statement described in section 6051(d) of the Internal Revenue Code of 1986.

"(7) Limits on disclosure of information reported.–

"(A) In general.–The disclosure of the information reported under paragraph (1) shall be restricted by the Secretary under rules similar to the rules of subsections (a) and (p) of section 6103 of the Internal Revenue Code of 1986.

"(B) Penalty for unauthorized willful disclosure of information.–The unauthorized disclosure of any information reported under paragraph (1) shall be subject to the penalty described in paragraph (1), (2), (3), or (4) of section 7213(a) of such Code.

"(9) Penalty for failure to report.–In the case of the failure of an employer (other than a Federal or other governmental entity) to report under paragraph (1)(A) with respect to each electing individual, the Secretary shall impose a penalty as described in part II of subchapter B of chapter 68 of the Internal Revenue Code of 1986.

"(d) Fees for Data Bank Services.–The Secretary shall establish fees for services provided under this section which shall remain available, without fiscal year limitation, to the Secretary to cover the administrative costs to the Data Bank of providing such services.

"(f) Definitions.–In this section:

"(1) Medicare beneficiary.–The term 'medicare beneficiary' means an individual entitled to benefits under part A, or enrolled under part B, of title XVIII, but does not include such an individual enrolled in part A under section 1818.

"(2) Medicaid beneficiary.–The term 'medicaid beneficiary' means an individual entitled to benefits under a State plan for medical assistance under title XIX (including a State plan operating under a Statewide waiver under section 1115).".

"(3) Group health plan.–The term 'group health plan' shall have the meaning given to such term by section 5000(b)(1) of the Internal Revenue Code of 1986.

"(4) TIN.–The term 'TIN' shall have the meaning given to such term by section 7701(a)(41) of such Code.".

(b) Conforming Amendments.–

(1) Medicare.–Section 1862(b)(5) (42 U.S.C. 1395y(b)(5)) is amended–

(A) in subparagraph (B), by striking "under subparagraph (A)" and all that follows and inserting "under–

"(i) subparagraph (A), and
"(ii) section 1144,
for purposes of carrying out this subsection.", and

(B) in subparagraph (C)(i), by striking "subparagraph (B)" and inserting "subparagraph (B)(i)".

***312** (2) Medicaid.–Section 1902(a)(25)(A)(i) (42 U.S.C. 1396a(a)(25)(A)(i)) is amended by striking "(as specified" and inserting "(including the use of information collected by the Medicare and Medicaid Coverage Data Bank under section 1144 and any additional measures as specified".

(c) Conforming Amendment Relating To Data Matches.–Subsection (a)(8)(B) of section 552a of title 5, United States Code, is amended–

(1) in clause (v), by striking "; or" at the end;

(2) in clause (vi), by striking the semicolon at the end and inserting "; or"; and

(3) by adding at the end the following new clause:

"(vii) matches performed pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;".

(d) Effective Date.–The amendments made by this section shall take effect on January 1, 1994.

Subchapter B–Medicaid

SEC. 13600. REFERENCES IN SUBCHAPTER; TABLE OF CONTENTS OF SUBCHAPTER.

(a) Amendments to Social Security Act.–Except as otherwise specifically provided, whenever in this subchapter an amendment 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 that section or other provision of the Social Security Act.

(b) References to OBRA.–In this subchapter, the terms "OBRA–1986", "OBRA–1987", "OBRA–1989", and "OBRA–1990" refer to the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509), the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239), and the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), respectively.

(c) Table of Contents of Subchapter.–The table of contents of this subchapter is as follows:

PART V–IMMUNIZATIONS

***313** PART I–SERVICES

SEC. 13601. PERSONAL CARE SERVICES FURNISHED OUTSIDE THE HOME AS OPTIONAL BENEFIT.

(a) In General.–Section 1905(a) (42 U.S.C. 1396d(a)) is amended–

(1) in paragraph (7), by striking "including personal care services" and all that follows through "nursing facility";

(2) by striking "and" at the end of paragraph (21);

(3) in paragraph (24), by striking the comma at the end and inserting a semicolon;

(4) by redesignating paragraphs (22), (23), and (24) as paragraphs (25), (22), and (23), respectively, by striking the semicolon at the end of paragraph (25), as so redesignated, and inserting a period, and by transferring and inserting paragraph (25) after paragraph (23), as so redesignated; and

(5) by inserting after paragraph (23), as so redesignated, the following new paragraph:

"(24) personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (A) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (C) furnished in a home or other location; and".

(b) Conforming Amendments.–(1) Section 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by striking "through (21)" and inserting "through (24)".

(2) Section 1902(j) (42 U.S.C. 1396a(j)) is amended by striking "through (22)" and inserting "through (25)".

(c) Effective Date.–The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of section 4721(a) of OBRA–1990.

SEC. 13602. ADDITIONAL FEDERAL SAVINGS THROUGH MODIFICATIONS TO DRUG REBATE PROGRAM.

(a) Changes in Rebate Program.–

***314** (1) In general.–Section 1927 (42 U.S.C. 1396r–8) is amended by striking subsection (c) and all that follows through "(2)" in subsection (f)(2) and inserting the following:

"(c) Determination of Amount of Rebate.–

"(1) Basic rebate for single source drugs and innovator multiple source drugs.–

"(A) In general.–Except as provided in paragraph (2), the amount of the rebate specified in this subsection for a rebate period (as defined in subsection (k)(8)) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of–

"(i) the total number of units of each dosage form and strength paid for under the State plan in the rebate period (as reported by the State); and
"(ii) subject to subparagraph (B)(ii), the greater of–
"(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or
"(II) the minimum rebate percentage (specified in subparagraph (B)(i)) of such average manufacturer price,
for the rebate period.

"(B) Range of rebates required.–

"(i) Minimum rebate percentage.–For purposes of subparagraph (A)(ii)(II), the 'minimum rebate percentage' for rebate periods beginning–
"(I) after December 31, 1990, and before October 1, 1992, is 12.5 percent;
"(II) after September 30, 1992, and before January 1, 1994, is 15.7 percent;
"(III) after December 31, 1993, and before January 1, 1995, is 15.4 percent;
"(IV) after December 31, 1994, and before January 1, 1996, is 15.2 percent; and
"(V) after December 31, 1995, is 15.1 percent.
"(ii) Temporary limitation on maximum rebate amount.–In no case shall the amount applied under subparagraph (A)(ii) for a rebate period beginning–
"(I) before January 1, 1992, exceed 25 percent of the average manufacturer price; or
"(II) after December 31, 1991, and before January 1, 1993, exceed 50 percent of the average manufacturer price.

"(C) Best price defined.–For purposes of this section–

"(i) In general.–The term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance ***315** organization, nonprofit entity, or governmental entity within the United States, excluding–
"(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, United States Code, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B);
"(II) any prices charged under the Federal Supply Schedule of the General Services Administration;
"(III) any prices used under a State pharmaceutical assistance program; and
"(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government.
"(ii) Special rules.–The term 'best price'–

"(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);
"(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package; and
"(III) shall not take into account prices that are merely nominal in amount.
"(2) Additional rebate for single source and innovator multiple source drugs.–

"(A) In general.–The amount of the rebate specified in this subsection for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, shall be increased by an amount equal to the product of–

"(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period; and
"(ii) the amount (if any) by which–
"(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds
"(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter), increased by the percentage by which the consumer price index for all urban consumers (U.S. city average) for the month before the month in which the rebate period begins exceeds such index for September 1990.
***316** "(B) Treatment of subsequently approved drugs.–In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting 'the first full calendar quarter after the day on which the drug was first marketed' for 'the calendar quarter beginning July 1, 1990' and 'the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed' for 'September 1990'.

"(3) Rebate for other drugs.–

"(A) In general.–The amount of the rebate paid to a State for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of–

"(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the rebate period, and
"(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period.
"(B) Applicable percentage defined.–For purposes of subparagraph (A)(i), the 'applicable percentage' for rebate periods beginning–

"(i) before January 1, 1994, is 10 percent, and
"(ii) after December 31, 1993, is 11 percent.
"(d) Limitations on Coverage of Drugs.–

"(1) Permissible restrictions.–(A) A State may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

"(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if–

"(i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6));

"(ii) the drug is contained in the list referred to in paragraph (2);

"(iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4); or

"(iv) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

"(2) List of drugs subject to restriction.–The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

"(A) Agents when used for anorexia, weight loss, or weight gain.

"(B) Agents when used to promote fertility.

"(C) Agents when used for cosmetic purposes or hair growth.

"(D) Agents when used for the symptomatic relief of cough and colds.

***317** "(E) Agents when used to promote smoking cessation.

"(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

"(G) Nonprescription drugs.

"(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

"(I) Barbiturates.

"(J) Benzodiazepines.

"(3) Update of drug listings.–The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2) or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

"(4) Requirements for formularies.–A State may establish a formulary if the formulary meets the following requirements:

"(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the State, the State's drug use review board established under subsection (g)(3)).

"(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

"(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from the appropriate compendia described in subsection (k)(6)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

"(D) The State plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

"(E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings

consistent with protecting the health of program beneficiaries.

***318** A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

"(5) Requirements of prior authorization programs.–A State plan under this title may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) only if the system providing for such approval–

"(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

"(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least a 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

"(6) Other permissible restrictions.–A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this Act.

"(e) Treatment of Pharmacy Reimbursement Limits.–

"(1) In general.–During the period beginning on January 1, 1991, and ending on December 31, 1994–

"(A) a State may not reduce the payment limits established by regulation under this title or any limitation described in paragraph (3) with respect to the ingredient cost of a covered outpatient drug or the dispensing fee for such a drug below the limits in effect as of January 1, 1991, and

"(B) except as provided in paragraph (2), the Secretary may not modify by regulation the formula established under sections 447.331 through 447.334 of title 42, Code of Federal Regulations, in effect on November 5, 1990, to reduce the limits described in subparagraph (A).

"(2) Special rule.–If a State is not in compliance with the regulations described in paragraph (1)(B), paragraph (1)(A) shall not apply to such State until such State is in compliance with such regulations.

"(3) Effect on state maximum allowable cost limitations.–This section shall not supersede or affect provisions in effect prior to January 1, 1991, or after December 31, 1994, relating to any maximum allowable cost limitation established by a State for payment by the State for covered outpatient drugs, and rebates shall be made under this section without regard to whether or not payment by the State for such drugs is subject to such a limitation or the amount of such a limitation.

"(4)".

(2) Conforming amendments.–Section 1927 (42 U.S.C. 1396r–8) is amended as follows:

(A) In subsection (b)–

(i) in paragraph (1)(A)–
***319** (I) by striking "each calendar quarter (or periodically in accordance with a schedule specified by the Secretary)" and inserting "for a rebate period", and
(II) by striking "dispensed under the plan during the quarter (or other period as the Secretary may specify) and inserting "dispensed after December 31, 1990, for which payment was made under the State plan for such period";
(ii) in paragraph (2)(A)–
(I) by striking "calendar quarter" and "the quarter" and inserting "rebate period" and "the period", respectively,
(II) by striking "dosage units" and inserting "units of each dosage form and strength and package size", and

(III) by inserting "after December 31, 1990, for which payment was made" after "dispensed"; and
(iii) in paragraph (3)(A)(i), by striking "quarter" each place it appears and inserting "rebate period under the agreement".
(B) In subsection (k)–

(i) in paragraph (1)–
(I) by striking "calendar quarter" and inserting "rebate period", and
(II) by inserting before the period at the end the following: ", after deducting customary prompt pay discounts";
(ii) in paragraph (3)–
(I) in subparagraph (E), by striking "**** emergency room visits",
(II) in subparagraph (F), by striking "services" and inserting "services and services provided by an intermediate care facility for the mentally retarded", and
(III) in the matter following subparagraph (H)–
(a) by striking "which is used" and inserting "for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used"; and
(b) by adding at the end the following: "Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C)) for such drug, biological product, or insulin.";
(iii) in paragraph (6), by striking ", which appears" and all that follows and inserting "or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i).";
***320** (iv) in paragraph (7)(A)(i), by striking "calendar quarter" and inserting "rebate period"; and
(v) by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:
"(8) Rebate period.–The term 'rebate period' means, with respect to an agreement under subsection (a), a calendar quarter or other period specified by the Secretary with respect to the payment of rebates under such agreement.".

(b) Limiting Federal Payments for Certain Drugs.–Paragraph (10) of section 1903(i) (42 U.S.C. 1396b(i)) (as inserted by section 4401(a)(1)(B) of OBRA–1990) is amended to read as follows:

"(10)(A) with respect to covered outpatient drugs unless there is a rebate agreement in effect under section 1927 with respect to such drugs or unless section 1927(a)(3) applies, and

"(B) with respect to any amount expended for an innovator multiple source drug (as defined in section 1927(k)) dispensed on or after July 1, 1991, if, under applicable State law, a less expensive multiple source drug could have been dispensed, but only to the extent that such amount exceeds the upper payment limit for such multiple source drug;".

(c) Elimination of Prohibition Against State Use of Formularies to Achieve Federal Savings.–Paragraph (54) of section 1902(a) (42 U.S.C. 1396a(a)) is amended to read as follows:

"(54) in the case of a State plan that provides medical assistance for covered outpatient drugs (as defined in section 1927(k)), comply with the applicable requirements of section 1927;".

(d) Effective Dates.–(1) Except as provided in paragraph (2), the amendments made by this section shall take effect as if included in the enactment of OBRA–1990.

(2) The amendment made by subsection (a)(1) (insofar as such subsection amends section 1927(d) of the Social Security Act) and the amendment made by subsection (c) shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not regulations to carry out such amendments have been promulgated by such date.

SEC. 13603. OPTIONAL MEDICAID COVERAGE OF TB-RELATED SERVICES FOR CERTAIN TB-INFECTED INDIVIDUALS.

(a) Coverage as Optional, Categorically Needy Group.–Section 1902(a)(10)(A)(ii) (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended–

(1) by striking "or" at the end of subclause (X),

(2) by adding "or" at the end of subclause (XI), and

(3) by adding at the end the following new subclause:

"(XII) who are described in subsection (z)(1) (relating to certain TB-infected individuals);".

(b) Group and Benefit Described.–Section 1902 is amended by adding at the end the following new subsection:

"(z)(1) Individuals described in this paragraph are individuals not described in subsection (a)(10)(A)(i)–

"(A) who are infected with tuberculosis;

"(B) whose income (as determined under the State plan under this title with respect to disabled individuals) does not ***321** exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan; and

"(C) whose resources (as determined under the State plan under this title with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan.

"(2) For purposes of subsection (a)(10), the term 'TB-related services' means each of the following services relating to treatment of infection with tuberculosis:

"(A) Prescribed drugs.

"(B) Physicians' services and services described in section 1905(a)(2).

"(C) Laboratory and X-ray services (including services to confirm the presence of infection).

"(D) Clinic services and Federally-qualified health center services.

"(E) Case management services (as defined in section 1915(g)(2)).

"(F) Services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to observe directly the intake of prescribed drugs.".

(c) Limitation on Benefits.–Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (F)–

(1) by striking "; and (XI)" and inserting ", (XI)",

(2) by striking "individuals, and (XI)" and inserting "individuals, (XII)", and

(3) by inserting before the semicolon at the end the following: ", and (XIII) the medical assistance made available to an individual described in subsection (z)(1) who is eligible for medical assistance only because of subparagraph (A)(ii)(XII) shall be limited to medical assistance for TB-related services (described in subsection (z)(2))".

(d) Conforming Expansion of Case Management Services Option.–Section 1915(g)(1) (42 U.S.C. 1396n(g)(1)) is amended by inserting "or to individuals described in section 1902(z)(1)(A)" after "or with either,".

(e) Conforming Amendment.–Section 1905(a) (42 U.S.C. 1396d(a)) is amended–

(1) by striking "or" at the end of clause (ix),

(2) by adding "or" at the end of clause (x),

(3) by inserting after clause (x) the following new clause:

"(xi) individuals described in section 1902(z)(1),", and

(4) by amending paragraph (19) to read as follows:

"(19) case management services (as defined in section 1915(g)(2)) and TB-related services described in section 1902(z)(2)(F);".

(f) Effective Date.–The amendments made by this section shall apply to medical assistance furnished on or after January 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

***322** SEC. 13604. LIMITING FEDERAL MEDICAID MATCHING PAYMENT TO BONA FIDE EMERGENCY SERVICES FOR UNDOCUMENTED ALIENS.

(a) In General.–Section 1903(v)(2) (42 U.S.C. 1396b(v)(2)) is amended–

(1) by striking "and" at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(C) such care and services are not related to an organ transplant procedure.".

(b) Effective Dates.–(1) Subject to paragraph (2), the amendments made by subsection (a) shall apply as if included in the enactment of OBRA–1986.

(2) The Secretary of Health and Human Services shall not disallow expenditures made for the care and services described in section 1903(v)(2)(C) of the Social Security Act, as added by subsection (a), furnished before the date of the enactment of this Act.

SEC. 13605. COVERAGE OF NURSE-MIDWIFE SERVICES PERFORMED OUTSIDE THE MATERNITY CYCLE.

(a) In General.–Section 1905(a)(17) (42 U.S.C. 1396d(a)(17)) is amended by inserting before the semicolon at the end the following: ", and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle".

(b) Effective Date.–The amendment made by subsection (a) shall apply to services furnished on or after October 1, 1993.

SEC. 13606. TREATMENT OF CERTAIN CLINICS AS FEDERALLY-QUALIFIED HEALTH CENTERS.

(a) In General.–Section 1905(l)(2)(B) (42 U.S.C. 1396d(l)(2)(B)) is amended–

(1) by striking "or" at the end of clause (i),

(2) by striking the semicolon at the end of clause (ii)(II) and inserting a comma,

(3) by moving clause (ii) 4 ems to the left,

(4) by adding "or" at the end of clause (iii), and

(5) by inserting after clause (iii) the following new clause:

"(iv) was treated by the Secretary, for purposes of part B of title XVIII, as a comprehensive Federally funded health center as of January 1, 1990;".

(b) Effective Date.–The amendments made by subsection (a) shall apply to calendar quarters beginning on or after July 1, 1993.

PART II–ELIGIBILITY

SEC. 13611. TRANSFERS OF ASSETS; TREATMENT OF CERTAIN TRUSTS.

(a) Periods of Ineligibility for Transfers of Assets.–

(1) In general.–Section 1917(c)(1) (42 U.S.C. 1396p(c)(1)) is amended to read as follows:

"(1)(A) In order to meet the requirements of this subsection for purposes of section 1902(a)(18), the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair ***323** market value on or after the look-back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (E).

"(B)(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d), 60 months) before the date specified in clause (ii).

"(ii) The date specified in this clause, with respect to–

"(I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

"(II) a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

"(C)(i) The services described in this subparagraph with respect to an institutionalized individual are the following:

"(I) Nursing facility services.

"(II) A level of care in any institution equivalent to that of nursing facility services.

"(III) Home or community-based services furnished under a waiver granted under subsection (c) or (d) of section 1915.

"(ii) The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i)) that are described in paragraph (7), (22), or (24) of section 1905(a), and, at the option of a State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

"(D) The date specified in this subparagraph is the first day of the first month during or after which assets have been

transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

"(E)(i) With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to–

"(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

***324** "(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

"(ii) With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to–

"(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

"(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

"(iii) The number of months of ineligibility otherwise determined under clause (i) or (ii) with respect to the disposal of an asset shall be reduced–

"(I) in the case of periods of ineligibility determined under clause (i), by the number of months of ineligibility applicable to the individual under clause (ii) as a result of such disposal, and

"(II) in the case of periods of ineligibility determined under clause (ii), by the number of months of ineligibility applicable to the individual under clause (i) as a result of such disposal.

(2) Exceptions.–Section 1917(c) is amended–

(A) in paragraph (2)(A), by striking "resources" and inserting "assets";

(B) by amending paragraph (2)(B) to read as follows:

"(B) the assets–

"(i) were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse,

"(ii) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

"(iii) were transferred to, or to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or

"(iv) were transferred to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1614(a)(3));";

(C) in paragraph (2)(C)–

(i) by striking "resources" each place it appears and inserting "assets",
(ii) by striking "any",
(iii) by striking "or (ii)" and inserting "(ii)", and
(iv) by striking "; or" and inserting ", or (iii) all assets transferred for less than fair market value have been returned to

the individual; or";
(D) by amending paragraph (2)(D) to read as follows:

"(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary;";

(E) by striking paragraph (3) and inserting the following:

"(3) For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset."; and

***325** (F) by adding at the end of paragraph (4) the following: "In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.".

(b) Treatment of Trust Amounts.–Section 1917 (42 U.S.C. 1396p) is amended by adding at the end the following:

"(d)(1) For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this title, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

"(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

"(i) The individual.

"(ii) The individual's spouse.

"(iii) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

"(iv) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"(B) In the case of a trust the corpus of which includes assets of an individual (as determined under subparagraph (A)) and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.

"(C) Subject to paragraph (4), this subsection shall apply without regard to–

"(i) the purposes for which a trust is established,

"(ii) whether the trustees have or exercise any discretion under the trust,

"(iii) any restrictions on when or whether distributions may be made from the trust, or

"(iv) any restrictions on the use of distributions from the trust.

"(3)(A) In the case of a revocable trust–

"(i) the corpus of the trust shall be considered resources available to the individual,

"(ii) payments from the trust to or for the benefit of the individual shall be considered income of the individual, and

"(iii) any other payments from the trust shall be considered assets disposed of by the individual for purposes of subsection (c).

"(B) In the case of an irrevocable trust–

"(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the ***326** corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income–

"(I) to or for the benefit of the individual, shall be considered income of the individual, and

"(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c); and

"(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subsection (c), and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

"(4) This subsection shall not apply to any of the following trusts:

"(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3)) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title.

"(B) A trust established in a State for the benefit of an individual if–

"(i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),

"(ii) the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title, and

"(iii) the State makes medical assistance available to individuals described in section 1902(a)(10)(A)(ii)(V), but does not make such assistance available to individuals for nursing facility services under section 1902(a)(10)(C).

"(C) A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3)) that meets the following conditions:

"(i) The trust is established and managed by a non-profit association.

"(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

"(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3)) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

"(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained

by the trust, the trust pays to the State from such ***327** remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this title.

"(5) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency waives the application of this subsection with respect to an individual if the individual establishes that such application would work an undue hardship on the individual as determined on the basis of criteria established by the Secretary.".

"(6) The term 'trust' includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the Secretary specifies.".

(c) Definitions.–Section 1917 (42 U.S.C. 1396p), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(e) In this section, the following definitions shall apply:

"(1) The term 'assets', with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action–

"(A) by the individual or such individual's spouse,

"(B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse, or

"(C) by any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse.

"(2) The term 'income' has the meaning given such term in section 1612.

"(3) The term 'institutionalized individual' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1902(a)(10)(A)(ii)(VI).

"(4) The term 'noninstitutionalized individual' means an individual receiving any of the services specified in subsection (c)(1)(C)(ii).

"(5) The term 'resources' has the meaning given such term in section 1613, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.".

(d) Conforming Amendments.–

(1) Section 1902 (42 U.S.C. 1396a) is amended–

(A) in subsection (a)(18), by striking "and transfers of assets" and inserting ", transfers of assets, and treatment of certain trusts";

(B) in subsection (a)(51)–

(i) by striking "(A)"; and
(ii) by striking ", and (B)" and all that follows and inserting a semicolon; and
(C) by striking subsection (k).

(2) Section 1924(b)(2)(B)(i) (42 U.S.C. 1396r–5(b)(2)(B)(i)) is amended by striking "1902(k)" and inserting "1917(d)".

***328** (e) Effective Dates.–(1) The amendments made by this section shall apply, except as provided in this subsection, to payments under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) The amendments made by this section shall not apply–

(A) to medical assistance provided for services furnished before October 1, 1993,

(B) with respect to assets disposed of on or before the date of the enactment of this Act, or

(C) with respect to trusts established on or before the date of the enactment of this Act.

(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendment made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 13612. MEDICAID ESTATE RECOVERIES.

(a) Mandate To Seek Recovery.–Section 1917(b)(1) (42 U.S.C. 1396p(b)(1)) is amended by striking "except–" and all that follows and inserting the following: "except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

"(A) In the case of an individual described in subsection (a)(1)(B), the State shall seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual.

"(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of–

"(i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or

"(ii) at the option of the State, any items or services under the State plan.

"(C)(i) In the case of an individual who has received (or is entitled to receive) benefits under a long-term care insurance policy in connection with which assets or resources are disregarded in the manner described in clause (ii), except as provided in such clause, the State shall seek adjustment or recovery from the individual's estate on account of medical assistance ***329** paid on behalf of the individual for nursing facility and other long-term care services.

"(ii) Clause (i) shall not apply in the case of an individual who received medical assistance under a State plan of a State which had a State plan amendment approved as of May 14, 1993, which provided for the disregard of any assets or resources–

"(I) to the extent that payments are made under a long-term care insurance policy; or

"(II) because an individual has received (or is entitled to receive) benefits under a long-term care insurance policy.".

(b) Hardship Waiver.–Section 1917(b) (42 U.S.C. 1396p(b)) is amended by adding at the end the following new paragraph:

"(3) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall waive the application of this subsection (other than paragraph (1)(C)) if such application would work an undue hardship as determined on the basis of criteria established by the Secretary.".

(c) Definition of Estate.–Section 1917(b) (42 U.S.C. 1396p(b)), as amended by subsection (b), is amended by adding at the end the following new paragraph:

"(4) For purposes of this subsection, the term 'estate', with respect to a deceased individual–

"(A) shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and

"(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.".

(d) Effective Dates.–(1)(A) Except as provided in subparagraph (B), the amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements imposed by such amendments solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, ***330** each year of such session shall be deemed to be a separate regular session of the State legislature.

(2) The amendments made by this section shall not apply to individuals who died before October 1, 1993.

PART III–PAYMENTS

SEC. 13621. ASSURING PROPER PAYMENTS TO DISPROPORTIONATE SHARE HOSPITALS.

(a) Disproportionate Share Hospitals Required to Provide Minimum Level of Services to Medicaid Patients.–

(1) In general.–Section 1923 (42 U.S.C. 1396r–4) is amended–

(A) in subsection (a)(1)(A), by striking "requirement" and inserting "requirements";

(B) in subsection (b)(1), by striking "requirement" and inserting "requirements";

(C) in the heading to subsection (d), by striking "Requirement" and inserting "Requirements";

(D) by adding at the end of subsection (d) the following new paragraph:

"(3) No hospital may be defined or deemed as a disproportionate share hospital under a State plan under this title or under subsection (b) or (e) of this section unless the hospital has a medicaid inpatient utilization rate (as defined in subsection (b)(2)) of not less than 1 percent.";

(E) in subsection (e)(1)–

(i) by striking "and" before "(B)", and
(ii) by inserting before the period at the end the following: ", and (C) the plan meets the requirement of subsection (d)(3) and such payment adjustments are made consistent with the last sentence of subsection (c)"; and
(F) in subsection (e)(2)–

(i) in subparagraph (A), by inserting "(other than the last sentence of subsection (c))" after "(c)",
(ii) by striking "and" at the end of subparagraph (A),
(iii) by striking the period at the end of subparagraph (B) and inserting ", and", and
(iv) by adding at the end the following new subparagraph:
"(C) subsection (d)(3) shall apply.".

(2) Effective date.–The amendments made by this subsection shall apply to payments to States under section 1903(a) of the Social Security Act for payments to hospitals made under State plans after–

(A) the end of the State fiscal year that ends during 1994, or

(B) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

***331** without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.

(b) Limiting Amount of Hospital Payment Adjustment to Uncovered Costs.–

(1) In general.–Section 1923 (42 U.S.C. 1396r–4) is amended by adding at the end the following new subsection:

"(g) Limit on Amount of Payment to Hospital.–

"(1) Amount of adjustment subject to uncompensated costs.–

"(A) In general.–A payment adjustment during a fiscal year shall not be considered to be consistent with subsection (c) with respect to a hospital if the payment adjustment exceeds the costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this title, other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year. For purposes of the preceding sentence, payments made to a hospital for services provided to indigent patients made by a State or a unit of local government within a State shall not be considered to be a source of third party payment.

"(B) Limit to public hospitals during transition period.–With respect to payment adjustments during a State fiscal year that begins before January 1, 1995, subparagraph (A) shall apply only to hospitals owned or operated by a State (or by an instrumentality or a unit of government within a State).

"(C) Modifications for private hospitals.–With respect to hospitals that are not owned or operated by a State (or by an instrumentality or a unit of government within a State), the Secretary may make such modifications to the manner in which the limitation on payment adjustments is applied to such hospitals as the Secretary considers appropriate.

"(2) Additional amount during transition period for certain hospitals with high disproportionate share.–

"(A) In general.–In the case of a hospital with high disproportionate share (as defined in subparagraph (B)), a payment adjustment during a State fiscal year that begins before January 1, 1995, shall be considered consistent with subsection (c) if the payment adjustment does not exceed 200 percent of the costs of furnishing hospital services described in paragraph (1)(A) during the year, but only if the Governor of the State certifies to the satisfaction of the Secretary that the hospital's applicable minimum amount is used for health services during the year. In determining the amount that is used for such

services during a year, there shall be excluded any amounts received under the Public Health Service Act, title V, title XVIII, or from third party payors (not including the State plan under this title) that are used for providing such services during the year.

***332** "(B) Hospitals with high disproportionate share defined.–In subparagraph (A), a hospital is a 'hospital with high disproportionate share' if–

"(i) the hospital is owned or operated by a State (or by an instrumentality or a unit of government within a State); and
"(ii) the hospital–
"(I) meets the requirement described in subsection (b)(1)(A), or
"(II) has the largest number of inpatient days attributable to individuals entitled to benefits under the State plan of any hospital in such State for the previous State fiscal year.

"(C) Applicable minimum amount defined.–In subparagraph (A), the 'applicable minimum amount' for a hospital for a fiscal year is equal to the difference between the amount of the hospital's payment adjustment for the fiscal year and the costs to the hospital of furnishing hospital services described in paragraph (1)(A) during the fiscal year.".

(2) Conforming amendments.–Section 1923 is amended–

(A) in subsection (c) in the matter preceding paragraph (1), by striking "subsection (f)" and inserting "subsections (f) and (g)"; and

(B) in subsection (e)(2) (as amended by subsection (a)(1)(F))–

(i) by striking "and" at the end of subparagraph (B);
(ii) by striking the period at the end of subparagraph (C) and inserting ", and"; and
(iii) by adding at the end the following new subparagraph:

"(D) subsection (g) shall apply.".

(3) Effective date.–

(A) In general.–Except as provided in subparagraph (B), the amendments made by this subsection shall apply to payments to States under section 1903(a) of the Social Security Act for payments to hospitals made under State plans after–

(i) the end of the State fiscal year that ends during 1994, or
(ii) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.

(B) Delay in implementation for private hospitals.–With respect to a hospital that is not owned or operated by a State (or by an instrumentality or a unit of government within a State), the amendments made by this subsection shall apply to payments to States under ***333**section 1903(a) for payments to hospitals made under State plans for State fiscal years that begin during or after 1995, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 13622. LIABILITY OF THIRD PARTIES TO PAY FOR CARE AND SERVICES.

(a) Liability of ERISA Plans.–(1) Section 1902(a)(25)(A) (42 U.S.C. 1396a(a)(25)(A)) is amended by striking "insurers)" and inserting "insurers, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, and health maintenance organizations)".

(2) Section 1903(o) (42 U.S.C. 1396b(o)) is amended by striking "regulation)" and inserting "regulation and including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974)), a service benefit plan, and a health maintenance organization)".

(b) Requiring State To Prohibit Insurers From Taking Medicaid Status Into Account.–Section 1902(a)(25) (42 U.S.C. 1396a(a)(25)) is amended–

(1) by striking "and" at the end of subparagraph (F);

(2) by adding "and" at the end of subparagraph (G); and

(3) by adding after subparagraph (G) the following new subparagraph:

"(H) that the State prohibits any health insurer (including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, a service benefit plan, and a health maintenance organization), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a plan under this title for such State, or any other State;".

(c) State Right to Third Party Payments.–Section 1902(a)(25) (42 U.S.C. 1396a(a)(25)), as amended by subsection (b), is amended–

(1) by striking "and" at the end of subparagraph (G);

(2) by adding "and" at the end of subparagraph (H); and

(3) by adding after subparagraph (H) the following new subparagraph:

"(I) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services;".

(d) Effective Date.–(1) Except as provided in paragraph (2), the amendments made by subsections (a)(1), (b), and (c) shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

***334** (2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsections (a) and (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(3) The amendment made by subsection (a)(2) shall apply to items and services furnished on or after October 1, 1993.

SEC. 13623. MEDICAL CHILD SUPPORT.

(a) State Plan Requirement.–Section 1902(a) (42 U.S.C. 1396a(a)) is amended–

(1) by striking "and" at the end of paragraph (54);

(2) in the paragraph (55) inserted by section 4602(a)(3) of OBRA–1990, by striking the period at the end and inserting a semicolon;

(3) by redesignating the paragraph (55) inserted by section 4604(b)(3) of OBRA–1990 as paragraph (56), by transferring and inserting it after the paragraph (55) inserted by section 4602(a)(3) of such Act, and by striking the period at the end and inserting a semicolon;

(4) by placing paragraphs (57) and (58), inserted by section 4751(a)(1)(C) of OBRA–1990, immediately after paragraph (56), as redesignated by paragraph (3);

(5) in the paragraph (58) inserted by section 4751(a)(1)(C) of OBRA–1990, by striking the period at the end and inserting a semicolon;

(6) by redesignating the paragraph (58) inserted by section 4752(c)(1)(C) of OBRA–1990 as paragraph (59) and by transferring and inserting it after the paragraph (58) inserted by section 4751(a)(1)(C) of such Act, and by striking the period at the end and inserting "; and"; and

(7) by inserting after paragraph (59) the following new paragraph:

"(60) provide that the State agency shall provide assurances satisfactory to the Secretary that the State has in effect the laws relating to medical child support required under section 1908.".

(b) Medical Child Support Laws.–Title XIX (42 U.S.C. 1936 et seq.) is amended by inserting after section 1907 the following new section:

"REQUIRED LAWS RELATING TO MEDICAL CHILD SUPPORT

"Sec. 1908. (a) In General.–The laws relating to medical child support, which a State is required to have in effect under section 1902(a)(60), are as follows:

***335** "(1) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that–

"(A) the child was born out of wedlock,

"(B) the child is not claimed as a dependent on the parent's Federal income tax return, or

"(C) the child does not reside with the parent or in the insurer's service area.

"(2) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer–

"(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

"(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

"(C) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that–

"(i) such court or administrative order is no longer in effect, or
"(ii) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

"(3) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and

the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer–

"(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

"(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

"(C) not to disenroll (or eliminate coverage of) any such child unless–

"(i) the employer is provided satisfactory written evidence that–
"(I) such court or administrative order is no longer in effect, or
"(II) the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

***336** "(ii) the employer has eliminated family health coverage for all of its employees; and

"(D) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 303(b) of the Consumer Credit Protection Act), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee's share of such premiums.

"(4) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this title and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

"(5) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent–

"(A) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

"(B) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

"(C) to make payment on claims submitted in accordance with subparagraph (B) directly to such custodial parent, the provider, or the State agency.

"(6) A law that permits the State agency under this title to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who–

"(A) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this title,

"(B) has received payment from a third party for the costs of such services to such child, but

"(C) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services,

to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this title, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

"(b) Definition.–For purposes of this section, the term 'insurer' includes a group health plan, as defined in section 607(1) of

the Employee Retirement Income Security Act of 1974, a health maintenance organization, and an entity offering a service benefit plan.".

(c) Effective Date.–(1) Except as provided in paragraph (2), the amendments made by this section apply to calendar quarters beginning on or after April 1, 1994, without regard to whether or not ***337** final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 13624. APPLICATION OF MEDICARE RULES LIMITING CERTAIN PHYSICIAN REFERRALS.

(a) In General.–Section 1903 (42 U.S.C.1396b) is amended by inserting after subsection (r) the following new subsection:

"(s) Notwithstanding the preceding provisions of this section, no payment shall be made to a State under this section for expenditures for medical assistance under the State plan consisting of a designated health service (as defined in subsection (h)(6) of section 1877) furnished to an individual on the basis of a referral that would result in the denial of payment for the service under title XVIII if such title provided for coverage of such service to the same extent and under the same terms and conditions as under the State plan, and subsections (f) and (g)(5) of such section shall apply to a provider of such a designated health service for which payment may be made under this title in the same manner as such subsections apply to a provider of such a service for which payment may be made under such title.".

(b) Effective Date.–The amendment made by subsection (a) shall apply to referrals made on or after December 31, 1994.

SEC. 13625. STATE MEDICAID FRAUD CONTROL.

(a) In General.–Section 1902(a) (42 U.S.C. 1396a(a)), as amended by section 13623(a), is amended–

(1) by striking "and" at the end of paragraph (59);

(2) by striking the period at the end of paragraph (60) and inserting "; and"; and

(3) by inserting after paragraph (60) the following new paragraph:

"(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1903(q) that effectively carries out the functions and requirements described in such section, as determined in accordance with standards established by the Secretary, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the State plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision ***338** of medical assistance under the plan without the existence of such a unit.".

(b) Effective Date.–Section 1902(a)(61) of the Social Security Act (as added by subsection (a)) shall take effect January 1, 1995, and the standards referred to in such section shall be established not later than March 31, 1994.

PART IV–IMMUNIZATIONS

SEC. 13631. MEDICAID PEDIATRIC IMMUNIZATION PROVISIONS.

(a) State Plan Requirement for Pediatric Immunization Distribution Program.–Section 1902(a) (42 U.S.C. 1396a(a)), as amended by sections 13623(a) and 13625(a), is amended–

(1) by striking "and" at the end of paragraph (60);

(2) by striking the period at the end of paragraph (61) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(62) provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1928.".

(b) Description of Required Program.–Title XIX is amended–

(1) by redesignating section 1928 as section 1931 and by moving such section to the end of such title, and

(2) by inserting after section 1927 the following new section:

"PROGRAM FOR DISTRIBUTION OF PEDIATRIC VACCINES

"Sec. 1928. (a) Establishment of Program.–

"(1) In general.–In order to meet the requirement of section 1902(a)(62), each State shall establish a pediatric vaccine distribution program (which may be administered by the State department of health), consistent with the requirements of this section, under which–

"(A) each vaccine-eligible child (as defined in subsection (b)), in receiving an immunization with a qualified pediatric vaccine (as defined in subsection (h)(8)) from a program-registered provider (as defined in subsection (c)) on or after October 1, 1994, is entitled to receive the immunization without charge for the cost of such vaccine; and

"(B)(i) each program-registered provider who administers such a pediatric vaccine to a vaccine-eligible child on or after such date is entitled to receive such vaccine under the program without charge either for the vaccine or its delivery to the provider, and (ii) no vaccine is distributed under the program to a provider unless the provider is a program-registered provider.

"(2) Delivery of sufficient quantities of pediatric vaccines to immunize federally vaccine-eligible children.–

"(A) In general.–The Secretary shall provide under subsection (d) for the purchase and delivery on behalf of each State meeting the requirement of section 1902(a)(62) (or, with respect to vaccines administered by an Indian tribe or tribal organization to Indian children, directly to ***339** the tribe or organization), without charge to the State, of such quantities of qualified pediatric vaccines as may be necessary for the administration of such vaccines to all Federally vaccine-eligible children in the State on or after October 1, 1994. This paragraph constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the purchase and delivery to States of the vaccines (or payment under subparagraph (C)) in accordance with this paragraph.

"(B) Special rules where vaccine is unavailable.–To the extent that a sufficient quantity of a vaccine is not available for purchase or delivery under subsection (d), the Secretary shall provide for the purchase and delivery of the available vaccine in accordance with priorities established by the Secretary, with priority given to Federally vaccine-eligible children unless the Secretary finds there are other public health considerations.

"(C) Special rules where state is a manufacturer.–

"(i) Payments in lieu of vaccines.–In the case of a State that manufactures a pediatric vaccine the Secretary, instead of providing the vaccine on behalf of a State under subparagraph (A), shall provide to the State an amount equal to the value of the quantity of such vaccine that otherwise would have been delivered on behalf of the State under such subparagraph, but only if the State agrees that such payments will only be used for purposes relating to pediatric immunizations.

"(ii) Determination of value.–In determining the amount to pay a State under clause (i) with respect to a pediatric vaccine, the value of the quantity of vaccine shall be determined on the basis of the price in effect for the qualified pediatric vaccine under contracts under subsection (d). If more than 1 such contract is in effect, the Secretary shall determine such value on the basis of the average of the prices under the contracts, after weighting each such price in relation to the quantity of vaccine under the contract involved.

"(b) Vaccine-Eligible Children.–For purposes of this section:

"(1) In general.–The term 'vaccine-eligible child' means a child who is a Federally vaccine-eligible child (as defined in paragraph (2)) or a State vaccine-eligible child (as defined in paragraph (3)).

"(2) Federally vaccine-eligible child.–

"(A) In general.–The term 'Federally vaccine-eligible child' means any of the following children:

"(i) A medicaid-eligible child.

"(ii) A child who is not insured.

"(iii) A child who (I) is administered a qualified pediatric vaccine by a Federally-qualified health center (as defined in section 1905(l)(2)(B)) or a rural health ***340** clinic (as defined in section 1905(l)(1)), and (II) is not insured with respect to the vaccine.

"(iv) A child who is an Indian (as defined in subsection (h)(3)).

"(B) Definitions.–In subparagraph (A):

"(i) The term 'medicaid-eligible' means, with respect to a child, a child who is entitled to medical assistance under a state plan approved under this title.

"(ii) The term 'insured' means, with respect to a child–

"(I) for purposes of subparagraph (A)(ii), that the child is enrolled under, and entitled to benefits under, a health insurance policy or plan, including a group health plan, a prepaid health plan, or an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974; and

"(II) for purposes of subparagraph (A)(iii)(II) with respect to a pediatric vaccine, that the child is entitled to benefits under such a health insurance policy or plan, but such benefits are not available with respect to the cost of the pediatric vaccine.

"(3) State vaccine-eligible child.–The term 'State vaccine-eligible child' means, with respect to a State and a qualified pediatric vaccine, a child who is within a class of children for which the State is purchasing the vaccine pursuant to subsection (d)(4)(B).

"(c) Program-Registered Providers.–

"(1) Defined.–In this section, except as otherwise provided, the term 'program-registered provider' means, with respect to a State, any health care provider that–

"(A) is licensed or otherwise authorized for administration of pediatric vaccines under the law of the State in which the administration occurs (subject to section 333(e) of the Public Health Service Act), without regard to whether or not the provider participates in the plan under this title;

"(B) submits to the State an executed provider agreement described in paragraph (2); and

"(C) has not been found, by the Secretary or the State, to have violated such agreement or other applicable requirements established by the Secretary or the State consistent with this section.

"(2) Provider agreement.–A provider agreement for a provider under this paragraph is an agreement (in such form and manner as the Secretary may require) that the provider agrees as follows:

"(A)(i) Before administering a qualified pediatric vaccine to a child, the provider will ask a parent of the child such questions as are necessary to determine whether the child is a vaccine-eligible child, but the provider need not independently verify the answers to such questions.

"(ii) The provider will, for a period of time specified by the Secretary, maintain records of responses made to the questions.

***341** "(iii) The provider will, upon request, make such records available to the State and to the Secretary, subject to section 1902(a)(7).

"(B)(i) Subject to clause (ii), the provider will comply with the schedule, regarding the appropriate periodicity, dosage, and contraindications applicable to pediatric vaccines, that is established and periodically reviewed and, as appropriate, revised by the advisory committee referred to in subsection (e), except in such cases as, in the provider's medical judgment subject to accepted medical practice, such compliance is medically inappropriate.

"(ii) The provider will provide pediatric vaccines in compliance with applicable State law, including any such law relating to any religious or other exemption.

"(C)(i) In administering a qualified pediatric vaccine to a vaccine-eligible child, the provider will not impose a charge for the cost of the vaccine. A program-registered provider is not required under this section to administer such a vaccine to each child for whom an immunization with the vaccine is sought from the provider.

"(ii) The provider may impose a fee for the administration of a qualified pediatric vaccine so long as the fee in the case of a Federally vaccine-eligible child does not exceed the costs of such administration (as determined by the Secretary based on actual regional costs for such administration).

"(iii) The provider will not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parent to pay an administration fee.

"(3) Encouraging involvement of providers.–Each program under this section shall provide, in accordance with criteria established by the Secretary–

"(A) for encouraging the following to become program-registered providers: private health care providers, the Indian Health Service, health care providers that receive funds under title V of the Indian Health Care Improvement Act, and health programs or facilities operated by Indian tribes or tribal organizations; and

"(B) for identifying, with respect to any population of vaccine-eligible children a substantial portion of whose parents have a limited ability to speak the English language, those program-registered providers who are able to communicate with the population involved in the language and cultural context that is most appropriate.

"(4) State requirements.–Except as the Secretary may permit in order to prevent fraud and abuse and for related purposes, a State may not impose additional qualifications or conditions, in addition to the requirements of paragraph (1), in order that a provider qualify as a program-registered provider under this section. This subsection does not limit the exercise of State authority under section 1915(b).

"(d) Negotiation of Contracts with Manufacturers.–

***342** "(1) In general.–For the purpose of meeting obligations under this section, the Secretary shall negotiate and enter into contracts with manufacturers of pediatric vaccines consistent with the requirements of this subsection and, to the maximum extent practicable, consolidate such contracting with any other contracting activities conducted by the Secretary to purchase vaccines. The Secretary may enter into such contracts under which the Federal Government is obligated to make outlays, the budget authority for which is not provided for in advance in appropriations Acts, for the purchase and delivery

of pediatric vaccines under subsection (a)(2)(A).

"(2) Authority to decline contracts.–The Secretary may decline to enter into such contracts and may modify or extend such contracts.

"(3) Contract price.–

"(A) In general.–The Secretary, in negotiating the prices at which pediatric vaccines will be purchased and delivered from a manufacturer under this subsection, shall take into account quantities of vaccines to be purchased by States under the option under paragraph (4)(B).

"(B) Negotiation of discounted price for current vaccines.–With respect to contracts entered into under this subsection for a pediatric vaccine for which the Centers for Disease Control and Prevention has a contract in effect under section 317(j)(1) of the Public Health Service Act as of May 1, 1993, no price for the purchase of such vaccine for vaccine-eligible children shall be agreed to by the Secretary under this subsection if the price per dose of such vaccine (including delivery costs and any applicable excise tax established under section 4131 of the Internal Revenue Code of 1986) exceeds the price per dose for the vaccine in effect under such a contract as of such date increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) from May 1993 to the month before the month in which such contract is entered into.

"(C) Negotiation of discounted price for new vaccines.–With respect to contracts entered into for a pediatric vaccine not described in subparagraph (B), the price for the purchase of such vaccine shall be a discounted price negotiated by the Secretary that may be established without regard to such subparagraph.

"(4) Quantities and terms of delivery.–Under such contracts–

"(A) the Secretary shall provide, consistent with paragraph (6), for the purchase and delivery on behalf of States (and tribes and tribal organizations) of quantities of pediatric vaccines for Federally vaccine-eligible children; and

"(B) each State, at the option of the State, shall be permitted to obtain additional quantities of pediatric vaccines (subject to amounts specified to the Secretary by the State in advance of negotiations) through purchasing the vaccines from the manufacturers at the applicable price negotiated by the Secretary consistent with paragraph (3), if (i) ***343** the State agrees that the vaccines will be used to provide immunizations only for children who are not Federally vaccine-eligible children and (ii) the State provides to the Secretary such information (at a time and manner specified by the Secretary, including in advance of negotiations under paragraph (1)) as the Secretary determines to be necessary, to provide for quantities of pediatric vaccines for the State to purchase pursuant to this subsection and to determine annually the percentage of the vaccine market that is purchased pursuant to this section and this subparagraph.

The Secretary shall enter into the initial negotiations under the preceding sentence not later than 180 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1993.

"(5) Charges for shipping and handling.–The Secretary may enter into a contract referred to in paragraph (1) only if the manufacturer involved agrees to submit to the Secretary such reports as the Secretary determines to be appropriate to assure compliance with the contract and if, with respect to a State program under this section that does not provide for the direct delivery of qualified pediatric vaccines, the manufacturer involved agrees that the manufacturer will provide for the delivery of the vaccines on behalf of the State in accordance with such program and will not impose any charges for the costs of such delivery (except to the extent such costs are provided for in the price established under paragraph (3)).

"(6) Assuring adequate supply of vaccines.–The Secretary, in negotiations under paragraph (1), shall negotiate for quantities of pediatric vaccines such that an adequate supply of such vaccines will be maintained to meet unanticipated needs for the vaccines. For purposes of the preceding sentence, the Secretary shall negotiate for a 6-month supply of vaccines in addition to the quantity that the Secretary otherwise would provide for in such negotiations. In carrying out this paragraph, the Secretary shall consider the potential for outbreaks of the diseases with respect to which the vaccines have been developed.

"(7) Multiple suppliers.–In the case of the pediatric vaccine involved, the Secretary shall, as appropriate, enter into a contract referred to in paragraph (1) with each manufacturer of the vaccine that meets the terms and conditions of the Secretary for an award of such a contract (including terms and conditions regarding safety and quality). With respect to multiple contracts entered into pursuant to this paragraph, the Secretary may have in effect different prices under each of such contracts and, with respect to a purchase by States pursuant to paragraph (4)(B), the Secretary shall determine which of such contracts will be applicable to the purchase.

"(e) Use of Pediatric Vaccines List.–The Secretary shall use, for the purpose of the purchase, delivery, and administration of pediatric vaccines under this section, the list established (and periodically reviewed and as appropriate revised) by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention).

***344** "(f) Requirement of State Maintenance of Immunization Laws.–In the case of a State that had in effect as of May 1, 1993, a law that requires some or all health insurance policies or plans to provide some coverage with respect to a pediatric vaccine, a State program under this section does not comply with the requirements of this section unless the State certifies to the Secretary that the State has not modified or repealed such law in a manner that reduces the amount of coverage so required.

"(g) Termination.–This section, and the requirement of section 1902(a)(62), shall cease to be in effect beginning on such date as may be prescribed in Federal law providing for immunization services for all children as part of a broad-based reform of the national health care system.

"(h) Definitions.–For purposes of this section:

"(1) The term 'child' means an individual 18 years of age or younger.

"(2) The term 'immunization' means an immunization against a vaccine-preventable disease.

"(3) The terms 'Indian', 'Indian tribe' and 'tribal organization' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act.

"(4) The term 'manufacturer' means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any pediatric vaccine. The term 'manufacture' means to manufacture, import, process, or distribute a vaccine.

"(5) The term 'parent' includes, with respect to a child, an individual who qualifies as a legal guardian under State law.

"(6) The term 'pediatric vaccine' means a vaccine included on the list under subsection (e).

"(7) The term 'program-registered provider' has the meaning given such term in subsection (c).

"(8) The term 'qualified pediatric vaccine' means a pediatric vaccine with respect to which a contract is in effect under subsection (d).

"(9) The terms 'vaccine-eligible child', 'Federally vaccine-eligible child', and 'State vaccine-eligible child' have the meaning given such terms in subsection (b).".

(c) Limitation on Medicaid Payments.–Section 1903(i) (42 U.S.C. 1396b(i)), as amended by section 2(b)(2) of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, is amended–

(1) in the paragraph (10) inserted by section 4401(a)(1)(B) of OBRA–1990, by striking all that follows "1927(g)" and inserting a semicolon;

(2) by redesignating the paragraph (12) inserted by section 4752(a)(2) of OBRA–1990 as paragraph (11), by transferring and inserting it after the paragraph (10) inserted by section 4401(a)(1)(B) of OBRA–1990, and by striking the period at the end and inserting a semicolon;

(3) by redesignating the paragraph (14) inserted by section 4752(e) of OBRA–1990 as paragraph (12), by transferring and inserting it after paragraph (11), as redesignated by paragraph ***345** (2), and by striking the period at the end and inserting a semicolon;

(4) by redesignating the paragraph (11) inserted by section 4801(e)(16)(A) of OBRA–1990 as paragraph (13), by transferring and inserting it after paragraph (12), as redesignated by paragraph (3), and by striking the period at the end and inserting "; or"; and

(5) by inserting after paragraph (13), as so redesignated, the following new paragraph:

"(14) with respect to any amount expended on administrative costs to carry out the program under section 1928.".

(d) Continued Coverage of Costs of a Pediatric Vaccine Under Certain Group Health Plans.–

(1) Requirement.–The requirement of this paragraph, with respect to a group health plan for plan years beginning after the date of the enactment of this Act, is that the group health plan not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act) below the coverage it provided as of May 1, 1993.

(2) Enforcement.–For purposes of section 2207 of the Public Health Service Act, the requirement of paragraph (1) is deemed a requirement of title XXII of such Act.

(e) Availability of Medicaid Payments for Childhood Vaccine Replacement Programs.–

(1) In general.–Section 1902(a)(32) (42 U.S.C. 1396a(a)(32)) is amended–

(A) by striking "and" at the end of subparagraph (B),

(B) by striking the period at the end of subparagraph (C) and inserting "; and", and

(C) by adding at the end the following new subparagraph:

"(D) in the case of payment for a childhood vaccine administered before October 1, 1994, to individuals entitled to medical assistance under the State plan, the State plan may make payment directly to the manufacturer of the vaccine under a voluntary replacement program agreed to by the State pursuant to which the manufacturer (i) supplies doses of the vaccine to providers administering the vaccine, (ii) periodically replaces the supply of the vaccine, and (iii) charges the State the manufacturer's price to the Centers for Disease Control and Prevention for the vaccine so administered (which price includes a reasonable amount to cover shipping and the handling of returns);".

(2) Effective date.–The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(f) Outreach and Education.–

(1) In general.–Section 1902(a) (42 U.S.C. 1396a(a)) is amended–

(A) in paragraph (11)(B)–

(i) by striking "effective July 1, 1969,",
(ii) by striking "and" before "(ii)", and
(iii) by striking "to him under section 1903" and inserting "to the individual under ***346**section 1903, and (iii) providing

for coordination of information and education on pediatric vaccinations and delivery of immunization services";
(B) in paragraph (11)(C), by inserting ", including the provision of information and education on pediatric vaccinations and the delivery of immunization services," after "operations under this title"; and

(C) in paragraph (43)(A), by inserting before the comma at the end the following: "and the need for age-appropriate immunizations against vaccine-preventable diseases".

(2) Coverage of public housing health centers and certain indian health care providers as federally-qualified health centers.–Section 1905(l)(2)(B) (42 U.S.C. 1396d(l)(2)(B)) is amended–

(A) by striking "or 340" each place it appears and inserting "340, or 340A", and

(B) by inserting "or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services" after "93–638)".

(3) Effective dates.–(A) Except as provided in subparagraph (B), the amendments made by this subsection shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(g) Schedule of Immunizations Under EPSDT.–

(1) In general.–Section 1905(r)(1) (42 U.S.C. 1396d(r)(1)) is amended–

(A) in subparagraph (A)(i), by inserting "and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1928(c)(2)(B)(i) for pediatric vaccines" after "child health care"; and

(B) in subparagraph (B)(iii), by inserting "(according to the schedule referred to in section 1928(c)(2)(B)(i) for pediatric vaccines)" after "appropriate immunizations".

(2) Effective date.–The amendments made by subparagraphs (A) and (B) of paragraph (1) shall first apply 90 days ***347** after the date the schedule referred to in subparagraphs (A)(i) and subparagraph (B)(iii) of section 1905(r)(1) of the Social Security Act (as amended by such respective subparagraphs) is first established.

(h) Denial of Federal Financial Participation for Inappropriate Administration of Single-Antigen Vaccine.–

(1) In general.–Section 1903(i) (42 U.S.C. 1396b(i)), as amended by subsection (c), is amended–

(A) in paragraph (13), by striking "or" at the end,

(B) in paragraph (14), by striking the period at the end and inserting "; or", and

(C) by inserting after paragraph (14) the following new paragraph:

"(15) with respect to any amount expended for a single-antigen vaccine and its administration in any case in which the administration of a combined-antigen vaccine was medically appropriate (as determined by the Secretary).".

(2) Effective date.–The amendments made by paragraph (1) shall apply to amounts expended for vaccines administered on or after October 1, 1993.

(i) Effective Date.–Except as otherwise provided in this section, the amendments made by this section shall apply to payments under State plans approved under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1994.

SEC. 13632. NATIONAL VACCINE INJURY COMPENSATION PROGRAM AMENDMENTS.

(a) Amendment of Vaccine Injury Table.–

(1) Filing.–Section 2116(b) of the Public Health Service Act (42 U.S.C. 300aa–16(b)) is amended by striking "such person may file" and inserting "or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 2111(b)(2), file".

(2) Additional vaccines.–Section 2114(e) of the Public Health Service Act (42 U.S.C. 300aa–14) is amended to read as follows:

"(e) Additional Vaccines.–

"(1) Vaccines recommended before August 1, 1993.–By August 1, 1995, the Secretary shall revise the Vaccine Injury Table included in subsection (a) to include–

***348** "(A) vaccines which are recommended to the Secretary by the Centers for Disease Control and Prevention before August 1, 1993, for routine administration to children,

"(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

"(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

"(2) Vaccines recommended after August 1, 1993.–When after August 1, 1993, the Centers for Disease Control and Prevention recommends a vaccine to the Secretary for routine administration to children, the Secretary shall, within 2 years of such recommendation, amend the Vaccine Injury Table included in subsection (a) to include–

"(A) vaccines which were recommended for routine administration to children,

"(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

"(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.".

(3) Effective Date.–A revision by the Secretary under section 2114(e) of the Public Health Service Act (42 U.S.C. 300aa-14(e)) (as amended by paragraph (2)) shall take effect upon the effective date of a tax enacted to provide funds for compensation paid with respect to the vaccine to be added to the vaccine injury table in section 2114(a) of the Public Health Service Act (42 U.S.C. 300aa-14(a)).

(b) Increased Spending.–Section 2115(j) of the Public Health Service Act (42 U.S.C. 300aa–15(j)) is amended by striking "$80,000,000 for each succeeding fiscal year" and inserting in lieu thereof "$110,000,000 for each succeeding fiscal year".

(c) Extension of Time for Decision.–Section 2112(d)(3)(D) of the Public Health Service Act (42 U.S.C. 300aa–12(d)(3)(D)) is amended by striking "540 days" and inserting "30 months (but for not more than 6 months at a time)".

PART V–MISCELLANEOUS

SEC. 13641. INCREASE IN LIMIT ON FEDERAL MEDICAID MATCHING PAYMENTS TO PUERTO RICO AND OTHER TERRITORIES.

(a) In General.–Paragraphs (1) through (5) of section 1108(c) (42 U.S.C. 1308(c)) are amended to read as follows:

"(1) Puerto Rico shall not exceed (A) $116,500,000 for fiscal year 1994 and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (as published by the Bureau of Labor Statistics) for the twelve-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;

"(2) the Virgin Islands shall not exceed (A) $3,837,500 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

"(3) Guam shall not exceed (A) $3,685,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

"(4) Northern Mariana Islands shall not exceed (A) $1,110,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000; and

***349** "(5) American Samoa shall not exceed (A) $2,140,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000.".

(b) Effective Date.–The amendment made by subsection (a) shall apply beginning with fiscal year 1994.

SEC. 13642. EXTENSION OF MORATORIUM ON TREATMENT OF CERTAIN FACILITIES AS INSTITUTIONS FOR MENTAL DISEASES.

Effective as if included in the enactment of OBRA–1989, section 6408(a)(3) of such Act is amended by striking "180 days" and all that follows and inserting "December 31, 1995.".

SEC. 13643. DEMONSTRATION PROJECTS.

(a) Extension of Demonstration Project on the Effect of Allowing States To Extend Medicaid Coverage to Certain Low-Income Families.–Effective as if included in the enactment of OBRA–1990, section 4745 of such Act is amended–

(1) in paragraph (1) of subsection (e), by striking "$12,000,000 in each of fiscal years 1991, 1992, and 1993, and to no more than $4,000,000 in fiscal year 1994" and inserting "$40,000,000"; and

(2) in paragraph (2) of subsection (f) by striking "January 1, 1995" and inserting "one year after the termination of the projects".

(b) Renewal of Unfunded Demonstration Project for Low-Income Pregnant Women and Children.–Effective as if included in the enactment of OBRA–1989, section 6407 of such Act is amended–

(1) in subsection (f), by striking "$10,000,000 in each of fiscal years 1990, 1991, and 1992" and inserting "$30,000,000";

and

(2) in subsection (g)(2), by striking "January 1, 1994" and inserting "one year after the termination of the demonstration projects".

(c) Application of Spousal Impoverishment Rules to the On Lok Frail Elderly Demonstration Project.–(1) Section 1924(a)(5), as added by section 4744(b)(1) of OBRA–1990, is amended by striking "1986." and inserting "1986 or a waiver under section 603(c) of the Social Security Amendments of 1983.".

(2) Section 603(c) of the Social Security Amendments of 1983 is amended–

(A) by striking "(c)" and inserting "(c)(1)";

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B); and

(C) by adding at the end the following new paragraph:

"(2) Section 1924 of the Social Security Act shall apply to any individual receiving services from an organization receiving a waiver under this subsection.".

SEC. 13644. EXTENSION OF PERIOD OF APPLICABILITY OF ENROLLMENT MIX REQUIREMENT TO CERTAIN HEALTH MAINTENANCE ORGANIZATIONS PROVIDING SERVICES UNDER DAYTON AREA HEALTH PLAN.

Section 2 of Public Law 102–276 is amended by striking "January 31, 1994" and inserting "December 31, 1995".

Subchapter C–Human Resources and Income Security Amendments

SEC. 13701. TABLE OF CONTENTS.

The table of contents of this subchapter is as follows:

Subpart C–Human Resources and Income Security Amendments

PART I–CHILD WELFARE SERVICES, FOSTER CARE, AND ADOPTION ASSISTANCE

SEC. 13702. REFERENCES.

Except as otherwise expressly provided, wherever in this subchapter an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

PART I–CHILD WELFARE SERVICES, FOSTER CARE, AND ADOPTION ASSISTANCE

SEC. 13711. ENTITLEMENT FUNDING FOR SERVICES DESIGNED TO STRENGTHEN AND PRESERVE

FAMILIES.

(a) In General.–Part B of title IV (42 U.S.C. 620–628) is amended–

(1) by striking the heading and inserting the following:

***351** "PART B–CHILD AND FAMILY SERVICES

"Subpart 1–Child Welfare Services"; and

(2) by adding at the end the following:

"Subpart 2–Family Preservation and Support Services

"SEC. 430. PURPOSES; LIMITATIONS ON AUTHORIZATIONS OF APPROPRIATIONS; RESERVATION OF CERTAIN AMOUNTS.

"(a) Purposes; Limitations on Authorization of Appropriations.–For the purpose of encouraging and enabling each State to develop and establish, or expand, and to operate a program of family preservation services and community-based family support services, there are authorized to be appropriated to the Secretary the amounts described in subsection (b) for the fiscal years specified in subsection (b).

"(b) Description of Amounts.–The amount described in this subsection is–

"(1) for fiscal year 1994, $60,000,000;

"(2) for fiscal year 1995, $150,000,000;

"(3) for fiscal year 1996, $225,000,000;

"(4) for fiscal year 1997, $240,000,000; or

"(5) for fiscal year 1998, the greater of–

"(A) $255,000,000; or

"(B) the amount described in this subsection for fiscal year 1997, increased by the inflation percentage applicable to fiscal year 1998.

"(c) Inflation Percentage.–For purposes of subsection (b)(5)(B) of this section, the inflation percentage applicable to any fiscal year is the percentage (if any) by which–

"(1) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the 12-month period ending on December 31 of the immediately preceding fiscal year; exceeds

"(2) the average of the Consumer Price Index (as so defined) for the 12-month period ending on December 31 of the 2nd preceding fiscal year.

"(d) Reservation of Certain Amounts.–

"(1) Evaluation, research, training, and technical assistance.–The Secretary shall reserve $2,000,000 of the amount described in subsection (b) for fiscal year 1994, and $6,000,000 of the amounts so described for each of fiscal years 1995,

1996, 1997, and 1998, for expenditure by the Secretary–

"(A) for research, training, and technical assistance related to the program under this subpart; and

"(B) for evaluation of State programs funded under this subpart and any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart.

***352** "(2) State court assessments.–The Secretary shall reserve $5,000,000 of the amount described in subsection (b) for fiscal year 1995, and $10,000,000 of the amounts so described for each of fiscal years 1996, 1997, and 1998, for grants under section 13712 of the Omnibus Budget Reconciliation Act of 1993.

"(3) Indian tribes.–The Secretary shall reserve 1 percent of the amounts described in subsection (b) for each fiscal year, for allotment to Indian tribes in accordance with section 433(a).

"SEC. 431. DEFINITIONS.

"(a) In General.–As used in this subpart:

"(1) Family preservation services.–The term 'family preservation services' means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including–

"(A) service programs designed to help children–

"(i) where appropriate, return to families from which they have been removed; or
"(ii) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

"(B) preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families;

"(C) service programs designed to provide followup care to families to whom a child has been returned after a foster care placement;

"(D) respite care of children to provide temporary relief for parents and other caregivers (including foster parents); and

"(E) services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition.

"(2) Family support services.–The term 'family support services' means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development.

"(3) State agency.–The term 'State agency' means the State agency responsible for administering the program under subpart 1.

"(4) State.–The term 'State' includes an Indian tribe or tribal organization, in addition to the meaning given such term for purposes of subpart 1.

"(5) Tribal organization.–The term 'tribal organization' means the recognized governing body of any Indian tribe.

***353** "(6) Indian tribe.–The term 'Indian tribe' means any Indian tribe (as defined in section 482(i)(5)) and any Alaska Native organization (as defined in section 482(i)(7)(A)).

"(b) Other Terms.–For other definitions of other terms used in this subpart, see section 475.

"SEC. 432. STATE PLANS.

"(a) Plan Requirements.–A State plan meets the requirements of this subsection if the plan–

"(1) provides that the State agency shall administer, or supervise the administration of, the State program under this subpart;

"(2)(A)(i) sets forth the goals intended to be accomplished under the plan by the end of the 5th fiscal year in which the plan is in operation in the State, and (ii) is updated periodically to set forth the goals intended to be accomplished under the plan by the end of each 5th fiscal year thereafter;

"(B) describes the methods to be used in measuring progress toward accomplishment of the goals;

"(C) contains assurances that the State–

"(i) after the end of each of the 1st 4 fiscal years covered by a set of goals, will perform an interim review of progress toward accomplishment of the goals, and on the basis of the interim review will revise the statement of goals in the plan, if necessary, to reflect changed circumstances; and

"(ii) after the end of the last fiscal year covered by a set of goals, will perform a final review of progress toward accomplishment of the goals, and on the basis of the final review (I) will prepare, transmit to the Secretary, and make available to the public a final report on progress toward accomplishment of the goals, and (II) will develop (in consultation with the entities required to be consulted pursuant to subsection (b)) and add to the plan a statement of the goals intended to be accomplished by the end of the 5th succeeding fiscal year;

"(3) provides for coordination, to the extent feasible and appropriate, of the provision of services under the plan and the provision of services or benefits under other Federal or federally assisted programs serving the same populations;

"(4) contains assurances that not more than 10 percent of expenditures under the plan for any fiscal year with respect to which the State is eligible for payment under section 434 for the fiscal year shall be for administrative costs, and that the remaining expenditures shall be for programs of family preservation services and community-based family support services with significant portions of such expenditures for each such program;

"(5) contains assurances that the State will–

"(A) annually prepare, furnish to the Secretary, and make available to the public a description (including separate descriptions with respect to family preservation services and community-based family support services) of–

"(i) the service programs to be made available under the plan in the immediately succeeding fiscal year;
***354** "(ii) the populations which the programs will serve; and
"(iii) the geographic areas in the State in which the services will be available; and
"(B) perform the activities described in subparagraph (A)–

"(i) in the case of the 1st fiscal year under the plan, at the time the State submits its initial plan; and
"(ii) in the case of each succeeding fiscal year, by the end of the 3rd quarter of the immediately preceding fiscal year;
"(6) provides for such methods of administration as the Secretary finds to be necessary for the proper and efficient operation of the plan;

"(7)(A) contains assurances that Federal funds provided to the State under this subpart will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the purposes of this subpart; and

"(B) provides that the State will furnish reports to the Secretary, at such times, in such format, and containing such

information as the Secretary may require, that demonstrate the State's compliance with the prohibition contained in subparagraph (A); and

"(8) provides that the State agency will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require.

"(b) Approval of Plans.–

"(1) In general.–The Secretary shall approve a plan that meets the requirements of subsection (a) only if the plan was developed jointly by the Secretary and the State, after consultation by the State agency with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation and family support services).

"(2) Plans of indian tribes.–

"(A) Exemption from inappropriate requirements.–The Secretary may exempt a plan submitted by an Indian tribe from any requirement of this section that the Secretary determines would be inappropriate to apply to the Indian tribe, taking into account the resources, needs, and other circumstances of the Indian tribe.

"(B) Special rule.–Notwithstanding subparagraph (A) of this paragraph, the Secretary may not approve a plan of an Indian tribe under this subpart to which (but for this subparagraph) an allotment of less than $10,000 would be made under section 433(a) if allotments were made under section 433(a) to all Indian tribes with plans approved under this subpart with the same or larger numbers of children.

"SEC. 433. ALLOTMENTS TO STATES.

"(a) Indian Tribes.–From the amount reserved pursuant to section 430(d)(3) for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount ***355** that bears the same ratio to such reserved amount as the number of children in the Indian tribe bears to the total number of children in all Indian tribes with State plans so approved, as determined by the Secretary on the basis of the most current and reliable information available to the Secretary.

"(b) Territories.–From the amount described in section 430(b) for any fiscal year that remains after applying section 430(d) for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 421.

"(c) Other States.–

"(1) In general.–From the amount described in section 430(b) for any fiscal year that remains after applying section 430(d) and subsection (b) of this section for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) which is not specified in subsection (b) of this section an amount equal to such remaining amount multiplied by the food stamp percentage of the State for the fiscal year.

"(2) Food stamp percentage defined.–

"(A) In general.–As used in paragraph (1) of this subsection, the term 'food stamp percentage' means, with respect to a State and a fiscal year, the average monthly number of children receiving food stamp benefits in the State for months in the 3 fiscal years referred to in subparagraph (B) of this paragraph, as determined from sample surveys made under section 16(c) of the Food Stamp Act of 1977, expressed as a percentage of the average monthly number of children receiving food stamp benefits in the States described in such paragraph (1) for months in such 3 fiscal years, as so determined.

"(B) Fiscal years used in calculation.–For purposes of the calculation pursuant to subparagraph (A), the Secretary shall use data for the 3 most recent fiscal years, preceding the fiscal year for which the State's allotment is calculated under this

subsection, for which such data are available to the Secretary.

"SEC. 434. PAYMENTS TO STATES.

"(a) Entitlement.–

"(1) General rule.–Except as provided in paragraph (2) of this subsection, each State which has a plan approved under this subpart shall be entitled to payment of the lesser of–

"(A) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

"(B) the allotment of the State under section 433 for the fiscal year.

"(2) Special rule.–Upon submission by a State to the Secretary during fiscal year 1994 of an application in such form and containing such information as the Secretary may require (including, if the State is seeking payment of an amount pursuant to subparagraph (B) of this paragraph, a description ***356** of the services to be provided with the amount), the State shall be entitled to payment of an amount equal to the sum of–

"(A) such amount, not exceeding $1,000,000, from the allotment of the State under section 433 for fiscal year 1994, as the State may require to develop and submit a plan for approval under section 432; and

"(B) an amount equal to the lesser of–

"(i) 75 percent of the expenditures by the State for services to children and families in accordance with the application and the expenditure rules of section 432(a)(4); or
"(ii) the allotment of the State under section 433 for fiscal year 1994, reduced by any amount paid to the State pursuant to subparagraph (A) of this paragraph.

"(b) Prohibitions.–

"(1) No use of other federal funds for state match.–Each State receiving an amount paid under paragraph (1) or (2)(B) of subection (a) may not expend any Federal funds to meet the costs of services described in this subpart not covered by the amount so paid.

"(2) Availability of funds.–A State may not expend any amount paid under subsection (a)(1) for any fiscal year after the end of the immediately succeeding fiscal year.

"(c) Direct Payments to Tribal Organizations of Indian Tribes.–The Secretary shall pay any amount to which an Indian tribe is entitled under this section directly to the tribal organization of the Indian tribe.

"SEC. 435. EVALUATIONS.

"(a) Evaluations.–

"(1) In general.–The Secretary shall evaluate the effectiveness of the programs carried out pursuant to this subpart in accomplishing the purposes of this subpart, any may evaluate and any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart, in accordance with criteria established in accordance with paragraph (2).

"(2) Criteria to be used.–In developing the criteria to be used in evaluations under paragraph (1), the Secretary shall consult with appropriate parties, such as–

"(A) State agencies administering programs under this part and part E;

"(B) persons administering child and family services programs (including family preservation and family support programs) for private, nonprofit organizations with an interest in child welfare; and

"(C) other persons with recognized expertise in the evaluation of child and family services programs (including family preservation and family support programs) or other related programs.

"(b) Coordination of Evaluations.–The Secretary shall develop procedures to coordinate evaluations under this section, to the extent feasible, with evaluations by the States of the effectiveness of programs under this subpart.".

***357** (b) Conforming Amendments.–

(1) Section 422 (42 U.S.C. 622) is amended–

(A) in subsection (a), by striking "this part" and inserting "this subpart";

(B) in subsection (b), by striking "this part" each place such term appears and inserting "this subpart"; and

(C) in subsection (b)(2), by inserting "under the State plan approved under subpart 2 of this part," after "part A of this title,".

(2) Section 423(a) (42 U.S.C. 623(a)) is amended by striking "this part" and inserting "this subpart".

(3) Section 428(a) (42 U.S.C. 628(a)) is amended by striking "this part" each place such term appears and inserting "this subpart".

(4) Section 471(a)(2) (42 U.S.C. 671(a)(2)) is amended by inserting "subpart 1 of" before "part B".

(c) Effective Date.–The amendments made by this section shall be effective with respect to calendar quarters beginning on or after October 1, 1993.

SEC. 13712. ENTITLEMENT FUNDING FOR STATE COURTS TO ASSESS AND IMPROVE HANDLING OF PROCEEDINGS RELATING TO FOSTER CARE AND ADOPTION.

(a) In General.–The Secretary shall make grants, in accordance with this section, to the highest State courts in States participating in the program under part E of title IV of the Social Security Act, for the purpose of enabling such courts–

(1) to conduct assessments, in accordance with such requirements as the Secretary shall publish, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the courts)–

(A) that implement parts B and E of title IV of such Act;

(B) that determine the advisability or appropriateness of foster care placement;

(C) that determine whether to terminate parental rights; and

(D) that determine whether to approve the adoption or other permanent placement of a child; and

(2) to implement changes deemed necessary as a result of the assessments.

(b) Applications.–In order to be eligible for a grant under this section, a highest State court shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary shall require.

(c) Allotments.–

(1) In general.–Each highest State court which has an application approved under subsection (b), and is conducting assessment activities in accordance with this section, shall be entitled to payment, for each of fiscal years 1995 through 1998, from amounts reserved pursuant to section 430(d)(2) of the Social Security Act, of an amount equal to the sum of–

(A) for fiscal year 1995, $75,000 plus the amount described in paragraph (2) for fiscal year 1995; and

***358** (B) for each of fiscal years 1996 through 1998, $85,000 plus the amount described in paragraph (2) for each of such fiscal years.

(2) Formula.–The amount described in this paragraph for any fiscal year is the amount that bears the same ratio to the amount reserved pursuant to section 430(d)(2) of the Social Security Act for the fiscal year (reduced by the dollar amount specified in paragraph (1) of this subsection for the fiscal year) as the number of individuals in the State who have not attained 21 years of age bears to the total number of such individuals in all States the highest State courts of which have approved applications under subsection (b).

(d) Use of Grant Funds.–Each highest State court which receives funds paid under this section may use such funds to pay–

(1) any or all costs of activities under this section in fiscal year 1995; and

(2) not more than 75 percent of the cost of activities under this section in each of fiscal years 1996, 1997, and 1998.

SEC. 13713. ENHANCED MATCH FOR AUTOMATED DATA SYSTEMS.

(a) Payments to States.–

(1) In general.–Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended–

(A) by striking “and” at the end of subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (E); and

(C) by inserting after subparagraph (B) the following:

“(C) 75 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems (including 75 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems–

“(i) meet the requirements imposed by regulations promulgated pursuant to section 479(b)(2);
“(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;
“(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A (for the purposes of facilitating verification of eligibility of foster children); and
“(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under a State plan approved under part B or this part; and

“(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanized data collection and information retrieval systems referred to in subparagraph (C); and”.

(2) Treatment of state expenditures for data collection and information retrieval systems.–Section 474 (42 U.S.C. 674) is amended by adding at the end the following:

***359** “(e) Automated Data Collection Expenditures.–The Secretary shall treat as necessary for the proper and efficient

administration of the State plan all expenditures of a State necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C), without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.".

(3) Effective date.–The amendments made by this subsection shall take effect on October 1, 1993.

(b) Termination of Enhanced Match.–

(1) In general.–Section 474(a)(3)(C) (42 U.S.C. 674(a)(3)(C)), as amended by subsection (a) of this section, is amended by striking "75 percent" each place such term appears and inserting "50 percent".

(2) Effective date.–The amendment made by paragraph (1) shall apply to expenditures during fiscal years beginning on or after October 1, 1996.

SEC. 13714. PERMANENT EXTENSION OF INDEPENDENT LIVING PROGRAM.

(a) In General.–Section 477 (42 U.S.C. 677) is amended–

(1) in subsection (a)(1), by striking the 3rd sentence;

(2) in subsection (c), by striking "of the fiscal years 1988 through 1992" and inserting "succeeding fiscal year";

(3) in subsection (e)(1)(A), by striking "each of the fiscal years 1987 through 1992" and inserting "fiscal year 1987 and any succeeding fiscal year";

(4) in subsection (e)(1)(B), by striking "fiscal years 1991 and 1992" and inserting "fiscal year 1991 and any succeeding fiscal year"; and

(5) in subsection (e)(1)(C)(ii), by striking "fiscal year 1992" and inserting "any succeeding fiscal year".

(b) Effective Date.–The amendments made by subsection (a) shall apply to activities engaged in on or after October 1, 1992.

SEC. 13715. TRAINING OF AGENCY STAFF AND FOSTER AND ADOPTIVE PARENTS.

Section 8006(b) of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 674 note) is amended by inserting ", and to expenditures made on or after October 1, 1993" before the period.

SEC. 13716. MORATORIUM ON COLLECTION OF DISALLOWANCES.

The Secretary of Health and Human Services shall not, before October 1, 1994–

(1) reduce any payment to, withhold any payment from, or seek any repayment from any State under part B or E of title IV of the Social Security Act by reason of a determination made in connection with a review of State compliance with section 427 of such Act for any Federal fiscal year before fiscal year 1995; or

(2) reduce any payment to, withhold any payment from, or seek any repayment from any State under such part E by reason of a determination made in connection with any on-site ***360** Federal financial review, or any audit conducted by the Inspector General using similar methodologies.

PART II–CHILD SUPPORT ENFORCEMENT

SEC. 13721. STATE PATERNITY ESTABLISHMENT PROGRAMS.

(a) Performance Standards.–Section 452(g) (42 U.S.C. 652(g)) is amended–

(1) in paragraph (1)–

(A) by striking "1991" and inserting "1994";

(B) by inserting "is based on reliable data and" before "equals or exceeds";

(C) by inserting "(rounded to the nearest whole percentage point)" before "equals"; and

(D) by striking subparagraphs (A), (B), and (C) and inserting the following:

"(A) 75 percent;

"(B) for a State with a paternity establishment percentage of not less than 50 percent but less than 75 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 3 percentage points;

"(C) for a State with a paternity establishment percentage of not less than 45 percent but less than 50 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 4 percentage points;

"(D) for a State with a paternity establishment percentage of not less than 40 percent but less than 45 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 5 percentage points; or

"(E) for a State with a paternity establishment percentage of less than 40 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 6 percentage points."; and

(2) in paragraph (2)–

(A) in subparagraph (A)–

(i) by striking "(or under all such plans)" each place such term appears and inserting "or E";
(ii) in clause (i), by inserting "during the fiscal year" before the comma;
(iii) in clause (ii)–
(I) in subclause (I), by striking "for such" and inserting "as of the end of the"; and
(II) in subclause (II), by striking "for the" and inserting "as of the end of the";
(iv) in clause (iii), by inserting "or acknowledged during the fiscal year" before the comma; and
(v) in the matter following clause (iii)–
(I) by striking "have been" and inserting "were";
(II) by inserting "during the immediately preceding fiscal year" after "wedlock";
(III) by striking "is being" and inserting "was being";
***361** (IV) by striking "for such" and inserting "as of the end of such preceding";
(V) by striking "are being" and inserting "were being"; and
(VI) by striking "for the" and inserting "as of the end of such preceding";

(B) by striking subparagraph (B) and inserting the following:

"(B) the term 'reliable data' means the most recent data available which are found by the Secretary to be reliable for purposes of this section.";

(C) by inserting "unless paternity is established for such child" after "the death of a parent"; and

(D) by inserting "or any child with respect to whom the State agency administering the plan under part E determines (as provided in section 454(4)(B)) that it is against the best interests of such child to do so" after "cooperate under section 402(a)(26)".

(b) State Plan Requirements for the Establishment of Paternity.–Section 466(a) (42 U.S.C. 666(a)) is amended–

(1) in paragraph (2)–

(A) by striking "at the option of the State,"; and

(B) by inserting "or paternity establishment" after "support order issuance and enforcement";

(2) in paragraph (5), by adding at the end the following:

"(C) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that due process safeguards are afforded. Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child.

"(D) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity.

"(E) Procedures under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity.

"(F) Procedures which provide that (i) any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence, and (ii) if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

"(G) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

***362** "(H) Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendent and any additional showing required by State law."; and

(3) by inserting after paragraph (10) the following new paragraph:

"(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.".

(c) Effective Date.–The amendments made by this section shall become effective with respect to a State on the later of–

(1) October 1, 1993 or,

(2) the date of enactment by the legislature of such State of all laws required by such amendments,

but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

PART III–SUPPLEMENTAL SECURITY INCOME

SEC. 13731. FEES FOR FEDERAL ADMINISTRATION OF STATE SUPPLEMENTARY PAYMENTS.

(a) In General.–

(1) Optional state supplementary payments.–Section 1616(d) (42 U.S.C. 1382e(d)) is amended–

(A) by inserting "(1)" after "(d)";

(B) by inserting ", plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3)" before the period; and

(C) by adding after and below the end the following:

"(2)(A) The Secretary shall assess each State an administration fee in an amount equal to–

"(i) the number of supplementary payments made by the Secretary on behalf of the State under this section for any month in a fiscal year; multiplied by

"(ii) the applicable rate for the fiscal year.

"(B) As used in subparagraph (A), the term 'applicable rate' means–

"(i) for fiscal year 1994, $1.67;

"(ii) for fiscal year 1995, $3.33;

"(iii) for fiscal year 1996, $5.00; and

"(iv) for fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as the Secretary determines is appropriate for the State.

"(C) Upon making a determination under subparagraph (B)(iv), the Secretary shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

***363** "(D) All fees assessed pursuant to this paragraph shall be transferred to the Secretary at the same time that amounts for such supplementary payments are required to be so transferred.

"(3)(A) The Secretary may charge a State an additional services fee if, at the request of the State, the Secretary provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this section.

"(B) The additional services fee shall be in an amount that the Secretary determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in subparagraph (A).

"(4) All administration fees and additional services fees collected pursuant to this subsection shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.".

(2) Mandatory state supplementary payments.–Section 212(b)(3) of Public Law 93–66 (42 U.S.C. 1382 note) is amended–

(A) by inserting "(A)" after "(3)";

(B) by inserting ", plus an administration fee assessed in accordance with subparagraph (B) and any additional services fee charged in accordance with subparagraph (C)" before the period; and

(C) by adding after and below the end the following:

"(B)(i) The Secretary shall assess each State an administration fee in an amount equal to–

"(I) the number of supplementary payments made by the Secretary on behalf of the State under this subsection for any month in a fiscal year; multiplied by

"(II) the applicable rate for the fiscal year.

"(ii) As used in clause (i), the term 'applicable rate' means–

"(I) for fiscal year 1994, $1.67;

"(II) for fiscal year 1995, $3.33;

"(III) for fiscal year 1996, $5.00; and

"(IV) for fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as the Secretary determines is appropriate for the State, taking into account the complexity of administering the State's supplementary payment program.

"(iii) Upon making a determination under clause (ii)(IV), the Secretary shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

"(iv) All fees assessed pursuant to this subparagraph shall be transferred to the Secretary at the same time that amounts for such supplementary payments are required to be so transferred.

"(C)(i) The Secretary may charge a State an additional services fee if, at the request of the State, the Secretary provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this subsection.

"(ii) The additional services fee shall be in an amount that the Secretary determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in clause (i).

***364** "(D) All administration fees and additional services fees collected pursuant to this paragraph shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.".

(b) Effective Date.–The amendments made by this section shall apply to supplementary payments made pursuant to section 1616(a) of the Social Security Act or section 212(a) of Public Law 93–66 for any calendar month beginning after September 30, 1993, and to services furnished after such date, regardless of whether regulations to implement such amendments have been promulgated by such date, or whether any agreement entered into under such section 1616(a) or such section 212(a) has been modified.

SEC. 13732. EXCLUSION FROM INCOME AND RESOURCES OF STATE RELOCATION ASSISTANCE.

Section 5035(c) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1382a note; 104 Stat. 1388–225) is amended by striking "in the 3-year period that begins on" and inserting "on or after".

SEC. 13733. PREVENTION OF ADVERSE EFFECTS ON ELIGIBILITY FOR, AND AMOUNT OF, BENEFITS WHEN SPOUSE OR PARENT OF BENEFICIARY IS ABSENT FROM THE HOUSEHOLD DUE TO ACTIVE MILITARY SERVICE.

(a) Absent Person Generally Deemed To Be Living in the Household.–Section 1614(f) (42 U.S.C. 1382c(f)) is amended by adding at the end the following:

"(4) For purposes of paragraphs (1) and (2), a spouse or parent (or spouse of such a parent) who is absent from the household in which the individual lives due solely to a duty assignment as a member of the Armed Forces on active duty shall, in the absence of evidence to the contrary, be deemed to be living in the same household as the individual.".

(b) Exclusion From Income of Hostile Fire Pay Received While in Active Military Service.–Section 1612(b) (42 U.S.C. 1382a(b)) is amended–

(1) in paragraph (18), by striking "and" the 2nd place such term appears;

(2) in paragraph (19), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(20) special pay received pursuant to section 310 of title 37, United States Code.".

(c) Effective Date.–The amendments made by this section shall take effect on the 1st day of the 2nd month that begins after the date of the enactment of this Act.

SEC. 13734. ELIGIBILITY FOR CHILDREN OF ARMED FORCES PERSONNEL RESIDING OUTSIDE THE UNITED STATES OTHER THAN IN FOREIGN COUNTRIES.

(a) In General.–Section 1614(a)(1)(B)(ii) (42 U.S.C. 1382c(a)(1)(B)(ii)) is amended by striking "the District of Columbia" and all that follows to the period and inserting "and who, for the month before the parent reported for such assignment, received a benefit under this title".

***365** (b) Effective Date.–The amendment made by subsection (a) shall take effect on the 1st day of the 3rd month that begins after the date of the enactment of this Act.

SEC. 13735. VALUATION OF CERTAIN IN-KIND SUPPORT AND MAINTENANCE WHEN THERE IS A COST OF LIVING ADJUSTMENT IN BENEFITS.

(a) In General.–Section 1611(c) (42 U.S.C. 1382(c)) is amended–

(1) in paragraph (1), by striking "and (5)" and inserting "(5), and (6)"; and

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(3) by inserting after paragraph (5) the following:

"(6) The dollar amount in effect under subsection (b) as a result of any increase in benefits under this title by reason of section 1617 shall be used to determine the value of any in-kind support and maintenance required to be taken into account in determining the benefit payable under this title to an individual (and the eligible spouse, if any, of the individual) for the 1st 2 months for which the increase in benefits applies.".

(b) Effective Date.–The amendments made by subsection (a) shall apply to benefits paid for months after the calendar year 1994.

SEC. 13736. EXCLUSION FROM INCOME OF CERTAIN AMOUNTS RECEIVED BY INDIANS FROM INTERESTS HELD IN TRUST.

(a) In General.–Section 8 of the Act of October 19, 1973 (25 U.S.C. 1408), is amended by inserting ", and up to $2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income," after "resource".

(b) Effective Date.–The amendment made by this section shall take effect on January 1, 1994.

PART IV–AID TO FAMILIES WITH DEPENDENT CHILDREN

SEC. 13741. 50 PERCENT FEDERAL MATCH OF STATE ADMINISTRATIVE COSTS.

(a) AFDC Matching.–Section 403(a)(3) (42 U.S.C. 603(a)(3)) is amended to read as follows:

"(3) in the case of any State, 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, except that no payment shall be made with respect to amounts expended in connection with the provision of any service described in section 2002(a) other than services furnished pursuant to section 402(g); and".

(b) Territorial Programs for Aged, Blind, and Disabled.–Sections 3(a)(4), 1003(a)(3), 1403(a)(3), and 1603(a)(4) (42 U.S.C. 303(a)(3), 1203(a)(3), 1353(a)(3), and 1383 note) (as in effect as provided by section 303 of the Social Security Amendments of 1972) are each amended by striking "the sum of" and all that follows and inserting "50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.".

(c) Effective Dates.–

***366** (1) In general.–Except as provided in paragraph (2) of this subsection, the amendments made by subsections (a) and (b) shall be effective with respect to calendar quarters beginning on or after April 1, 1994.

(2) Special rule.–In the case of a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, the amendments made by subsections (a) and (b) shall be effective no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

SEC. 13742. INCREASE IN STEPPARENT INCOME DISREGARD.

(a) In General.–Section 402(a)(31) (42 U.S.C. 602(a)(31)) is amended by striking "$75" and inserting "$90".

(b) Effective Date.–The amendment made by subsection (a) shall take effect on October 1, 1993, and shall apply to payments under part A of title IV of the Social Security Act for fiscal year 1994 and such payments for succeeding fiscal years.

PART V–UNEMPLOYMENT INSURANCE

SEC. 13751. EXTENSION OF CURRENT FEDERAL UNEMPLOYMENT RATE.

Section 3301 of the Internal Revenue Code of 1986 is amended–

(1) by striking "1996" in paragraph (1) and inserting "1998", and

(2) by striking "1997" in paragraph (2) and inserting "1999".

PART VI–SOCIAL SERVICES IN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

SEC. 13761. INCREASE IN BLOCK GRANTS TO STATES FOR SOCIAL SERVICES.

Title XX (42 U.S.C. 1397–1397e) is amended by adding at the end the following:

"SEC. 2007. ADDITIONAL GRANTS.

"(a) Entitlement.–

"(1) In general.–In addition to any payment under section 2002, each State shall be entitled to–

"(A) 2 grants under this section for each qualified empowerment zone in the State; and

"(B) 1 grant under this section for each qualified enterprise community in the State.

"(2) Amount of grants.–

"(A) Empowerment grants.–The amount of each grant to a State under this section for a qualified empowerment zone shall be–

"(i) if the zone is designated in an urban area, $50,000,000, multiplied by that proportion of the population of the zone that resides in the State; or

***367** "(ii) if the zone is designated in a rural area, $20,000,000, multiplied by such proportion.

"(B) Enterprise grants.–The amount of the grant to a State under this section for a qualified enterprise community shall be 1/95 of $280,000,000, multiplied by that proportion of the population of the community that resides in the State.

"(C) Population determinations.–The Secretary shall make population determinations for purposes of this paragraph based on the most recent decennial census data available.

"(3) Timing of grants.–

"(A) Qualified empowerment zones.–With respect to each qualified empowerment zone, the Secretary shall make–

"(i) 1 grant under this section to each State in which the zone lies, on the date of the designation of the zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986; and

"(ii) 1 grant under this section to each such State, on the 1st day of the 1st fiscal year that begins after the date of the designation.

"(B) Qualified enterprise communities.–With respect to each qualified enterprise community, the Secretary shall make 1 grant under this section to each State in which the community lies, on the date of the designation of the community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

"(4) Funding.–$1,000,000,000 shall be made available to the Secretary for grants under this section.

"(b) Program Options.–Notwithstanding section 2005(a):

"(1) In order to prevent and remedy the neglect and abuse of children, a State may use amounts paid under this section to make grants to, or enter into contracts with, entities to provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women and mothers, and their children.

"(2) In order to assist disadvantaged adults and youths in achieving and maintaining self-sufficiency, a State may use amounts paid under this section to make grants to, or enter into contracts with–

"(A) organizations operated for profit or not for profit, for the purpose of training and employing disadvantaged adults and youths in construction, rehabilitation, or improvement of affordable housing, public infrastructure, and community facilities; and

"(B) nonprofit organizations and community or junior colleges, for the purpose of enabling such entities to provide short-term training courses in entrepreneurism and self-employment, and other training that will promote individual self-sufficiency and the interests of the community.

"(3) A State may use amounts paid under this section to make grants to, or enter into contracts with, nonprofit community-based organizations to enable such organizations to provide ***368** activities designed to promote and protect the interests of children and families, outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

"(4) In order to assist disadvantaged adults and youths in achieving and maintaining economic self-support, a State may use amounts paid under this section to–

"(A) fund services designed to promote community and economic development in qualified empowerment zones and qualified enterprise communities, such as skills training, job counseling, transportation services, housing counseling, financial management, and business counseling;

"(B) assist in emergency and transitional shelter for disadvantaged families and individuals; or

"(C) support programs that promote home ownership, education, or other routes to economic independence for low income families and individuals.

"(c) Use of Grants.–

"(1) In general.–Subject to subsection (d) of this section, each State that receives a grant under this section with respect to an area shall use the grant–

"(A) for services directed only at the goals set forth in paragraphs (1), (2), and (3) of section 2001;

"(B) in accordance with the strategic plan for the area; and

"(C) for activities that benefit residents of the area for which the grant is made.

"(2) Technical assistance.–A State may use a portion of any grant made under this section in the manner described in section 2002(e).

"(d) Remittance of Certain Amounts.–

"(1) Portion of grant upon termination of designation.–Each State to which an amount is paid under this subsection during a fiscal year with respect to an area the designation of which under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 ends before the end of the fiscal year shall remit to the Secretary an amount equal to the total of the amounts so paid with respect to the area, multiplied by that proportion of the fiscal year remaining after the designation ends.

"(2) Amounts paid to the states and not obligated within 2 years.–Each State shall remit to the Secretary any amount paid to the State under this section that is not obligated by the end of the 2-year period that begins with the date of the payment.

"(e) Definitions.–As used in this section:

"(1) Qualified empowerment zone.–The term 'qualified empowerment zone' means, with respect to a State, an area–

"(A) which has been designated (other than by the Secretary of the Interior) as an empowerment zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

"(B) with respect to which the designation is in effect;

***369** "(C) the strategic plan for which is a qualified plan; and

"(D) part or all of which is in the State.

"(2) Qualified enterprise community.–The term 'qualified enterprise community' means, with respect to a State, an area–

"(A) which has been designated (other than by the Secretary of the Interior) as an enterprise community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

"(B) with respect to which the designation is in effect;

"(C) the strategic plan for which is a qualified plan; and

"(D) part or all of which is in the State.

"(3) Strategic plan.–The term 'strategic plan' means, with respect to an area, the plan contained in the application for designation of the area under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

"(4) Qualified plan.–The term 'qualified plan' means, with respect to an area, a plan that–

"(A) includes a detailed description of the activities proposed for the area that are to be funded with amounts provided under this section;

"(B) contains a commitment that the amounts provided under this section to any State for the area will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of this section;

"(C) was developed in cooperation with the local government or governments with jurisdiction over the area; and

"(D) to the extent that any State will not use the amounts provided under this section for the area in the manner described in subsection (b), explains the reasons why not.

"(5) Rural area.–The term 'rural area' has the meaning given such term in section 1393(a)(2) of the Internal Revenue Code of 1986.

"(6) Urban area.–The term 'urban area' has the meaning given such term in section 1393(a)(3) of the Internal Revenue Code of 1986.".

Subchapter D–Customs and Trade Provisions

SEC. 13800. TABLE OF CONTENTS.

SUBCHAPTER D–CUSTOMS AND TRADE PROVISIONS

PART I–EXTENSION OF CUSTOMS USER FEE, GSP, AND TRADE ADJUSTMENT ASSISTANCE PROGRAMS

PART II–CUSTOMS OFFICER PAY REFORM

***370** PART I–EXTENSION OF CUSTOMS USER FEE, GSP, AND TRADE ADJUSTMENT ASSISTANCE PROGRAMS

SEC. 13801. EXTENSION OF AUTHORITY TO LEVY CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking out "1995" and inserting "1998".

SEC. 13802. GENERALIZED SYSTEM OF PREFERENCES.

(a) Treatment of Countries Formerly Within the Union of Soviet Socialist Republics.–The table in section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) is amended by striking out "Union of Soviet Socialist Republics".

(b) Extension of Duty-Free Treatment Under System.–

(1) In general.–Section 505(a) of the Trade Act of 1974 (19 U.S.C. 2465(a)) is amended by striking out "July 4, 1993" and inserting "September 30, 1994".

(2) Retroactive application for certain liquidations and reliquidations.–Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer within 180 days after the date of the enactment of this Act, the entry–

(A) of any article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on July 4, 1993, and

(B) that was made after July 4, 1993, and before such date of enactment,

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry. As used in this paragraph, the term "entry" includes a withdrawal from warehouse for consumption.

SEC. 13803. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE PROGRAM.

(a) Extension.–

(1) Section 285 of the Trade Act of 1974 (19 U.S.C. 2271, preceding note) is amended–

(A) by striking "No" and all that follows through "and no duty" in subsection (b) and inserting "No duty"; and

(B) by adding at the end the following new subsection:

"(c) No assistance, vouchers, allowances, or other payments may be provided under chapter 2, and no technical assistance may be provided under chapter 3, after September 30, 1998.".

(2) Sections 245 and 256(b) of the Trade Act of 1974 (19 U.S.C. 2317 and 2346(b)) are each amended by striking "1988, 1989, 1990, 1991, 1992, and 1993" and inserting "1993, 1994, 1995, 1996, 1997, and 1998".

(b) Training.–Section 236(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)(A)) is amended by inserting before the end period ",except that for fiscal year 1997, the total amount of payments made under paragraph (1) shall not exceed $70,000,000".

***371** PART II–CUSTOMS OFFICER PAY REFORM

SEC. 13811. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

(a) In General.–Section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267) is amended to read as follows:

"SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

"(a) Overtime Pay.–

"(1) In general.–Subject to paragraph (2) and subsection (c), a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b).

"(2) Special provisions relating to overtime work on callback basis.–

"(A) Minimum duration.–Any work for which compensation is authorized under paragraph (1) and for which the customs officer is required to return to the officer's place of work shall be treated as being not less than 2 hours in duration; but only if such work begins at least 1 hour after the end of any previous regularly scheduled work assignment and ends at least 1 hour before the beginning of the following regularly scheduled work assignment.

"(B) Compensation for commuting time.–

"(i) In general.–Except as provided in clause (ii), in addition to the compensation authorized under paragraph (1) for work to which subparagraph (A) applies, the customs officer is entitled to be paid, as compensation for commuting time, an amount equal to 3 times the hourly rate of basic pay of the officer.
"(ii) Exception.–Compensation for commuting time is not payable under clause (i) if the work for which compensation is authorized under paragraph (1)–
"(I) does not commence within 16 hours of the customs officer's last regularly scheduled work assignment, or
"(II) commences within 2 hours of the next regularly scheduled work assignment of the customs officer.

"(b) Premium Pay for Customs Officers.–

"(1) Night work differential.–

"(A) 3 p.m. to midnight shiftwork.–If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

***372** "(B) 11 p.m. to 8 a.m. shiftwork.–If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

"(C) 7:30 p.m. to 3:30 a.m. shiftwork.–If the regularly scheduled work assignment of a customs officer is 7:30 p.m. to 3:30 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate for the period from 7:30 p.m. to 11:30 p.m. and at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate for the period from 11:30 p.m. to 3:30 a.m.

"(2) Sunday differential.–A customs officer who performs any regularly scheduled work on a Sunday that is not a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 50 percent of that basic rate.

"(3) Holiday differential.–A customs officer who performs any regularly scheduled work on a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate.

"(4) Treatment of premium pay.–Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose.

"(c) Limitations.–

"(1) Fiscal year cap.–The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) and premium pay under subsection (b) that a customs officer may be paid in any fiscal year may not exceed $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

"(2) Exclusivity of pay under this section.–A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) for time worked may not receive pay or other compensation for that work under any other

provision of law.

"(d) Regulations.–The Secretary of the Treasury shall promulgate regulations to prevent–

"(1) abuse of callback work assignments and commuting time compensation authorized under subsection (a)(2); and

"(2) the disproportionately more frequent assignment of overtime work to customs officers who are near to retirement.

"(e) Definitions.–As used in this section:

"(1) The term 'customs officer' means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable ***373** standards as may be promulgated by the Office of Personnel Management.

"(2) The term 'holiday' means any day designated as a holiday under a Federal statute or Executive order.".

(b) Necessary Conforming Amendments.–

(1) Section 2 of the Act of June 3, 1944 (19 U.S.C. 1451a), is repealed.

(2) Section 450 of the Tariff Act of 1930 (19 U.S.C. 1450) is amended–

(A) by striking out "at night" in the section heading and inserting "during overtime hours";

(B) by striking out "at night" and inserting "during overtime hours"; and

(C) by inserting "aircraft," immediately before "vessel".

(c) Effective Date.–The amendments made by subsections (a) and (b) apply to customs inspectional services provided on or after January 1, 1994.

SEC. 13812. ADDITIONAL BENEFITS FOR CUSTOMS OFFICERS.

(a) Treatment of Certain Pay for Retirement Purposes.–Section 8331(3) of title 5, United States Code, is amended–

(1) by striking out "and" at the end of subparagraph (C);

(2) by striking out the semicolon at the end of subparagraph (D) and inserting "; and";

(3) by adding after subparagraph (D) the following:

"(E) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;"; and

(4) by striking out "subparagraphs (B), (C), and (D) of this paragraph," and inserting "subparagraphs (B), (C), (D), and (E) of this paragraph".

(b) Foreign Language Proficiency Awards.–Cash awards for foreign language proficiency may, under regulations prescribed by the Secretary of the Treasury, be paid to customs officers (as referred to in section 5(e)(1) of the Act of February 13, 1911) to the same extent and in the same manner as would be allowable under subchapter III of chapter 45 of title 5, United States Code, with respect to law enforcement officers (as defined by section 4521 of such title).

(c) Effective Dates.–

(1) Subsection (a) Amendments.–The amendments made by subsection (a) take effect on January 1, 1994, and apply only with respect to service performed on or after such date.

(2) Subsection (b).–Subsection (b) takes effect on January 1, 1994.

SEC. 13813. REIMBURSEMENTS FROM THE CUSTOMS USER FEE ACCOUNT.

Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended–

***374** (1) by amending clause (i) of subparagraph (A) to read as follows: "(i) in–

"(I) paying overtime compensation under section 5(a) of the Act of February 13, 1911,

"(II) paying premium pay under section 5(b) of the Act of February 13, 1911, but the amount for which reimbursement may be made under this subclause may not, for any fiscal year, exceed the difference between the cost of the premium pay for that year calculated under such section 5(b) as amended by section 13811 of the Omnibus Budget Reconciliation Act of 1993 and the cost of such pay calculated under subchapter V of chapter 55 of title 5, United States Code,

"(III) paying agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid under subclause (I),

"(IV) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and

"(V) paying foreign language proficiency awards under section 13812(b) of the Omnibus Budget Reconciliation Act of 1993, and";

(2) by inserting before the flush sentence appearing after clause (ii) of subparagraph (A) the following sentence: "The transfer of funds required under subparagraph (C)(iii) has priority over reimbursements under this subparagraph to carry out subclauses (II), (III), (IV), and (V) of clause (i).";

(3) by striking out "except for costs described in subparagraph (A)(i) (I) and (II)," in subparagraph (B)(i); and

(4) by amending subparagraph (C)–

(A) by striking out "to fully reimburse inspectional overtime and preclearance costs" in clause (i) and inserting "to reimburse costs described in subparagraph (A)(i)"; and

(B) by inserting after clause (ii) of subparagraph (C) the following:

"(iii) For each fiscal year, the Secretary of the Treasury shall calculate the difference between–

"(I) the estimated cost for overtime compensation that would have been incurred during that fiscal year for inspectional services if section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267), as in effect before the enactment of section 13811 of the Omnibus Budget Reconciliation Act of 1993, had governed such costs, and

"(II) the actual cost for overtime compensation, premium pay, and agency retirement contributions that is incurred during that fiscal year in regard to inspectional services under section 5 of the Act of February 13, 1911, as amended by section 13811 of the Omnibus Budget Reconciliation Act of 1993, and under section 8331(3) of title 5, United States Code, as amended by section 13812(a)(1) of such Act of 1993, plus the actual cost that is incurred during that fiscal year for foreign language proficiency awards under section 13812(b) of such Act of 1993,

***375** and shall transfer from the Customs User Fee Account to the General Fund of the Treasury an amount equal to the

difference calculated under this clause, or $18,000,000, whichever amount is less. Transfers shall be made under this clause at least quarterly and on the basis of estimates to the same extent as are reimbursements under subparagraph (B)(iii).”.

CHAPTER 3–FOOD STAMP PROGRAM

SEC. 13901. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.–This chapter may be cited as the “Mickey Leland Childhood Hunger Relief Act”.

(b) Table of Contents.–The table of contents of this chapter is as follows:

SUBCHAPTER B–PROMOTING SELF-SUFFICIENCY

SUBCHAPTER C–SIMPLIFYING THE PROVISION OF FOOD ASSISTANCE

SUBCHAPTER D–IMPROVING PROGRAM INTEGRITY

SEC. 13902. REFERENCES TO THE ACT.

Except as otherwise provided in this chapter, references in this chapter to "the Act" and sections of the Act shall be deemed to be ***376** references to the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and the sections of such Act.

SUBCHAPTER A–ENSURING ADEQUATE FOOD ASSISTANCE

SEC. 13911. HELPING LOW-INCOME HIGH SCHOOL STUDENTS.

Section 5(d)(7) of the Act (7 U.S.C. 2014(d)(7)) is amended by striking "who is a student, and who has not attained his eighteenth birthday" and inserting "who is an elementary or secondary school student, and who is 21 years of age or younger".

SEC. 13912. FAMILIES WITH HIGH SHELTER EXPENSES.

(a) Computation.–Section 5(e) of the Act (7 U.S.C. 2014(e)) is amended–

(1) in the fourth sentence by striking ": Provided, That the amount" and all that follows through "June 30"; and

(2) in the fifth sentence by striking "under clause (2) of the preceding sentence".

(b) Limitations.–

(1) Interim caps.–Section 5(e) of the Act (7 U.S.C. 2014(e)) is amended by inserting after the fourth sentence the following:

"In the 15-month period ending September 30, 1995, such excess shelter expense deduction shall not exceed $231 a month in the 48 contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $402, $330, $280, and $171 a month, respectively. In the 15-month period ending December 31, 1996, such excess shelter expense deduction shall not exceed $247 a month in the 48 contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $429, $353, $300, and $182 a month, respectively.".

(2) Subsequent removal of cap.–Section 5(e) of the Act (7 U.S.C. 2014(e)), as amended by paragraph (1), is amended by striking the fifth and sixth sentences.

SEC. 13913. RESOURCE EXCLUSION FOR EARNED INCOME TAX CREDITS.

Section 5(g)(3) of the Act (7 U.S.C. 2014(g)(3)) is amended by adding at the end the following:

"The Secretary shall also exclude from financial resources any earned income tax credits received by any member of the household for a period of 12 months from receipt if such member was participating in the food stamp program at the time the credits were received and participated in such program continuously during the 12-month period.".

SEC. 13914. HOMELESS FAMILIES IN TRANSITIONAL HOUSING.

Section 5(k)(2)(F) of the Act (7 U.S.C. 2014(k)(2)(F)) is amended to read as follows:

"(F) housing assistance payments made to a third party on behalf of the household residing in transitional housing for the homeless;".

***377** SEC. 13915. HOUSEHOLDS BENEFITING FROM GENERAL ASSISTANCE VENDOR PAYMENTS.

Section 5(k)(1)(B) of the Act (7 U.S.C. 2014(k)(1)(B)) is amended by striking "living expenses" and inserting "housing expenses, not including energy or utility-cost assistance,".

SEC. 13916. CONTINUING BENEFITS TO ELIGIBLE HOUSEHOLDS.

Section 8(c)(2)(B) of the Act (7 U.S.C. 2017(c)(2)(B)) is amended by inserting "of more than one month in" after "following any period".

SEC. 13917. IMPROVING THE NUTRITIONAL STATUS OF CHILDREN IN PUERTO RICO.

Section 19(a)(1)(A) of the Act (7 U.S.C. 2028(a)(1)(A)) is amended–

(1) by striking "$1,091,000,000" and inserting "$1,097,000,000"; and

(2) by striking "$1,133,000,000" and inserting "$1,143,000,000".

Subchapter B–Promoting Self-Sufficiency

SEC. 13921. CHILD SUPPORT PAYMENTS TO NON-HOUSEHOLD MEMBERS.

Section 5(e) of the Act (7 U.S.C. 2014(e)) is amended by adding at the end the following:

"Before determining the excess shelter expense deduction, all households shall be entitled to a deduction for child support payments made by a household member to or for an individual who is not a member of the household if such household member was legally obligated to make such payments, except that the Secretary is authorized to prescribe by regulation the methods, including calculation on a retrospective basis, that State agencies shall use to determine the amount of the deduction for child support payments.".

SEC. 13922. IMPROVING ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES.

(a) Dependent Care Deduction.–Section 5(e) of the Act (7 U.S.C. 2014(e)) is amended in clause (1) of the fourth sentence–

(1) by striking "$160 a month for each dependent" and inserting "$200 a month for each dependent child under 2 years of age and $175 a month for each other dependent"; and

(2) by striking ", regardless of the dependent's age,".

(b) Reimbursements to Participants in Employment and Training Programs.–Section 6(d)(4)(I)(i)(II) of the Act (7 U.S.C. 2015(d)(4)(I)(i)(II)) is amended to read as follows:

"(II) the actual costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of an individual in the program (other than an individual who is the caretaker relative of a dependent in a family receiving benefits under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) in a local area where an employment, training, or education program under title IV of such Act is in operation, or was in operation, on the date of enactment of the Hunger Prevention Act of 1988) up to any limit set by the State agency (which limit shall not be less than the limit for the dependent care deduction under section 5(e)), but in no event ***378** shall such payment or reimbursements exceed the applicable local market rate as determined by procedures consistent with any such determination under the Social Security Act. Individuals subject to the program under this paragraph may not be required to participate if dependent costs exceed the limit established by the State agency under this subclause or other actual costs exceed any limit established under subclause (I).".

(c) Conforming Amendment.–Section 16(h)(3) of the Act (7 U.S.C. 2025(h)(3)) is amended by striking "representing $160 per month per dependent" and inserting "equal to the payment made under section 6(d)(4)(I)(i)(II) but not more than the applicable local market rate,".

SEC. 13923. VEHICLES NEEDED TO SEEK AND CONTINUE EMPLOYMENT AND FOR HOUSEHOLD TRANSPORTATION.

Section 5(g)(2) of the Act (7 U.S.C. 2014(g)(2)) is amended by striking "$4,500" and inserting the following: "a level set by the Secretary, which shall be $4,500 through August 31, 1994, $4,550 beginning September 1, 1994, through September 30, 1995, $4,600 beginning October 1, 1995, through September 30, 1996, and $5,000 beginning October 1, 1996, as adjusted on such date and on each October 1 thereafter to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics for the 12-month period ending on June 30 preceding the date of such adjustment and rounded to the nearest $50".

SEC. 13924. VEHICLES NECESSARY TO CARRY FUEL OR WATER.

Section 5(g)(2) of the Act (7 U.S.C. 2014(g)(2)) is amended by adding at the end the following: "The Secretary shall exclude from financial resources the value of a vehicle that a household depends upon to carry fuel for heating or water for home use when such transported fuel or water is the primary source of fuel or water for the household.".

SEC. 13925. TESTING RESOURCE ACCUMULATION.

Section 17 of the Act (7 U.S.C. 2026) is amended by adding at the end the following:

"(k) The Secretary shall conduct, under such terms and conditions as the Secretary shall prescribe, for a period not to exceed 4 years, projects to test allowing not more than 11,000 eligible households, in the aggregate, to accumulate resources up to $10,000 each (which shall be excluded from consideration as a resource) for later expenditure for a purpose directly related to improving the education, training, or employability (including self-employment) of household members, for the purchase of a home for the household, for a change of the household's residence, or for making major repairs to the household's home.".

Subchapter C–Simplifying the Provision of Food Assistance

SEC. 13931. SIMPLIFYING THE HOUSEHOLD DEFINITION FOR HOUSEHOLDS WITH CHILDREN AND OTHERS.

Section 3(i) of the Act (7 U.S.C. 2012(i)) is amended–

(1) in the first sentence–

(A) by striking "(2)" and inserting "or (2)";

***379** (B) by striking ", or (3) a parent of minor children and that parent's children" and all that follows through "parents and children, or siblings, who live together", and inserting the following:

". Spouses who live together, parents and their children 21 years of age or younger (who are not themselves parents living with their children or married and living with their spouses) who live together, and children (excluding foster children) under 18 years of age who live with and are under the parental control of a person other than their parent together with the person exercising parental control"; and

(C) striking ", unless one of" and all that follows through "disabled member"; and

(2) in the second sentence by striking "clause (1) of the preceding sentence" and inserting "the preceding sentences".

SEC. 13932. ELIGIBILITY OF CHILDREN OF PARENTS PARTICIPATING IN DRUG OR ALCOHOL ABUSE TREATMENT PROGRAMS.

Section 3 of the Act (7 U.S.C. 2012) is amended–

(1) in the last sentence of subsection (i) by inserting ", together with their children," after "narcotics addicts or alcoholics"; and

(2) in subsection (g)(5) by inserting ", and their children," after "or alcoholics".

Subchapter D–Improving Program Integrity

SEC. 13941. ADDITIONAL MEANS OF CLAIMS COLLECTION.

(a) Safeguards.–Section 11(e)(8) of the Act (7 U.S.C. 2020(e)(8)) is amended–

(1) by striking "and (B)" and inserting "(B)"; and

(2) by striking the semicolon at the end and inserting the following:

", and (C) such safeguards shall not prevent the use by, or disclosure of such information, to agencies of the Federal Government (including the United States Postal Service) for purposes of collecting the amount of an overissuance of coupons, as determined under section 13(b) of this Act and excluding claims arising from an error of the State agency, that has not been recovered pursuant to such section, from Federal pay (including salaries and pensions) as authorized pursuant to section 5514 of title 5 of the United States Code;".

(b) Recovery.–Section 13 of the Act (7 U.S.C. 2022) is amended by adding at the end the following:

"(d) The amount of an overissuance of coupons as determined under subsection (b) and except for claims arising from an error of the State agency, that has not been recovered pursuant to such subsection may be recovered from Federal pay (including salaries and pensions) as authorized by section 5514 of title 5 of the United States Code.".

SEC. 13942. DISQUALIFICATION OF RECIPIENTS FOR TRADING FIREARMS, AMMUNITION, EXPLOSIVES, OR CONTROLLED SUBSTANCES FOR COUPONS.

Section 6(b)(1) of the Act (7 U.S.C. 2015(b)(1)) is amended by striking subdivisions (ii) and (iii) and inserting the following:

***380** "(ii) for a period of 1 year upon–

"(I) the second occasion of any such determination; or

"(II) the first occasion of a finding by a Federal, State, or local court of the trading of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for coupons; and

"(iii) permanently upon–

"(I) the third occasion of any such determination;

"(II) the second occasion of a finding by a Federal, State, or local court of the trading of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for coupons; or

"(III) the first occasion of a finding by a Federal, State, or local court of the trading of firearms, ammunition, or explosives for coupons.".

SEC. 13943. INCREASED CAP FOR CIVIL MONEY PENALTY FOR TRAFFICKING IN COUPONS.

Section 12(b)(3)(B) of the Act (7 U.S.C. 2021(b)(3)(B)) is amended by striking "during a 2-year period" and inserting "for violations occurring during a single investigation".

SEC. 13944. INCREASED CAP FOR CIVIL MONEY PENALTY FOR SELLING FIREARMS, AMMUNITION, EXPLOSIVES, OR CONTROLLED SUBSTANCES FOR COUPONS.

Section 12(b)(3)(C) of the Act (7 U.S.C. 2021(b)(3)(C)) is amended–

(1) by striking "substances (as the term is" and inserting "substance (as"; and

(2) by striking "during a 2-year period" and inserting "for violations occurring during a single investigation".

Subchapter E–Improving Food Stamp Program Management

SEC. 13951. EXPEDITED CLAIM COLLECTION; ADJUSTMENTS TO ERROR RATE CALCULATIONS.

(a) Collection and Disposition of Claims.–Section 13(a)(1) of the Act (7 U.S.C. 2022(a)(1)) is amended–

(1) in the fifth sentence by striking "(after a determination on any request for a waiver for good cause related to the claim has been made by the Secretary)"; and

(2) in the sixth sentence by striking "2 years" and inserting "1 year".

(b) Administrative and Judicial Review.–Section 14(a) of the Act (7 U.S.C. 2023(a)) is amended–

(1) in the sixth sentence by inserting after "pursuant to section 16(c)" the following: "(including determinations as to whether there is good cause for not imposing all or a portion of the penalty)"; and

(2) by striking the last sentence.

(c) Quality Control System.–Section 16(c) of the Act (7 U.S.C. 2025(c)) is amended–

(1) in paragraph (1)(C)–

(A) by striking "payment error tolerance level" and inserting "national performance measure"; and

***381** (B) by striking "equal to" and all that follows through the first period and inserting the following: "equal to–

"(i) the product of–

"(I) the value of all allotments issued by the State agency in the fiscal year; times
"(II) the lesser of–
"(aa) the ratio of–
"(aaa) the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year; to
"(bbb) the national performance measure for the fiscal year, or
"(bb) 1; times
"(III) the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year.";

(2) in paragraph (3)(A) by striking "60 days (or 90 days at the discretion of the Secretary)" and inserting "120 days";

(3) in paragraph (6) by striking "shall be used to establish" and all that follows through "level" the last place it appears; and

(4) by adding at the end the following:

"(8)(A) This paragraph applies to the determination of whether a payment is due by a State agency for a fiscal year under paragraph (1)(C).

"(B) Not later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed.

"(C) Not later than 30 days thereafter, the Secretary shall–

"(i) determine final error rates, the national average payment error rate, and the amounts of payment claimed against State agencies; and

"(ii) notify State agencies of the payment claims.

"(D) A State agency desiring to appeal a payment claim determined under subparagraph (C) shall submit to an administrative law judge–

"(i) a notice of appeal, not later than 10 days after receiving a notice of the claim; and

"(ii) evidence in support of the appeal of the State agency, not later than 60 days after receiving a notice of the claim.

"(E) Not later than 60 days after a State agency submits evidence in support of the appeal, the Secretary shall submit responsive evidence to the administrative law judge to the extent such evidence exists.

"(F) Not later than 30 days after the Secretary submits responsive evidence, the State agency shall submit rebuttal evidence to the administrative law judge to the extent such evidence exists.

"(G) The administrative law judge, after an evidentiary hearing, shall decide the appeal–

"(i) not later than 60 days after receipt of rebuttal evidence submitted by the State agency; or

***382** "(ii) if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal.

"(H) In considering a claim under this paragraph, the administrative law judge shall consider all grounds for denying the claim, in whole or in part, including the contention of a State agency that the claim should be waived, in whole or in part, for good cause.

"(I) The deadlines in subparagraphs (D), (E), (F), and (G) shall be extended by the administrative law judge for cause shown.

"(9) As used in this subsection, the term 'good cause' includes–

"(A) a natural disaster or civil disorder that adversely affects food stamp program operations;

"(B) a strike by employees of a State agency who are necessary for the determination of eligibility and processing of case changes under the food stamp program;

"(C) a significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload;

"(D) a change in the food stamp program or other Federal or State program that has a substantial adverse impact on the

management of the food stamp program of a State; and

"(E) a significant circumstance beyond the control of the State agency.".

Subchapter F–Uniform Reimbursement Rates

SEC. 13961. UNIFORM REIMBURSEMENT RATES.

Section 16 of the Act (7 U.S.C. 2025) is amended–

(1) in the first sentence of subsection (a)–

(A) by striking "and (5)" and inserting "(5)";

(B) by inserting before ": Provided," the following: ", (6) automated data processing and information retrieval systems subject to the conditions set forth in subsection (g), (7) food stamp program investigations and prosecutions, and (8) implementing and operating the immigration status verification system established under section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d))"; and

(C) in the proviso, by striking "authorized to pay each State agency an amount not less than 75 per centum of the costs of State food stamp program investigations and prosecutions, and is further";

(2) in subsection (g) by striking "an amount equal to 63 percent effective on October 1, 1991, of" and inserting "the amount provided under subsection (a)(6) for";

(3) by striking subsection (j); and

(4) by redesignating subsection (k) as subsection (j).

SEC. 13962. MANDATORY FUNDING FOR NUTRITION PROGRAMS.

Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary of Agriculture $230,000 for each of the fiscal years 1994, 1995, and 1996 for the purchase, processing, and distribution of additional commodities which are relatively lower in saturated fats, are a good source of calcium, are relatively low in sodium and sugars, or are high in iron, and which are a good source of protein or other valuable ***383** nutrients. Such commodities shall be easy for low-income families to use, be not easily spoilable, and be easy to handle. Such commodities shall include low-sodium peanut butters, low-fat or low-sodium cheeses, lower fat canned meats, fruits and vegetables, or other similar foods. The Secretary shall select 2 States to carry out this 3-year required effort to improve the health of low-income individuals and to test the acceptability by, ease of storage and preparation by, and impact on low-income participants in the emergency food assistance program established under the Emergency Food Assistance Act of 1983 (7 U.S.C. 612 note). These additional commodities shall be provided to each such State and such State shall be entitled to receive such commodities during each such fiscal year 1994, 1995, and 1996 and in addition to any commodities provided under other Federal programs. Out of $230,000 required to be provided each year to the Secretary of Agriculture by the Secretary of the Treasury, $220,000 ($110,000 per State) shall be used by the Secretary of Agriculture to purchase, process and distribute the commodities to such States and $10,000 ($5,000 per State) shall be provided to such States for State and local payments for costs associated with the distribution of commodities by emergency feeding organizations in such States.

Subchapter G–Implementation and Effective Dates

SEC. 13971. IMPLEMENTATION AND EFFECTIVE DATES.

(a) General Effective Date and Implementation.–Except as provided in subsection (b), this chapter and the amendments made by this chapter shall take effect, and shall be implemented beginning on, October 1, 1993.

(b) Special Effective Dates and Implementation.–(1)(A) Except as provided in subparagraph (B), section 13951 shall take effect on October 1, 1991.

(B) The amendment made by section 13951(c)(2) shall take effect on October 1, 1992.

(2)(A) Except as provided in subparagraph (B), the amendments made by section 13961 shall be effective with respect to calendar quarters beginning on or after April 1, 1994.

(B) In the case of a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, and that demonstrates to the satisfaction of the Secretary of Agriculture that there is no mechanism, under the constitution and laws of the State, for appropriating the additional funds required by the amendments made by this section before the next such regular legislative session, the Secretary may delay the effective date of all or part of the amendments made by section 13961 until the beginning date of a calendar quarter that is not later than the first calendar quarter beginning after the close of the first regular session of the State legislature after the date of enactment of this Act.

(3) Sections 13912(a) and 13912(b)(1) shall take effect, and shall be implemented beginning on, July 1, 1994.

(4) Sections 13911, 13913, 13914, 13915, 13916, 13922, 13924, 13931, 13932, and 13942 shall take effect, and shall be implemented beginning on, September 1, 1994.

***384** (5)(A) Except as provided in subparagraph (B), section 13921 shall take effect, and shall be implemented beginning on, September 1, 1994.

(B) State agencies shall implement the amendment made by section 13921 not later than October 1, 1995.

(6) Section 13912(b)(2) shall take effect, and shall be implemented beginning on, January 1, 1997.

CHAPTER 4–TIMBER SALES

SEC. 13981. TABLE OF CONTENTS.

The table of contents of this chapter is as follows:

CHAPTER 4–TIMBER SALES

SEC. 13982. SHARING OF FOREST SERVICE TIMBER SALE RECEIPTS.

(a) Definitions.–As used in this section:

(1) Applicable percentage.–The term "applicable percentage" means–

(A) for fiscal year 1994, 85 percent; and

(B) for each of fiscal years 1995 through 2003, 3 percentage points less than the applicable percentage for the preceding fiscal year.

(2) 25-percent payments to states.–The term "25-percent payments to States" means the 25 percent payments authorized by the Act of May 23, 1908 (35 Stat. 260, chapter 192; 16 U.S.C. 500) for the States of Washington, Oregon, and California for the benefit of counties in which national forests are situated and that are affected by decisions related to the northern spotted owl.

(3) Special payment amount.–The term "special payment amount" means the amount determined by multiplying–

(A) the applicable percentage; by

(B) the annual average of the 25-percent payments to States made to a county pursuant to such Acts during the 5-year period consisting of fiscal years 1986 through 1990.

(b) Payments.–

(1) In general.–In lieu of making the 25-percent payments to States, the Secretary of the Treasury shall make payments to States, for the benefit of counties, that are eligible to receive the 25-percent payments to States as of the date of enactment of this Act in accordance with paragraph (2).

(2) Amount of payments.–

(A) Fiscal years 1994 through 1998.–For each of fiscal years 1994 through 1998, the payment to each State for the benefit of each county in the State referred to in paragraph (1) shall be equal to the sum of the special payment amounts for each county in the State.

(B) Fiscal years 1999 through 2003.–

(i) In general.–For each of fiscal years 1999 through 2003, the payment to each State for the benefit of each county in the State referred to in paragraph (1) ***385** shall be equal to the sum of the payments for each county in the State as calculated under clause (ii).
(ii) Payments for counties.–The payment for each county referred to in clause (i) shall be equal to the greater of–
(I) the special payment amount for the county; or
(II) the share of the 25-percent payments to States allocable to the county.

SEC. 13983. SHARING OF BUREAU OF LAND MANAGEMENT TIMBER SALE RECEIPTS.

(a) Definitions.–As used in this section:

(1) Applicable percentage.–The term "applicable percentage" means–

(A) for fiscal year 1994, 85 percent; and

(B) for each of fiscal years 1995 through 2003, 3 percentage points less than the applicable percentage for the preceding fiscal year.

(2) 50-percent payments to counties.–The term "50-percent payments to counties" means the 50-percent share paid to counties in the States of Oregon and California pursuant to title II of the Act of August 28, 1937 (50 Stat. 875, chapter 876; 43 U.S.C. 1181f), and the payments made to counties pursuant to the Act of May 24, 1939 (53 Stat. 753, chapter 144; 43 U.S.C. 1181f–1 et seq.).

(3) Special payment amount.–The term "special payment amount" means the amount determined by multiplying–

(A) the applicable percentage; by

(B) the annual average of the 50-percent payments to counties made to a county pursuant to such Acts during the 5-year period consisting of fiscal years 1986 through 1990.

(b) Payments.–

(1) In general.–In lieu of making the 50-percent payments to counties, the Secretary of the Treasury shall make payments to counties that are eligible to receive the 50-percent payments as of the date of enactment of this Act in accordance with paragraph (2).

(2) Amount of payments.–

(A) Fiscal years 1994 through 1998.–For each of fiscal years 1994 through 1998, the Secretary of the Treasury shall pay to each county referred to in paragraph (1) the special payment amount.

(B) Fiscal years 1999 through 2003.–For each of fiscal years 1999 through 2003, the Secretary of the Treasury shall pay to each county referred to in paragraph (1) the greater of–

(i) the special payment amount; or
(ii) the share of the 50-percent payments to counties allocable to the county.

***386** TITLE XIV–BUDGET PROCESS PROVISIONS

SEC. 14001. PURPOSE.

The Congress declares that it is essential to–

(1) preserve the deficit reduction achieved by this Act;

(2) extend the system of discretionary spending limits for the single discretionary category set forth in section 601 of the Congressional Budget Act of 1974;

(3) extend the pay-as-you-go enforcement system; and

(4) prohibit the consideration of direct spending or receipts legislation that would decrease the pay-as-you-go surplus achieved by this Act and created under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 14002. DISCRETIONARY SPENDING LIMITS.

(a) Definition of "Discretionary Spending Limit".–Section 601(a)(2) of the Congressional Budget Act of 1974 is amended–

(1) in subparagraph (D) by striking the word "and"; and

(2) by inserting after subparagraph (E) the following:

"and

"(F) with respect to fiscal years 1996, 1997, and 1998, for the discretionary category, the amounts set forth for those years in section 12(b)(1) of House Concurrent Resolution 64 (One Hundred Third Congress);".

(b) Point of Order in the Senate.–Section 601(b)(1) of the Congressional Budget Act of 1974 is amended to read as follows:

"(1) Except as otherwise provided in this subsection, it shall not be in order in the Senate to consider any concurrent resolution on the budget for fiscal year 1995, 1996, 1997, or 1998 (or amendment, motion, or conference report on such a resolution) that would exceed any of the discretionary spending limits in this section.".

(c) Conforming Amendments.–(1) Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended–

(A) in subsection (a) by striking "Fiscal Years 1991–1995 Enforcement.–" and inserting "Fiscal Years 1991–1998 Enforcement.–";

(B) in subsection (b)(1)–

(i) in the matter before subparagraph (A), by–

(I) striking "When the President submits the budget under section 1105(a) of title 31, United States Code, for budget year 1992, 1993, 1994, or 1995" and inserting "When the President submits the budget under section 1105(a) of title 31, United States Code, for budget year 1992, 1993, 1994, 1995, 1996, 1997, or 1998"; and
(II) striking "the budget shall include, adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear through 1995" and inserting "the budget shall include, adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear through 1998";

***387** (ii) in paragraph (1)(B), by inserting at the end thereof the following new clause:

"(iii) For a budget submitted for budget year 1996, 1997, or 1998, the adjustments shall be those necessary to reflect changes in inflation estimates since those of March 31, 1993, set forth on page 46 of House Conference Report 103–48.";

(iii) in the matter before subparagraph (A) in paragraph (2) by–

(I) striking "When OMB submits a sequestration report under section 254 (g) or (h) for fiscal year 1991, 1992, 1993, 1994, or 1995" and inserting "When OMB submits a sequestration report under section 254 (g) or (h) for fiscal year 1991, 1992, 1993, 1994, 1995, 1996, 1997, or 1998"; and
(II) striking "for the fiscal year and each succeeding year through 1995," and inserting "for the fiscal year and each succeeding year through 1998,";

(iv) in paragraph (2)(D)(i), by striking "for fiscal year 1991, 1992, 1993, 1994, or 1995," and inserting "for any fiscal year,";

(v) in paragraph (2)(E), by–

(I) striking the final word "and" in subparagraph (ii); and
(II) inserting before the final period the following:
"; and
"(iv) if, for fiscal years 1994, 1995, 1996, 1997, and 1998, the amount of new budget authority provided in appropriation Acts exceeds the discretionary spending limit on new budget authority due to technical estimates made by the director of the Office of Management and Budget, the adjustment is the amount of the excess, but not to exceed an amount (for any one fiscal year) equal to 0.1 percent of the adjusted discretionary spending limit on new budget authority for that fiscal year"; and

(vi) in paragraph (2)(F), by inserting immediately before the final period the following: ", and not to exceed 0.5 percent of

the adjusted discretionary spending limit on outlays for the fiscal year in fiscal year 1996, 1997, or 1998".

(2) Reports.–Sections 254(d)(2) and 254(g)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 are each amended by striking "1995" and inserting "1998".

(3) Expiration.–(A) Notwithstanding section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, sections 250, 251, 252, and 254 through 258C of that Act shall expire on September 30, 1998.

(B) Section 607 of the Congressional Budget Act of 1974 is amended by striking "shall apply to fiscal years 1991 to 1995" and inserting "shall apply to fiscal years 1991 to 1998".

SEC. 14003. ENFORCING PAY-AS-YOU-GO.

(a) Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended–

***388** (1) in subsection (a), by striking "Fiscal Year 1992–1995 Enforcement." and inserting "Fiscal Year 1992–1998 Enforcement.";

(2) in subsection (d), by striking "estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995" both places that it appears and inserting "estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1998" both places; and

(3) in subsection (e), by striking "for fiscal year 1991, 1992, 1993, 1994, or 1995," and inserting "for any fiscal year from 1991 through 1998,".

(b) Section 254(g)(3) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking "1995" and inserting "1998".

(c) Upon enactment of this Act, the director of the Office of Management and Budget shall reduce the balances of direct spending and receipts legislation applicable to each fiscal year under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 by an amount equal to the net deficit reduction achieved through the enactment in this Act of direct spending and receipts legislation for that year.

SEC. 14004. EXERCISE OF RULE-MAKING POWERS.

The Congress enacts the provisions of this part–

(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such these provisions shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

And the Senate agree to the same.

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

Martin Olav Sabo,
Richard Gephardt,

As additional conferees from the Committee on the Budget, for consideration of title I and section 9005(a)–(c) and (f) of the House bill, and title I and sections 5001, 5002(a), (b), and (d), and 5003 of the Senate amendment, and modifications

committed to conference:

Charlie Stenholm,
Earl Pomeroy,
Dale E. Kildee,

As additional conferees from the Committee on the Budget, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference:

Louise Slaughter,
***389** Alan Mollohan,
Bart Gordon,

As additional conferees from the Committee on the Budget, for consideration of title III of the House bill, and title III (except section 3003(b)) of the Senate amendment, and modifications committed to conference:

Barney Frank,
Lucien E. Blackwell,
Lynn C. Woolsey,
Rick Lazio,

As additional conferees from the Committee on the Budget, for consideration of title IV and sections 5117, 13233, 13263, 13270, 13420, and 14402(d) of the House bill, and sections 7904, 12001–50, 12061, 12071, 12101, and 12301–02 of the Senate amendment, and modifications committed to conference:

Dale E. Kildee,
David E. Price,
Barbara B. Kennelly,

As additional conferees from the Committee on the Budget, for consideration of sections 5000–187, 13234, 13242, 13264, 13400–571, and 14411 of the House bill, and sections 7000–501, 7601(c), 7801, 7802(b) and (c), 7904, 7951, 12101–02, and 12321 of the Senate amendment, and modifications committed to conference:

Tony Beilenson,
Louise Slaughter,
Harry Johnston,

As additional conferees from the Committee on the Budget, for consideration of sections 5200–44, 5301, and 9006–07 of the House bill, and sections 4001–11 and 6001 of the Senate amendment, and modifications committed to conference:

John Bryant,
William J. Coyne,
Jerry F. Costello,

As additional conferees from the Committee on the Budget, for consideration of title VII and that portion of section 4002 which adds a new section 455(j) to the Higher Education Act of 1965, section 4025(7) and that portion of section 5203 which adds a new section 309(j)(8) to the Communications Act of 1934, and section 5187(b) of the House bill, and title XI, section 4008(c), that portion of section 12011 which adds a new section 455(j) to the Higher Education Act of 1965, sections 12045(7), 12047(a), and 12105 of the Senate amendment, and modifications committed to conference:

Michael A. Andrews,
Alan Mollohan,
Lynn C. Woolsey,

As additional conferees from the Committee on the Budget, for consideration of title VIII and section 9004 of the House bill, and section 4051 of the Senate amendment, and modifications committed to conference:

***390** Barbara B. Kennelly,
Jerry F. Costello,
Patsy T. Mink,

As additional conferees from the Committee on the Budget, for consideration of title IX and sections 1402, 5301, and

11002 of the House bill, and titles V and VI and section 1503 of the Senate amendment, and modifications committed to conference:

John Bryant,
Patsy T. Mink,
Lucien E. Blackwell,

As additional conferees from the Committee on the Budget, for consideration of titles VI and X and sections 13702 and 13704 of the House bill, and title IX and X and sections 12103–04 of the Senate amendment, and modifications committed to conference:

Howard L. Berman,
Michael A. Andrews,
Bart Gordon,

Provided, that for consideration of title VI and sections 10001 and 10002 of the House bill, and title IX of the Senate amendment, Mr. Pomeroy is appointed in lieu of Mr. Berman; Messrs, Cox and Smith of Michigan are appointed in lieu of Messrs. Kolbe and Miller of Florida.

Earl Pomeroy,

As additional conferees from the Committee on the Budget, for consideration of title XI and sections 8002 and 9005(a) of the House bill, and sections 5002(a) and 6002 of the Senate amendment, and modifications committed to conference:

Bob Wise,
Jerry F. Costello,
Howard L. Berman,

As additional conferees from the Committee on the Budget, for consideration of title XII of the House bill, and title XIII (except section 13008(b)) and section 7901(b) and (c) of the Senate amendment, and modifications committed to conference:

David E. Price,
William J. Coyne,
Harry Johnston,

As additional conferees from the Committee on the Budget, for consideration of sections 4032, 4033(3), 8002, 9004, 11001, 12004(b), 13001–20, 13201–84, 13601–02, and 13604–705 of the House bill, and sections 1106, 1403, 1504, 3003(b), 7433, 7601–03, 7701–02, 7901(a) and (c), 7902–03, 7950–54, that portion of section 12011 which adds a new section 457 to the Higher Education Act of 1965, 12055, 12203(d), 12025, 13008(b), 15001, and 15002 of the Senate amendment, and modifications committed to conference:

William J. Coyne,
Tony Beilenson,

***391** As additional conferees from the Committee on the Budget, for consideration of title XV and XVI, section 1405(c) of the House bill, those portions of section 4002 which add new sections 453(a)(3) and 456(a)(2) to the Higher Education Act of 1965, section 4029, those portions of section 5181 which add new sections 2158(b)(3)(B) and 2161(b) to the Public Health Service Act, 9008, and 13560 of the House bill, and title XIV, that portion of section 1201 which adds a new section 305(c)(4) to the Rural Electrification Act, those portions of section 12011 which add new sections 453(a)(4) and 456(a)(2) to the Higher Education Act of 1965, of the Senate amendment, and modifications committed to conference:

Charlie Stenholm,
Bob Wise,
Barney Frank,

As additional conferees from the Committee on Agriculture, for consideration of title I and section 9005(a)–(c) and (f) of the House bill, and title I and sections 5001, 5002(a), (b), and (d), and 5003 of the Senate amendment, and modifications committed to conference:

Kika de la Garza,

Charlie Rose,
Dan Glickman,
Harold L. Volkmer,
Timothy J. Penny,

As additional conferees from the Committee on Armed Services, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference:

Ronald V. Dellums,
G.V. Montgomery,
Pat Schroeder,
Earl Hutto,
Ike Skelton,

Provided, for consideration of section 12009 of the House bill, and section 13003 of the Senate amendment, Mr. McCurdy is appointed in lieu of Mr. Montgomery, and Mr. Hunter is appointed in lieu of Mr. Stump.

Dave McCurdy,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of title III of the House bill, and title III (except section 3003(b)) of the Senate amendment, and modifications committed to conference:

Henry B. Gonzalez,
Steve Neal,
John J. LaFalce,
Bruce F. Vento,
Charles Schumer,
James A. Leach,
Marge Roukema,

As additional conferees from the Committee on Education and Labor, for consideration of title IV and sections 5117, ***392** 13233, 13263–64, 13270, 13420, and 14402(d) of the House bill, and sections 7904, 12001–50, 12061, 12071, 12101, and 12301–02 of the Senate amendment, and modifications committed to conference:

William D. Ford,
William L. Clay,
George Miller,
Austin J. Murphy,
Pat Williams,

Solely for purposes of sections 4201–4203 of the House bill and sections 12301 and 12302 of the Senate amendment:

William F. Goodling,
Thomas E. Petri, (Except for sections 5117, 13233, 13263, 13264, 13270, and 13420, of the House bill and sections 7904 and 12101 of the Senate amendment)

Solely for purposes of sections 4201–4203 of the House bill and sections 12301 and 12302 of the Senate amendment:

Marge Roukema,

As additional conferees from the Committee on Energy and Commerce, for consideration of [communications] sections 5200–44 of the House bill, and sections 4001–11 of the Senate amendment, and modifications committed to conference:

John D. Dingell,
Edward J. Markey,
Billy Tauzin,
Thomas J. Manton,
Lynn Schenk,
Carlos J. Moorhead,
Jack Fields,
Michael G. Oxley,

As additional conferees from the Committee on Energy and Commerce, for consideration of [health] sections 5000–5091, 5100–87, 13010 (a) and (c), 13413(e), 13234, 13242, 13264, 13431–13571, and 14411 of the House bill, and sections 1105(b), 7000, 7201–7501, 7601(c), 7801, 7802 (b) and (c), 7904, 7951, 12101–12205, and 12321 of the Senate amendment, and modifications committed to conference:

John D. Dingell,
Henry A. Waxman,
Ron Wyden,
Edolphus Towns,
Jim Slattery,

As additional conferees from the Committee on Energy and Commerce, for consideration of [energy] sections 5301 and 9006–07 of the House bill, and section 6001 of the Senate amendment, and modifications committed to conference:

John D. Dingell,
Philip R. Sharp,
Craig A. Washington,
***393** Mike Kreidler,
Al Swift,
Carlos J. Moorhead,
Mike Bilirakis,
Joe Barton,

As additional conferees from the Committee on Foreign Affairs, for consideration of title VI and sections 10001 and 10002 of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

Lee H. Hamilton,
Howard L. Berman,
Eni Faleomavaega,
M.G. Martinez,
Robert E. Andrews,
Benjamin A. Gilman,
Olympia Snowe,
Henry J. Hyde,

As additional conferees from the Committee on Government Operations, for consideration of section 1405(c) of the House bill, and that portion of section 1201 which adds a new section 305(c)(4) to the Rural Electrification Act, of the Senate amendment, and modifications committed to conference:

John Conyers, Jr.,
Glenn English,
Collin C. Peterson,
Tom Barrett,
Craig A. Washington,

As additional conferees from the Committee on Government Operations, for consideration of those portions of section 4002 which add new sections 453(a)(3) and 456(a)(2) to the Higher Education Act of 1965, and sections 4029 and 13560 of the House bill, and those portions of section 12011 which add new sections 453(a)(4) and 456(a)(2) to the Higher Education Act of 1965, of the Senate amendment, and modifications committed to conference:

John Conyers, Jr.,
***394** Cardiss Collins,
Edolphus Towns,
Henry A. Waxman,
John M. Spratt, Jr.,

As additional conferees from the Committee on Government Operations, for consideration of those portions of section 5181 which add new sections 2158(b)(3)(B) and 2161(b) to the Public Health Service Act, of the House bill, and modifications committed to conference:

John Conyers, Jr.,
John M. Spratt, Jr.,
Mike Synar,
Donald M. Payne,

As additional conferees from the Committee on Government Operations, for consideration of section 9008 of the House bill, and modifications committed to conference:

John Conyers, Jr.,
Cardiss Collins,
John M. Spratt, Jr.,
Mike Synar,
Craig A. Washington,

As additional conferees from the Committee on Government Operations, for consideration of title XVI and sections 15001–111, 15206, and 15301 of the House bill, and title XIV of the Senate amendment, and modifications committed to conference:

John Conyers, Jr.,
John M. Spratt, Jr.,
Henry A. Waxman,
Cardiss Collins,
Mike Synar,

As additional conferees from the Committee on the Judiciary, for consideration of title VII of the House bill, and title XI and section 12047(a) of the Senate amendment, and modifications committed to conference:

Jack Brooks,
William J. Hughes,
Don Edwards,
John Conyers, Jr.,
Mike Synar,
Carlos J. Moorhead,
Howard Coble,
Hamilton Fish, Jr.,

As additional conferees from the Committee on the Judiciary, for consideration of that portion of section 4002 which adds a new section 455(j) to the Higher Education Act of 1965, section 4025(7), and that portion of section 5203 which adds a new section 309(j)(8) to the Communications Act of 1934, of the House bill, and section 4008(c), that portion of section 12011 which adds a new section 455(j) to the Higher Education Act of 1965, and section 12045(7) of the Senate amendment, and modifications committed to conference:

Jack Brooks,
John Conyers, Jr.,
Mike Synar,
Pat Schroeder,
Howard L. Berman,
Hamilton Fish, Jr.,

As additional conferees from the Committee on the Judiciary, for consideration of section 5187(b) of the House bill, and section 12105 of the Senate amendment, and modifications committed to conference:

Jack Brooks,
John Bryant,
Dan Glickman,
Barney Frank,
Howard L. Berman,
George W. Gekas,

Jim Ramstad,
Hamilton Fish, Jr.,

***395** As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of title VIII and section 9004 of the House bill, and section 4051 of the Senate amendment, and modifications committed to conference:

Gerry E. Studds,
Billy Tauzin,
William O. Lipinski,
Solomon P. Ortiz,
Thomas J. Manton,
Jack Fields,

Provided, for consideration of title VIII of the House bill, and section 4051 of the Senate amendment, Mr. Inhofe is appointed: for consideration of section 9004 of the House bill, Mr. Saxton is appointed.

James M. Inhofe,
Jim Saxton,

As additional conferees from the Committee on Natural Resources, for consideration of title IX and sections 1402, 5301, and 11002, of the House bill, and titles V and VI and section 1503 of the Senate amendment, and modifications committed to conference:

George Miller,
Bruce F. Vento,
Ron de Lugo,
Richard Lehman,
Bill Richardson,

As additional conferees from the Committee on Post Office and Civil Service, for consideration of title X and sections 13702 and 13704 of the House bill, and titles IX and X and sections 12103–04 of the Senate amendment, and modifications committed to conference:

William L. Clay,
Pat Schroeder,
Frank McCloskey,
Eleanor H. Norton,
Barbara-Rose Collins,
Constance Morella,

As additional conferees from the Committee on Public Works and Transportation, for consideration of title XI and sections 8002 and 9005(a) of the House bill, and sections 5002(a) and 6002 of the Senate amendment, and modifications committed to conference:

Norman Y. Mineta,
Jim Oberstar,
Douglas Applegate,
Nick J. Rahall II,
Robert A. Borski,
Bud Shuster,
Bill Clinger,
Sherwood L. Boehlert,

As additional conferees from the Committee on Rules, for consideration of title XVI and sections 13560, 13605, and ***396** 15201–15212 of the House bill, and title XIV of the Senate amendment, and modifications committed to conference:

John Moakley,
Butler Derrick,
Tony Beilenson,
Martin Frost,

David Bonior,

As additional conferees from the Committee on Veterans' Affairs, for consideration of title XII of the House bill, and title XIII (except section 13008(b)) and section 7901 (b) and (c) of the Senate amendment, and modifications committed to conference:

G.V. Montgomery,
Lane Evans,
J. Roy Rowland,
Jim Slattery,
George E. Sangmeister,
Bob Stump,

As additional conferees from the Committee on Ways and Means, for consideration of title XIV (except sections 14402(d) and 14411) and section 13603 of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
Charles B. Rangel,

As additional conferees from the Committee on Ways and Means, for consideration of sections 13001–20 of the House bill, and modifications committed to conference:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
Andrew Jacobs, Jr.,

As additional conferees from the Committee on Ways and Means, for consideration of sections 13201–84 of the House bill, and sections 7601–03 and 7802 of the Senate amendment, and modifications committed to conference:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
Harold Ford,

As additional conferees from the Committee on Ways and Means, for consideration of title XVI of the House bill, and modifications committed to conference:

Dan Rostenkowski,
Pete Stark,

As additional conferees from the Committee on Ways and Means, for consideration of sections 4032, 4033(3), 5000–91, 5117, those portions of section 5181 which add new sections 2161 and 2173(b) to the Public Health Service Act, sections 5181(b), 8002, 9004, 11001, 12004(b), 13400–571, 13601–02, 13604–705, 14402(d), 14411, and 15301 of the House bill, and sections 1106, 1403, 1504, 3003(b), 7000– ***397**305, 7433, 7701–02, 7901(a) and (c), 7902–04, 7950–54, that portion of section 12011 which adds a new section 457 to the Higher Education Act of 1965, sections 12055, 12101–02, that portion of section 12202 which adds a new section 2148(b) to the Public Health Service Act, sections 12203(d), 12025, 13008(b), 15001, and 15002 of the Senate amendment, and modifications committed to conference:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
Charles B. Rangel,
Pete Stark,
Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

Patrick J. Leahy,
From the Committee on Banking, Housing, and Urban Affairs:

Don Riegle,
Paul Sarbanes,
From the Committee on the Budget:

Jim Sasser,
Ernest F. Hollings,
J. Bennett Johnston,
From the Committee on Commerce, Science, and Transportation:

Ernest F. Hollings,
Daniel K. Inouye,
John Breaux,
From the Committee on Energy and Natural Resources:

J. Bennett Johnston,
Dale Bumpers,
Wendell Ford,
From the Committee on Environment and Public Works:

Max Baucus,
Daniel Patrick Moynihan,
From the Committee on Finance:

Daniel Patrick Moynihan,
Max Baucus,
Bill Bradley,
George J. Mitchell,
David Pryor,
Don Riegle,
John D. Rockefeller IV,
From the Committee on Foreign Relations:

Claiborne Pell,
John F. Kerry,
From the Committee on Governmental Affairs:

John Glenn,
Carl Levin,
David Pryor,
From the Committee on the Judiciary:

Dennis DeConcini,
***398** From the Committee on Labor and Human Resources:

Edward M. Kennedy,
Claiborne Pell,
Christopher J. Dodd,
Paul Simon,
Tom Harkin,
Barbara A. Mikulski,
Jeff Bingaman,

Paul Wellstone,
Harris Wofford,
From the Committee on Veterans' Affairs:

Jay Rockefeller,
Dennis DeConcini,
Managers on the Part of the Senate.

***399** JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

OVERVIEW

The Conference Agreement on the Omnibus Budget Reconciliation Act of 1993 is a carefully crafted, rational and constructive compromise which implements the basic objectives of both the House and the Senate bills. It embodies the President's economic program and meets the objectives of the House and Senate conferees. It confirms and extends those budget process changes enacted in the Budget Enforcement Act of 1990 which have exercised effective discipline over the Federal budget.

In February of this year, President Clinton proposed to move the American economy in a new direction. The Congressional budget resolution passed in March adopted and strengthened the President's budget proposal. By passing this conference agreement, the Congress will fulfill the promise of the budget resolution. This conference agreement, unlike the substitute bills that were offered in both Houses, will:

Reduce Federal deficits by approximately $500 billion over the five years 1994–1998, with more than half the reduction coming from spending cuts and the remainder from tax increases;

Restore fairness to our tax system;

Shift the nation's priorities towards investment.

With the passage of this conference agreement, America will begin to move to a new path of lower deficits and higher wages and standards of living for America's working families.

****1089*400** The economic policies of the 1980's and early 1990's were based on lower taxes for the wealthy, large government deficits, and high interest rates. The results were that:

The income and living standards of the American worker stagnated. From 1980 to 1992, the weekly earnings of the typical full-time worker rose less than 0.1 percent per year in real terms (after removing the effects of inflation).

We borrowed nearly a trillion dollars (net) from foreigners. At the end of 1980, U.S. holdings of assets abroad exceeded foreign holdings here by $393 billion; at the end of 1992, foreign assets here exceeded our assets abroad by $521 billion.

Consequently, our international trade balance deteriorated, from a current-account surplus of $2 billion in 1980 to a deficit that peaked at $167 billion in 1987 and was still $66 billion in 1992.

The economic gains that took place benefited the wealthy most; the distribution of income and wealth became much more unequal.

These policies–and the results they produced–were repudiated by the American people in the 1992 election. This conference agreement represents the response of the President and the Congress, working together, to the need for change.

The expectation that a deficit reduction plan such as this would become law has already laid the groundwork for a better future. Long-term interest rates have come down about 1 percentage point since November 1992. In recent testimony to the Congress, Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, confirmed that the belief by capital markets in a deficit-reduction package has "tilted long-term rates down in the last several months." Already this decline has benefited consumers and businesses. For example, a reduction of 1 percentage point in the mortgage interest rate lowers the monthly payment on the mortgage on a typical home by about $70.

Now we must make good on the promise. We must pass this conference agreement in order to lock in reductions in long-term interest rates and end uncertainty about budget policy. We must pass this conference agreement to begin to channel our nation's savings away from the financing of government debt and toward productive investment.

The conference agreement reduces the deficit by approximately $500 billion over the next five years. Spending reductions account for $255 billion and revenue increases account for the remainder. Discretionary (appropriated) spending is below 1993 levels each year through 1998.

Under the conference agreement, the deficit as a percent of Gross Domestic Product will be cut dramatically by 1998. Instead of falling only slightly through 1996 and then rising again to 4.6 percent of GDP in 1998, as it would under current spending and tax policies, it will be brought down to 2.7 percent of GDP in 1997 and remain at that level in 1998. This is the necessary first step in long-term deficit control.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****1091*402** At the end of fiscal year 1998, the federal debt will be lower than it would have been under current policies by nearly half a trillion dollars.

Every policy change in the conference agreement is specific and enforceable. It changes entitlement law, changes tax law, and establishes new caps on discretionary spending to ensure that appropriations do not exceed the levels established in the budget resolution.

This conference agreement will improve in important ways the lives of all Americans:

It reduces the huge drain on the nation's savings pool that the deficit represents. Every dollar of deficit reduction means either a dollar more for private investment in housing, plant, and equipment, or a dollar not borrowed overseas. Increases in private investment are required to raise standards of living and give American workers more tools to improve their productivity and earnings. Reduction in borrowing overseas means more jobs kept in the United States.

The conference agreement includes $48 billion in tax incentives for investment, jobs, and rewarding work, aimed specifically at small business, distressed communities and the working poor.

This conference agreement specifically mandates–and finances–increases in childhood immunization and family preservation and support. For immunization, $500 million over five years is included to provide free vaccines to children who have no health insurance coverage or are eligible for Medicaid, with an additional $85 million to build vaccine stockpiles.

Other Presidential programs for investment in people and in the physical infrastructure of our country can be financed by redirecting spending within the overall caps on discretionary spending.

More than half of the deficit reduction is made on the spending side. The conference agreement mandates $88 billion in net entitlement cuts. The caps on discretionary spending will reduce outlays by $102 billion compared with a continuation of current policies. Debt service savings, changes in debt management and miscellaneous effects will account for another $65 billion.

But the budget can't be brought under control by spending cuts alone–not without making deep cuts in vital benefit programs, inflicting undue hardship, and short-changing investment programs.

Alternative plans offered in both the House and the Senate which did not include revenues failed to come near President Clinton's $500 billion deficit reduction target. Chairman Greenspan indicated that financial markets would react "appropriately negatively" to any perception that we were backing off the $500 billion commitment.

Furthermore, the additional spending cuts in these alternative plans fell mainly on the poor and the elderly. A budget balanced by spending cuts alone will place an unfair burden on those who can least afford it.

This legislation improves the progressivity of the tax structure and requires those who benefited from the policies of the 1980's and early 1990's to pay their share of the bill that has come due.

****1092*403** The revenue component is a net increase of $241 billion.

The tax package restores tax code progressivity lost in recent years.

Most of the tax increases affect only higher-income individuals and corporations. The exception is the gasoline tax, which will cost the average household less than one dollar a week. Overall, the Congressional Budget Office estimates that 81 percent of the tax increase will fall on households with incomes over $200,000. Furthermore, 76 percent of the net tax increase will be on the wealthiest 1 percent of the population.

The conference agreement helps low-income people, particularly workers and their children, and does not hurt those who rely on Social Security as their main source of income.

Social Security benefit payments are not touched. Changes in the taxation of Social Security benefits affect only higher-income retirees, and bring them closer to the tax treatment of working people with similar incomes. Everyone who now pays no tax on his or her Social Security benefits will continue to be exempt.

The expanded Earned Income Tax Credit allows a full-time minimum wage worker with one or two children to bring his or her family up to the poverty line. It encourages work. The proposal will reduce the U.S. child poverty rate, which was one of every four children under age six in 1991. In 1991, 5.5 million poor persons lived in families with children in which someone was employed full-time, year-round.

The conference agreement increases funding for Food Stamps by $2.5 billion over the next five years, targeted to the estimated 5.5 million hungry children and an additional 6 million children at risk of hunger in America. The elimination of the shelter cost cap will assist the most needy families with children, who are most at risk of homelessness.

The Omnibus Budget Reconciliation Act of 1993 represents a major step forward in dealing with the two deficits which became chronic in the last decade–the Federal budget deficit and the deficit in investment in the earing power and well-being of America's workers and their children. It begins a serious program of economic reconstruction. And it represents the first real attempt in more than a decade to invest in America's future and that of our children and grandchildren.

TITLE I–AGRICULTURE

(Numbers in parentheses refer to the section numbers of the provisions in the House Bill (H), the Senate Amendment (S), and the Conference Report (CR))

The Managers on the part of the House and the Senate on title I of the bill met to resolve a number of issues in disagreement between the House Bill and the Senate Amendment. A number of provisions agreed to by the Managers are included in the Conference Substitute. However, a number of provisions that were agreed to by the Managers were subsequently removed from the Conference Substitute pursuant to the Managers' agreement that provisions potentially violative of section 313 of the Congressional ****1093*404** Budget Act of 1974, commonly referred to as the "Byrd Rule", be removed from the Conference Substitute.

The Byrd Rule provides, in pertinent part, that during Senate debate on a reconciliation conference report, any Senator may make a point of order against extraneous material that, if sustained, will result in the extraneous material being stricken and result in the Conference Report being sent back to the House. The Rule also provides guidance as to what constitutes extraneous matter in a reconciliation conference report.

SUBTITLE A–COMMODITY PROGRAMS

UPLAND COTTON. (H. 1103; S. 1103; CR. 1101)

Triple Base. (H. 1103(a))

The House Bill amends section 103B(c)(1)(C)(ii) of the Agricultural Act of 1949 ('49 Act) to decrease eligible payment acres under the cotton program from 85% to 80% of the crop base, less the Acreage Conservation Reserve (ACR) requirement for the crop, beginning with crop year 1994.

The Senate Amendment contains no similar provision.

The Conference Substitute deletes the House provision.

50/92 Program. (S. 1103(a); CR. 1101(a)(4))

The House Bill contains no similar provision.

The Senate Amendment amends section 103B(c)(1)(D) of the '49 Act to reduce the acres eligible for deficiency payments under the program to 85% of payment acres for the 1994 and 1995 crops, except in the case of prevented planting, reduced acres, or planting of alternative crops (in which case payments would be made on 92% of payment acres).

The Conference Substitute adopts the Senate provision.

Provisions Necessary to the Operation of the Program. (H. 1103(b); CR. 1101(b))

The House Bill extends the provisions of the price support program through crop year 1998.

The Senate Amendment contains no similar provision.

The Managers agreed to include the House provision in the Conference Substitute, with an amendment to extend the provisions of the price support program through crop year 1997 including bases and yields, deficiency and land diversion payments, and payment limits. However, certain provisions relating to cotton skiprow practices, extra long staple cotton, cottonseed and cottonseed oil support, preliminary allotments for the 1998 cotton crop, suspension of marketing quotas and acreage allotments, and related provisions, and the suspension of parity-based price support provisions were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

The Managers understand that certain of these deleted provisions might be considered necessary in order to prevent potential conflicts between different price support and other provisions of law. It is a well settled legal convention that a later enacted statute takes precedence over a prior enacted conflicting law. The Managers intend that, consistent with this principle, any amendments made or provisions of law extended by this bill should take precedence over any provisions of law that may appear to be in conflict with the operation of the cotton price support program in its current ****1094*405** manner as a result of

the failure to extend certain of these provisions beyond 1995.

Acreage Limitation Program. (S. 1103(b); CR. 1101(a)(5))

The House Bill contains no similar provision.

The Senate Amendment amends section 103B(e)(1)(D) of the ‘49 Act to amend, effective for the 1995 crop, the requirement that the Secretary achieve a ratio of carryover to total disappearance of upland cotton (stocks-to-use ratio) from the present 30 percent to 29½ percent.

The Conference Substitute adopts the Senate provision with an amendment to require, effective for the 1997 crop of upland cotton, that the Secretary achieve a ratio of carryover to total disappearance of upland cotton (stocks-to-use ratio) of 29 percent.

WHEAT. (H. 1101; S. 1101; CR. 1102)

Triple Base. (H. 1101(a))

The House Bill amends section 107(B)(c)(1)(C)(ii) of the ‘49 Act to decrease eligible payment acres under the wheat program from 85% to 80% of the crop base, less the ACR requirement for the crop, beginning with crop year 1994.

The Senate Amendment contains no similar provision.

The Conference Substitute deletes the House provision.

0/92 Program. (S. 1101; CR. 1102(a)(4))

The House Bill contains no similar provision.

The Senate Amendment amends section 107B(c)(1)(E) of the ‘49 Act to reduce the acres eligible for deficiency payments under the program to 85% of payment acres for the 1994 and 1995 crops; except ***406** in the case of prevented planting, reduced yields, or planting of alternative crops (in which case payments would be made on 92% of payment acres).

The Conference Substitute adopts the Senate provision with an amendment to extend the 0/92 program through 1997.

Provisions Necessary to the Operation of the Program. (H. 1101(b))

The House Bill extends the provisions of the price support program through crop year 1998.

The Senate Amendment contains no similar provision.

The Managers agreed to include the House provision in the Conference Substitute with an amendment to extend the provisions of the price support program through crop year 1997. However, these provisions were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

FEED GRAINS. (H. 1102; S. 1102; CR. 1103)

Triple Base. (H. 1102(a))

The House Bill amends section 105B(c)(1)(C) of the ‘49 Act to decrease eligible payment acres under the feed grains program from 85% to 80% of the crop base, less the ACR requirement for the crop, beginning with crop year 1994.

The Senate Amendment contains no similar provision.

The Conference Substitute deletes the House provision.

0/92 Program. (S.1102(a); CR.1103(a)(4))

The House Bill contains no similar provision.

The Senate Amendment amends section 105B(c)(1)(E) of the '49 Act to reduce the acres eligible for deficiency payments under the program to 85% of payment acres for the 1994 and 1995 crops; except ****1095** in the case of prevented planting, reduced yields, or planting of alternative crops (in which case payments would be made on 92% of payment acres).

The Conference Substitute adopts the Senate provision with an amendment to extend the 0/92 program through 1997.

Provisions Necessary to the Operation of the Program. (H.1102(b))

The House Bill extends the provisions of the price support program through crop year 1998.

The Senate Amendment contains no similar provision.

The Managers agreed to include the House provisions in the Conference Substitute, with an amendment to extend the provisions of the price support program through crop year 1997. However, these provisions were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Deficiency Payments for Barley. (S.1102(b); CR.1103(a)(4)))

The House Bill contains no similar provision.

The Senate Amendment amends section 105B(c)(1)(B)(iii)(IV)(bb) of the '49 Act to make a technical correction to extend the feed barley formula through crop year 1995.

The Managers agreed to include the Senate provision in the Conference Substitute, however, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

RICE (H.1104; S.1104; CR.1104)

Triple Base. (H.1104(a))

The House Bill amends section 101B(c)(1)(C)(ii) of the '49 Act to decrease eligible payment acres under the rice program from 85% to 80% of the crop base, less the ACR requirement for the crop, beginning with crop year 1994.

The Senate Amendment contains no similar provision.

The Conference Substitute deletes the House provision.

50/92 Program. (S.1104; CR.1104)

The House Bill contains no similar provision.

The Senate Amendment amends section 101B(c)(1)(D) of the '49 Act to reduce the acres eligible for deficiency payments under the program to 85% of payment acres for the 1994 and 1995 crops, except in the case of prevented planting, reduced yields, or planting of alternative crops (in which case payments would be made on 92% of payment acres).

The Conference Substitute adopts the Senate provision with an amendment to extend the 50/92 program through 1997.

Provisions Necessary to the Operation of the Program. (H.1104(b))

The House Bill extends the provisions of the price support program through crop year 1998.

The Senate Amendment contains no similar provision.

The Managers agreed to include to include the House provision in the Conference Substitute with an amendment to extend the provisions of the price support program through crop year 1997. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

DAIRY (H.1105; S.1105; CR.1105)

Butter/Powder. (H.1105(a); S.1105(a)(1); CR.1105(a)(3))

****1096*407** The House Bill amends section 204(c)(3) of the '49 Act to readjust the purchase prices for butter (to no more than $0.65/pound) and nonfat dry milk (to no less than $1.034/pound) beginning on the date of enactment.

The Senate Amendment is identical to the House provision except for technical differences.

The Conference Substitute adopts the Senate provision.

Reduction in Price Received. (H.1105(b); S.1105(a)(2); CR.1105(a)(4))

The House Bill amends section 204(h)(2)(B) of the '49 Act to extend the reduction in the price received by milk producers for the 1996 through 1998 calendar years at the reduced level of 10 cents per hundredweight.

The Senate Amendment is comparable to the House provision except that it extends the 10 cent reduction in price through the 1996 calendar year only.

The Conference Substitute adopts the Senate provision.

Provisions Necessary to the Operation of the Program. (H.1105(c)(1); S.1105(c); CR.1105(b))

The House Bill extends the provisions of the dairy price support program through the 1998 calendar year.

The Senate Amendment extends the dairy price support program through the 1996 calendar year.

The Conference Substitute adopts the House provision with an amendment to extend the provisions of the price support program through 1996.

Conforming Amendments to Extend Other Dairy Provisions. (H.1105(a)(2)–(5))

The House Bill extends certain programs through calendar year 1998.

The Senate Amendment contains no similar provision.

The Managers agreed to include the House provision in the Conference Substitute, with an amendment to extend these provisions through 1997. However, certain provisions were extended only through 1996 and other provisions relating to transfer of dairy products to military and veterans hospitals, the Dairy Indemnity Program, the Dairy Export Incentive Program, and Export Sales of Dairy Products were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Bovine Growth Hormone. (S.1105(b); CR.1105(c))

The House Bill contains no similar provision.

The Senate Amendment amends section 204 of the ‘49 Act to provide that, from the date of enactment through September 30, 1994, it shall be unlawful to use, market, or sell bovine growth hormone for commercial purposes.

The Conference Substitute adopts the Senate provision with an amendment. The amendment: (1) changes the period of the prohibition on the sale of bovine growth hormone to the 90–day period immediately following the date on which the Food and Drug Administration first approves the sale of bovine growth hormone; and (2) requires a ten percent reduction in the assessment on dairy producers imposed by the Omnibus Budget Reconciliation Act of 1990 during such 90–day period.

TOBACCO. (H.1106; S.1106; CR.1106)

****1097*408** Marketing Assessment. (H.1106(a))

The House Bill amends section 106(g) of the ‘49 Act to increase the marketing assessment by 10 percent (to .55 percent of the national price support level) for the 1994 through 1998 crops.

The Senate Amendment contains no similar provision.

The Conference Substitute deletes the House provision.

Extension of Marketing Assessment. (H.1106(b); S.1106(b)(1)(A))

The House Bill extends the marketing assessment through the 1998 crop.

The Senate Amendment is identical to the House provision.

The Managers agreed to include the House and the Senate provisions in the Conference Substitute, however, the provision was deleted in order to comply with the Byrd Rule.

Importer Contribution to Marketing Assessment. (S.1106(b)(1)(B); CR.1106(b)(1))

The House Bill contains no similar provision.

The Senate Amendment adds a new subsection (h) to section 106 of the ‘49 Act to provide that, subject to a monetary penalty for nonpayment, a marketing assessment must be paid by importers of tobacco produced outside of the United States, calculated by multiplying the number of pounds imported times the sum of the per pound marketing assessments imposed on purchasers of domestic Burley and domestic Flue-cured tobacco.

The Conference Substitute adopts the Senate provision.

Quotas and Allotments. (H.1106(c))

The House Bill amends certain quota and allotment provisions in order to improve the effectiveness of the program.

The Senate Amendment contains no similar provision.

The Managers agreed to include the House provision in the Conference Substitute, with amendments directing the Secretary of Agriculture to conduct a referendum in the State of Virginia to determine whether growers favor cross-county leasing of certain marketing quotas. If such a referendum was approved, leasing would be permitted only between farms in adjacent counties as of the date of enactment of the provision. However, these provisions were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Domestic Marketing Assessment. (S.1106(a); CR.1106(a))

The House Bill contains no similar provision.

The Senate Amendment adds a new section 320C to the Agricultural Adjustment Act of 1938 (1938 Act) to require domestic manufacturers of cigarettes to certify annually to the Secretary the United States-produced percentage of the total quantity of tobacco used by the domestic manufacturers to produce cigarettes during the calendar year. Domestic manufacturers who fail to use at least 75 percent domestic tobacco in cigarettes, or to certify the percentage of domestic tobacco used, shall pay a nonrefundable marketing assessment to the Commodity Credit Corporation (CCC), calculated by multiplying–

(1) the quantity of imported tobacco used by the manufacturer to produce cigarettes in the prior calendar year in excess of 25 percent of total tobacco used, by

(2) the difference between–

****1098*409** (a) the average price per pound of domestic Burley tobacco and domestic Flue-cured tobacco during the preceding year; and

(b) the average price per pound of unmanufactured imported tobacco during the preceding year, as determined by the Secretary.

A domestic manufacturer who uses less than 75 percent domestically grown tobacco also shall purchase from producer-owned cooperative marketing associations a quantity of tobacco (equally divided between Burley and Flue-Cured tobacco) equal to the quantity of imported tobacco used by the manufacturer in excess of 25 percent of all tobacco used to produce cigarettes during the preceding year. Failure to purchase the required amounts of Burley or Flue-cured tobacco from the associations shall result in a penalty in an amount equal to 75 percent of the average market price for the respective type of tobacco for the total purchase shortage.

The Conference Substitute adopts the Senate provision with amendments. Under the Conference Substitute, manufacturers of domestic cigarettes are required to make reports and maintain sufficient records for carrying out the requirements. The Conference Substitute clarifies that any person who provides false information or who fails to provide required information is to be subject to applicable Federal criminal sanctions.

The Managers recognize that Turkish and Oriental tobaccos are not grown in the United States. In setting a domestic content standard, the Managers' intent and belief is that the level is sufficient to permit continued importation of Turkish and Oriental tobaccos necessary to maintain current manufacturing blends.

The Conference Substitute also contains provisions authorizing the Secretary of Agriculture to reduce the domestic content percentage level under the provision to respond to natural disasters which cause reduced tobacco production. Whenever the Secretary, in consultation with producer-owned cooperative marketing associations, determines that disastrous losses have occurred to an annual crop of Burley or Flue-cured tobacco, and that pool inventories for the kind of tobacco involved have been depleted, the Secretary may reduce the domestic tobacco percentage for cigarettes below 75 percent to a level that approximately reflects the reduced availability of domestic supplies due to disaster losses to such crop. The Conference Substitute details guidelines the Secretary is to follow in determining whether disastrous losses have occurred and the extent to which such losses should be factored into a determination of the domestic tobacco percentage.

Importer Contributions to No Net Cost Tobacco Fund. (S. 1106(b)(2); CR.1106(b)(2) and (3))

The House Bill contains no similar provision.

The Senate Amendment amends sections 106A and 106B of the 1949 Act to require each importer of Flue-cured or Burley tobacco to pay an assessment to the applicable association funds, or the Commodity Credit Corporation No Net Cost Tobacco Accounts, equal to the product of–

(1) the number of pounds imported; and

****1099*410** (2) the sum of the amount of per pound producer contributions and purchaser assessments that are required of domestic producers and purchasers.

Failure by an importer to pay into the No Net Cost Fund or Account will result in a penalty equal to 75 percent of the average market price for the respective kind of tobacco on the quantity of tobacco as to which the failure occurs.

The Conference Substitute adopts the Senate provision.

Fees for Inspecting Imported Tobacco. (S.1106(c); CR.1106(c))

The House Bill contains no similar provision.

The Senate Amendment amends section 213(d) of the Tobacco Adjustment Act of 1983 to require the Secretary to collect from importers an amount for user fees paid for inspection services provided at a rate comparable to those fees and charges collected in connection with inspection of tobacco produced in the United States.

The Conference Substitute adopts the Senate provision.

Quota Reduction Floor. (S.1106(d); CR.1106(d))

The House Bill contains no similar provision.

The Senate Amendment amends sections 319(c) and 317(c) of the 1938 Act, respectively, to extend the Burley and Flue-cured tobacco quota reduction floors to 1996, and authorize the Secretary to reduce the 1995 and 1996 Burley and Flue-cured national marketing quotas by more than 10% of the preceding year's national marketing quotas if the use of the statutory minimum national marketing quota would cause inventories of burley or flue-cured tobacco to exceed 150 percent of the applicable reserve stock level.

The Conference Substitute adopts the Senate provision.

SUGAR. (H.1107; S.1107; CR.1107)

Marketing Assessment. (H.1107(a); S.1107; CR.1107(a))

The House Bill amends section 206(i) of the 1949 Act to increase the current marketing assessment by 10 percent to 0.198 cents per pound of raw cane sugar, and 0.2123 cents per pound of beet sugar, for all marketings during fiscal years 1995 through 1999.

The Senate Amendment is comparable to the House provision except it does not require the assessments beyond the fiscal year 1996.

The Conference Substitute adopts the House provision with an amendment to increase the marketing assessment for fiscal years 1995 through 1998 to an amount equal to 1.1 percent of the loan level for raw cane sugar, and 1.1794 percent of such loan level per pound of beet sugar. Processors of sugarcane or sugar beets who knowingly market sugar in excess of their allocated allotment under section 359d of the Agricultural Adjustment Act of 1938 are required to pay an additional assessment equal to double the applicable marketing assessment.

Provisions Necessary to the Operation of the Program. (H.1107(b); CR.1107(b))

The House Bill extends the sugar price support program through the 1998 crops.

The Senate Amendment contains no similar provision.

****1100*411** The Conference Substitute adopts the House provision with an amendment to extend the provisions of the price

support program through the 1997 crops.

OILSEEDS. (H.1108; S.1108; CR.1108)

Provisions Necessary to the Operation of the Program. (H.1108(a); CR.1108))

The House Bill extends the provisions of the oilseeds program through the 1998 marketing year.

The Senate Amendment contains no similar provision.

The Managers agreed to include in the Conference Substitute the House provision with an amendment to extend the provisions of the price support program through the 1997 marketing year. However, the provision was deleted from the Conference Substitute in order to comply with the Byrd Rule.

Loan Level. (S.1108(a); CR.1108(3))

The House Bill contains no similar provision.

The Senate Amendment amends section 205(c) of the ‘49 Act to lower the soybean loan rate to $4.92 per bushel from $5.02 per bushel and the minor oilseed loan rate to $0.087 per pound from $4.089 per pound for the 1994 through 1995 crops.

The Conference Substitute adopts the Senate provision with an amendment to extend the changed loan rates through 1997.

Loan Maturity. (S.1108(b); CR.1108(4))

The House Bill contains no similar provision.

The Senate Amendment amends section 205(h) of the ‘49 Act to provide that oilseed loans for the 1994 and 1995 crops shall mature 9 months after the application is made, but in no case later than the last day of the fiscal year in which they are made.

The Conference Substitute adopts the Senate provision with an amendment to apply the provision through the 1997 crop.

Loan Origination Fee. (S.1108(c); CR.1108(5))

The House Bill contains no similar provision.

The Senate Amendment amends section 205(m) of the ‘49 Act to limit the applicability of the loan origination fee to the 1991 through 1993 crops of soybeans and minor oilseeds.

The Conference Substitute adopts the Senate provision.

PEANUTS (H.1109; S.1109; CR.1109)

Additional Marketing Assessment. (H.1109(a))

The House Bill amends section 108B of the ‘49 Act to establish an additional marketing assessment of two percent in addition to the current 1 percent required in section 108B of the national average quota or additional peanut support rate per pound for the 1993 through 1998 crops of peanuts. Producers and handlers of peanuts would each pay one-half of the additional assessment. Assessments collected would be used to defray realized losses of the peanut program. Monies assessed would be put into a reserve account and used to cover losses incurred by the Commodity Credit Corporation (CCC) for the sale or disposal of peanuts for which price support has been provided.

The Senate Amendment contains no similar provision.

The Conference Substitute deletes the House provision.

Provisions Necessary to the Operation of the Program. (H.1109(b); CR.1109(c))

****1101*412** The House Bill extends the peanut price support program through copy year 1998.

The Senate Amendment contains no similar provision.

The Managers agreed to include the House provision in the Conference Substitute with an amendment to extend the provisions of the price support program through crop year 1997. However, the provisions of the House Bill that extended current provisions relating to Peanut Experimental and Research Programs, the suspension of marketing quotas, acreage allotments, and certain price support provisions, producer referenda on poundage quotas, transfer of quota, and others through 1997 were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

The Managers understand that certain of these deleted provisions might be considered necessary in order to prevent potential conflicts between different price support and other provisions of law. It is a well settled legal convention that a later enacted statute takes precedence over a prior enacted conflicting law. The Managers intended that, consistent with this principle, any amendments made or provisions of law extended by this bill should take precedence over any provisions of law that may appear to be in conflict with the operation of the peanut price support program in its current manner as a result of the failure to extend certain of these provisions beyond 1995.

Assessment Under Marketing Agreement. (H.1109(c); CR.1109(b))

The House Bill adds a new provision to section 8b(b)(1) of the Agricultural Adjustment Act (7 U.S.C. 608(b)(1)(l)), which authorizes the Secretary, if assessments exist under a marketing agreement entered into under the authority of section 8b of the Agricultural Adjustment Act, to apply the assessment to all peanut handlers, regardless of whether they have entered into such agreement.

The Senate Amendment contains no similar provision.

The Conference Substitute adopts the House provision with an amendment to exempt nonparticipating peanut handlers from assessments for purposes of indemnifying producers for peanuts rejected under the agreement.

Marketing Assessment. (H.1109(b); S.1109; CR.1109(a)(3))

The House Bill amends section 108B(g) of the ‘49 Act to extend the current marketing assessment on peanut producers and first purchasers through the 1998 crop.

The Senate Amendment amends section 108B(g) of the ‘49 Act to increase the total marketing assessment by 10% for the 1994 through 1997 crops, with producers paying 0.6%, and first purchasers paying 0.5%, of the product of the applicable national average support rate times the quantity of peanuts marketed.

The Managers agreed to include the Senate provision with an amendment to increase and extend marketing assessments through the 1997 crop, with further increases in the last two years, and to split the increased marketing assessment between producers and first purchasers as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****1102*413** Honey. (H.1110; S.1110; CR.1110)

Support Rate. (H.1110(a); S.1110(a); CR.1110(2))

The House Bill amends section 207(a) of the ‘49 Act to reduce the minimum price support level for honey from 53.8 cents per pound to 50 cents per pound for the 1994 through 1998 crop years.

The Senate Amendment amends section 207(a) of the '49 Act to reduce the minimum price support level for honey from 53.8 cents per pound to 47 cents per pound for the 1994 through 1997 crop years.

The Conference Substitute adopts the Senate provision with an amendment to ratchet down the support rate for crop years 1994 through 1998. The price support level per pound for honey under the amendment will be as set out in the following table:

Crop year and price support rate:

1993–53.8 cents (current law).

1994–50 cents.

1995–50 cents.

1996–49 cents.

1997–48 cents.

1998–47 cents.

Payment Limitations. (H.1110(b); S.1110(b); CR.1110(3))

The House Bill amends section 207(e) of the '49 Act to reduce the amount of payments that may be received by a person from $125,000 in the 1994 crop year to $100,000 in the 1995 crop year, $75,000 in the 1996 crop year, and $50,000 in the 1997 and subsequent crop years.

The Senate Amendment is comparable to the House provision, except it does not apply beyond the 1997 crop year.

The Conference Substitute adopts the House provision with an amendment to extend the payment limit only through 1998.

Provisions Necessary to the Operation of the Program. (H.1110(c); S. 1110(c); CR.1110))

The House Bill extends the honey price support program through the 1998 crop year.

The Senate Amendment extends the honey price support program through the 1997 crop year.

The Conference Substitute adopts the House provision.

Marketing Assessment. (H.1110(d); CR.1110(4))

The House Bill amends section 207(i) of the '49 Act to eliminate the honey marketing assessment beginning in crop year 1994.

The Senate Amendment contains no similar provision.

The Conference Substitute adopts the House provision.

WOOL and MOHAIR (H.1111; S.1111; CR.1111)

Payment Limitations. (H.1111(a); S.1111(a); CR.1111(2))

The House Bill amends section 704(b) of the National Wool Act of 1954 to reduce the amount of incentive payments that a person may receive to $125,000 in the 1994 marketing year, to $100,000 ****1103*414** in the 1995 marketing year, $75,000 in

the 1996 marketing year, and $50,000 in the 1997 and subsequent marketing years.

The Senate Amendment is comparable to the House provision except it does not apply beyond the 1997 marketing year.

The Conference Substitute adopts the Senate provision.

Marketing Charges. (H.1111(b); S.1111(d); CR.1111(3))

The House Bill amends section 706 of the National Wool Act of 1954 to reduce outlays by prohibiting the Secretary from deducting specified marketing charges in determining net sales proceeds for shorn wool and shorn mohair.

The Senate Amendment is identical to the House provision, except for technical differences.

The Conference Substitute adopts the Senate provision.

Provisions Necessary to the Operation of the Program. (H.1111(c); S.1111(e)(2); CR.1111(1))

The House Bill extends the price support program for wool and mohair through the 1998 marketing year.

The Senate Amendment extends the price support program for wool and mohair through the 1997 marketing year.

The Conference Substitute adopts the Senate provision.

Marketing Assessment. (H.1111(d); S.1111(c); CR.1111(2)(B))

The House Bill amends section 704(c) of the National Wool Act of 1954 to eliminate the wool and mohair marketing assessment beginning with the 1993 marketing year.

The Senate Amendment is identical to the House provision, except for technical differences.

The Conference Substitute adopts the Senate provision.

Policy of Congress. (H.1111(e)(1))

The House Bill amends section 702 of the National Wool Act of 1954 to strike the reference to wool as a strategic commodity and to strike the finding that the wool promotion policy is a measure of national security.

The Senate Amendment contains no similar provision.

The Managers agreed to include the House provision in the Conference Substitute, however, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Cap on Price Support for Shorn Wool; Technical Deletion of Obsolete Language. (H.1111(e)(2); S.1111(e)(1) & 1111(b))

The House Bill amends section 703(b)(3) of the National Wool Act of 1954 to eliminate obsolete language which does not affect the current calculation of price support for wool.

The Senate Amendment revises section 703(b)(3) of the National Wool Act of 1954 to prohibit the support price for shorn wool for the 1994 through 1997 marketing years from exceeding the support price for the 1993 marketing year. This section also eliminates obsolete language.

Section 1111(e)(1) also strikes “1982” and inserts “1990”, which is consistent with the House provision.

The Managers agreed to include the House provision, however, the provision was subsequently deleted from the Conference

Substitute in order to comply with the Byrd Rule.

Advertising and Sales Promotion Program. (H.1111(e)(3))

****1104*415** The House Bill adds a new section 708(b) of the National Wool Act of 1954 to require that funds of the Commodity Credit Corporation be used to provide funds for a wool and mohair promotion program if funding for a marketing year would be less than was available in the previous marketing year.

The Senate Amendment contains no similar provision.

The Conference Substitute deletes the House provision.

Conforming Amendments To Extension of Commodity Titles (H.1112)

The House Bill extends all other provisions of titles I–XI of the 1990 Farm Bill through 1998. This includes, among others, programs such as Deficiency Payments, the Acreage Base and Yield System, the National Cost of Production Standards Review Board, and the Options Pilot Program.

The Senate Amendment contains no similar provision.

The Managers agreed to include the House provisions with an amendment to extend the provisions through 1997. However, the provisions were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

SUBTITLE B–RESTRUCTURING OF RURAL ELECTRIFICATION LOAN PROGRAMS

Restructuring of Certain Loan Programs. (H.1201; S.1201)

The House Bill amends sections 2, 4, 7, 13, 18, 203, 305, 307, 309, 314, 406, and 408 of, adds new sections 306C and 306D to, the REAct, and makes certain amendments to the Consolidated Farm and Rural Development Act, to restructure the Rural Electrification Administration (REA) direct and insured electric and telephone loan programs, to target assistance provided under such programs, to reduce the cost of the programs, and to delete the current authority for the REA to make electric and telephone loans at 2% interest rates.

The Senate Amendment is similar to the House provision except that it does not amend section 7 of the REAct, it omits certain provisions of the House bill, and includes other provisions not included in the House bill, in addition to a number of other technical differences.

The Managers agreed to resolve the provisions of Subtitle B of title I to include those provisions indicated below. However, a number of these items were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Insured Electric Loans (H.1201(a)(1); S.1201(a)(1))

The House Bill amends section 305(c) of the REAct to establish a hardship loan program under which the Administrator is directed to make electric loans and charge interest of 5% annually, if–

(1) the average revenue per kilowatt-hour sold by the applicant is not less than 120 percent of the State average;

(2) the average residential revenue per kilowatt-hour sold by the applicant is not less than 120 percent of the State average; and

(3) the average per capita income (or median household income) of residents in the service area of the applicant is less than the State average.

****1105*416** New section 305(c)(1)(B) authorizes the Administrator to make 5% hardship loans to applicants that, in the

discretion of the Administrator, have experienced a severe hardship. Section 305(c)(1)(C) provides that no hardship loan may be made to an applicant if the average number of consumers per line mile of the system exceeds 17 and the purpose of the loan is to furnish or improve service to an urban area.

New section 305(c)(2) establishes a municipal rate loan program under which the Administrator is directed to make electric loans and charge interest at a rate equal to the current market yield on municipal bonds of similar maturities. Section 305(c)(2) limits the interest that may be charged under the program to 7% if–

(1) the average number of consumers does not exceed 5.5 per line mile; or

(2)(A) the average revenue per kilowatt-hour sold by the applicant is not less than the State average; and

(B) the average per capita income (or median household income) of residents in the service area of the applicant is less than the State average.

Section 305(c)(2) provides that the program's 7% interest rate cap will not apply to certain borrowers with more than 17 consumers per line mile if the purpose of the loan is to furnish or improve electric service to consumers in an urban area. Section 305(c)(2) also makes available a prepayment option to borrowers. Section 305(c)(3) prohibits the Administrator from requiring that borrowers of hardship loans obtain credit elsewhere as a condition of obtaining such REA electric loan.

Section 305(c)(2)(C)(ii) allows borrowers to select the term of their loan repayment, up to 35 years.

The Senate Amendment is identical to the House provision except–

(1) for technical differences; and

(2) that section 305(c)(2)(C)(ii) of the Senate provision allows borrowers to select the term of their loan repayment, up to 35 years, subject to the REA Administrator's authority to prohibit an applicant from selecting a term that would result in the total term of the loan being greater than the useful life of the assets being financed.

The Managers agreed to adopt the Senate provision with a number of technical amendments. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Insured Telephone Loans. (H. 1201(a)(1); S. 1201(a)(1))

The House Bill amends section 305(d) of the REAct to delete the current authority for the REA to make telephone loans at 2% interest and establishes a multi-leveled telephone loan program.

New section 305(d)(1) establishes a hardship loan program under which the Administrator is directed to make telephone loans and charge interest of 5% annually, if–

(1) the average number of subscribers per line mile in the loan applicant's service are is not more than 4;

(2) the applicant is capable of producing income or margins, before interest payments on the loan applied for, not less ****1106*417** than that necessary to service interest requirements on all outstanding debt and not more than three times such interest service requirements; and

(3) the Administrator has approved a telecommunications modernization plan for the State and, if a borrower-developed plan, the applicant is a participant in the plan.

New section 305(d)(1)(B) authorizes the Administrator to waive the income requirement in (2) above, under certain emergencies or in the case of severe hardship. Section 305(d)(1)(C) allows applicants to request a Rural Telephone Bank loan if funds for the hardship loan program are exhausted.

New section 305(d)(2) establishes a cost-of-money loan program under which the Administrator is directed to make telephone loans and charge interest at a rate equal to the current cost of money to the Federal Government and limits the interest that may be charged under the program to 7% if–

(1) the applicant's average number of subscribers does not exceed 15 per line mile;

(2) the applicant is capable of producing income or margins, before interest payments on the loan applied for, not less than that necessary to service interest requirements on all outstanding debt, and not greater than five times such interest service requirements; and

(3) the Administrator has approved a telecommunications modernization plan for the State and, if a borrower-developed plan, the applicant is a participant in the plan.

New section 305(d)(2)(B) requires the Administrator to offer cost-of-money loan program applicants the option to include in the loan agreement the right of the applicant to prepay.

New section 305(d)(2)(C) requires the Administrator, on the request of a cost-of-money loan program applicant, to–

(1) consider the application to be for a Rural Telephone Bank (RTB) loan; and

(2) if the applicant is eligible for such an RTB loan, make a cost-of-money loan to the applicant concurrently with an RTB loan, in specified amounts from each program.

New section 305(d)(2)(D) allows applicants to request an REA loan guarantee if funds for the cost-of-money loan program are exhausted.

New section 305(d)(3) requires that a telecommunications modernization plan be approved for the State in order for borrowers in the State to be eligible for telephone loans and allows States 6 months after final regulations for the program are promulgated to develop the plan, after which time the Administrator must approve a plan developed by a majority of the telephone borrowers in the State. New section 305(d)(3) also establishes criteria for the modernization plan and prohibits the disapproval of the plan once it has been approved by the Administrator.

The Senate Amendment is identical to the House provision except–

(1) for technical differences;

(2) section 305(d)(1)(A)(ii) as added by the Senate provision requires an applicant for a loan to be capable of producing net income or margins, after interest payments on the loan applied ****1107*418** for, of not less than the amount necessary to service interest requirements on all outstanding debt and not greater than five times such interest service requirements;

(3) section 305(d)(2)(B) requires the Administrator to offer cost-of-money loan program applicants the option to include a prepayment right in the loan agreements, on terms consistent with similar provisions of commercial loans.

(4) that section 305(d)(3)(B)(vi) of the REAct as added by the Senate provision requires that telecommunications modernization plan to provide for such additional requirements for service standards as maybe required by the Administrator; and

(5) that section 305(d)(3)(C) of the REAct as added by the Senate provision provides for a grace period during which loans maybe made to a borrower serving a State that does not have an approved telecommunication modernization plan if the loan is made less than 1 year after the REA Administrator has adopted final regulations to implement the modernization plan requirement.

The Managers agreed to adopt the House provision with a number amendments, including an amendment to exclude from eligibility for telephone loans under the hardship program applicants with an average number of subscribers per mile of line

in the area included in the proposed loan of more than 17. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Rural Telephone Bank Loan Program Purposes. (H. 1201(a)(2)(A); S. 1201(a)(2)(A))

The House Bill amends section 408(a) of the REAct to strike the first and second purposes and to require that RTB loans be made (1) "for the purchase and installation of telephone lines, systems, and facilities (other than buildings used primarily for administrative purposes, vehicles not used primarily in construction, and personal customer premise equipment) directly related to the furnishing, improvement, or extension of rural telecommunications service or the acquisition of a rural telecommunications capability", and (2) for the purchase of class B stock.

The Senate Amendment similarly amends section 408(a), except–

(1) for certain technical differences; and

(2) the Senate provision does not delete purpose (1), as currently included in section 408(a) of the REAct.

The Managers agree to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Rural Telephone Bank Loan Program Eligibility. (H. 1201(a)(2)(B)(i); S. 1201(a)(2)(B)(i))

The House Bill amends section 408(b)(4) of the REAct to provide that the RTB may make a loan to an applicant only if–

(1) the average number of subscribers in the applicant's service area does not exceed 15 per line mile;

(2) The applicant is capable of producing net income or margins, before interest payments on the loan applied for, of not less than that necessary to service interest requirements ****1108*419** on all outstanding debt and not greater than five times such interest service requirements; and

(3) the Administrator has approved a telecommunications modernization plan for the State, and, if a borrower-developed plan, the applicant is a participant in the plan.

The Senate Amendment is identical to the House provision, except–

(1) for technical differences; and

(2) the Senate provision requires an applicant for a loan to be capable of producing net income or margins, after interest payments on the loan applied for, of not less than that necessary to service interest requirements on all outstanding debt and not greater than five times such interest service requirements.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Rural Telephone Bank Loan Prepayments. (H. 1201(a)(2)(B)(ii); S. 1201(a)(2)(B)(ii))

The House Bill amends section 408(b)(8) of the REAct to extend the prepayment authority under such section to allow the prepayment at face value of RTB loans made after the date of enactment of Omnibus Budget Reconciliation Act of 1993 (OBRA '93). The amendment also requires that the RTB must use funds from such prepayments to repay obligations issued to the U.S. Treasury under section 407(b) of the REAct, and that in repaying such obligations the Governor must first repay the advances bearing the greatest rate of interest.

The Senate Amendment is identical to the House provision, except that the Senate Amendment does not require the RTB to give priority, in repaying obligations issued to the U.S. Treasury with funds from prepayments, to the repayment of advances

bearing the greatest rate of interest.

The Managers agreed to adopt the House provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Rural Telephone Bank–Concurrent Loan Authority. (H. 1201(a)(2)(B)(iii); S. 1201(a)(2)(B)(iii))

The House Bill adds new paragraphs (9) and (10) to section 408 of the REAct that require the Governor of the RTB, on the request of an RTB loan applicant, to–

(1) consider the application to be for a Rural Telephone Bank (RTB) loan under section 408 and for a REA cost-of-money telephone loan under section 305(d)(2) of the REAct; and

(2) if the applicant is eligible for such a REAct loan, make a cost-of-money loan to the applicant concurrently with an REA loan, in specified proportions from each program.

The Senate Amendment is identical to the House provision, except for technical differences.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Rural Telephone Bank–Interest Rates. (H. 1201(a)(2)(C))

****1109*420** The House Bill adds a new section 408(e) to the REAct to require that RTB loans and advances made on or after November 5, 1990 must bear an interest rate as determined under section 408 of the REAct. The application of the section is limited to loans obligated after the date of enactment of OBRA '93.

The Senate Amendment contains no comparable provision.

The Managers agreed to adopt the House provision with an amendment to clarify that funds are not authorized under section 408(e) until actually appropriated. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Authorization of Appropriations. (H. 1201(a)(3); S. 1201(a)(3))

The House Bill amends section 314 of the REAct to require that loans be made for the REA electric and telephone programs at the following levels:

(1) Electric hardship loans–$125 million per year through 1998, adjusted for inflation after 1994.

(2) Electric municipal rate loans–$600 million per year through 1998, adjusted for inflation after 1994.

(3) Telephone hardship loans–$125 million per year through 1998, adjusted for inflation after 1994.

(4) Telephone cost-of-money loans–$198 million per year through 1998, adjusted for inflation after 1994.

The Senate Amendment is comparable to the House provision, except for technical differences.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Rule of Interpretation. (H. 1201(a)(4))

The House Bill adds at the end of section 309(a) of the REAct a sentence to clarify that section 309(a) shall not be construed

to make section 408(b)(2) or section 412 applicable to title III of the REAct.

Section 408(b)(2) of the REAct provides, in pertinent part, that all loans made pursuant to the REAct for facilities for telephone systems with an average subscriber density of three or fewer per line mile shall be made under section 201 of the REAct, unless the borrower elects to have such loan made by the RTB. Section 412 prohibits the making of a section 201 loan to any borrower that during the immediately preceding year had a net worth in excess of 20 percent of its assets, unless the Administrator finds that the borrower cannot obtain such a loan from the RTB or from other reliable sources at reasonable rates of interest and terms and conditions.

The Senate Amendment contains no comparable provision.

The Managers agreed to adopt the House provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Demand Side Management Programs. (H. 1201(a)(5)(A) & (B); S. 1201(a)(4)(A) & (B))

The House Bill amends section 2 and 4 of the Rural Electrification Act of 1936 (REAct) to clarify that the rural electric loan program may be used to furnish and improve electric service, and to ****1110*421** assist electric borrowers to implement demand side management and energy conservation programs.

The Senate Amendment is identical to the House provision, except for technical differences.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Protection Against Municipal Condemnation. (H. 1201(a)(5)(C))

The House Bill amends section 7 of the REAct to extend the provisions of section 306(b) of the Consolidated Farm and Rural Development Act (regarding rural water associations) to REAct rural electric and telephone borrowers. The provision would also prohibit municipal and other governmentally-owned utilities from curtailing or limiting the ability of rural electric and telephone borrowers from continuing to service their current territories.

The Senate Amendment contains no comparable provision.

The Managers agreed to adopt the House provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Rural Area Definition–Electric Program. (H. 1201(a)(5)(D); S. 1201(a)(4)(C))

The House Bill amends section 13 of the REAct to change the definition of “rural area”, for purposes of titles I, III, IV, and V of the Act, to mean those areas not within an urban or urbanized area, as defined by the Bureau of the Census.

The Senate Amendment is similar to the House provision, except that it defines rural area to mean those areas not within an urban area, as defined by the Bureau of the Census.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Rural Area Definition–Title II Telephone Program. (H. 1201(a)(5)(E); S. 1201(a)(4)(D))

The House Bill amends section 203(b) of the REAct to change the definition of “rural area” for purposes of title II of the Act to mean those areas not within a city, village, or borough in excess of 5,000 inhabitants.

The Senate Amendment is identical to the House provision.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Miscellaneous Amendments–Title III. (H. 1201(a)(5)(F); S. 1201(a)(4)(E) & (F))

The House Bill amends section 307 of the REAct to prohibit the Administrator from requesting that an electric loan applicant apply for and accept a loan from other sources in an amount exceeding 30 percent of the credit needs of the applicant.

The Senate Amendment is identical to the House provision. Section 1201(a)(4)(E) makes technical amendments to section 305 of the REAct not included in the House provision.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

RTB Investments. (H. 1201(a)(5)(G); S. 1201(a)(4)(G))

****1111*422** The House Bill adds a new subsection (i) to section 406 of the REAct to authorize the RTB to invest funds from the RTB Equity Account in obligations of the United States.

The Senate Amendment is identical to the House provision.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Loan Origination Fee Prohibition. (H. 1201(a)(5)(H); S. 1201(a)(4)(H))

The House Bill adds a new subsection (b) to section 18 of the REAct to prohibit the Administrator and the Governor from charging any fee or charge not expressly provided for in the Act in connection with any loan under the Act.

The Senate Amendment is similar to the House provision, except that in new subsection (b) of section 18, it prohibits the charging of fees in connection with any loan made or guaranteed under the Act.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Consultants–Generally. (S. 1201(a)(4)(H))

The House Bill contains no comparable provision.

The Senate Amendment adds a new subsection (c) to section 18 of the REAct that–

(1) in new paragraph (1), authorizes the Administrator to permit a borrower to voluntarily provide funds for use by the Administrator in obtaining technical, engineering, legal or other assistance required in the review of an application for a loan or loan guarantee;

(2) in new paragraph (2), requires the Administrator to ensure that a consultant hired for such a purpose must have no financial or other conflict of interest in the outcome of the application of the borrower;

(3) in new paragraph (3), prohibits the Administrator from requiring a borrower to pay consultancy costs as a condition of processing a loan application, without the consent of the borrower;

(4) in new paragraph (4), authorizes the Administrator to enter into such contracts, grants, or cooperative agreements as are necessary to carry out section 18 of the REAct, without regard to any requirements for competition, section 3709 of the

Revised Statutes, and section 3324 of title 31, United States Code; and

(5) in new paragraph (5), provides that nothing in the new subsection (c) may limit the Administrator's authority to retain consultants from funds otherwise made available to the Administrator.

The Managers agreed to adopt the Senate provision with an amendment to delete the clause in paragraph (4) that authorizes the Administrator to enter into such contracts "without regard to any requirements for competition, section 3709 of the Revised Statutes, and section 3324 of title 31, U.S.C." However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

****1112*423** Distribution Borrower Eligibility; Administrative Prohibitions. (H. 1201(a)(5)(I); S. 1201(a)(4)(I))

The House Bill adds a new section 306C to the REAct to provide that–

(1) a distribution borrower not in default on the repayment of any loan made or guaranteed under the Act shall be eligible for a loan, loan guarantee, or lien accommodation under title III of the REAct; and

(2) for the purpose of determining such eligibility, a default by a borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower.

Section 1201(a)(5)(I) also adds a new section 306D to the REAct to prohibit the REA Administrator from–

(1) requiring prior approval of;

(2) imposing any requirement, restriction, or prohibition with respect to the operation of; or

(3) denying or delaying the granting of a lien accommodation to, any electric borrower whose net worth exceeds 110 percent of the outstanding principal balance on all loans made or guaranteed to the borrower by the Administrator.

The Senate Amendment is similar to the House provision, except that, with regard to new section 306C, it also provides that a default by a borrower from which the distribution borrower purchases wholesale power shall not–

(1) reduce the eligibility of the distribution borrower for assistance under the REAct; or

(2) be the cause, directly or indirectly, of imposing any requirement of restriction on the borrower as a condition of assistance, except as necessary to implement a debt restructuring agreed on by the power supply borrower and the Government.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Water and Waste Loan Eligibility. (H.1201(b); S.1021(b))

The House Bill amends section 306(a)(1) of the Consolidated Farm and Rural Development Act to expand the eligibility for water and waste loans under section 306(a)(1) to include any borrower to whom a loan has been made under the REAct.

The Senate Amendment is identical to the House provision, except for technical differences.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Regulations. (H.1201(c); S.1201(d))

The House Bill requires the Administrator of the Rural Development Administration, not later than October 1, 1993, to issue

interim final rules to implement the amendments made by section 1201.

The Senate Amendment requires that interim final rules to implement the amendments made by section 1201 must be issued not later than October 1, 1993 by–

****1113*424** (1) the REA Administrator in the case of amendments to programs administered by the Administrator; and

(2) the Rural Development Administration Administrator in the case of amendments to programs administered by the Administrator.

The Managers agreed to adopt the Senate provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Transfer of REAct Administration to RDA. (H.1202(a))

The House Bill amends section 1 of the REAct to provide that the Administrator of the Rural Development Administration shall carry out the REAct under the supervision of the Secretary of Agriculture, and makes a number of conforming amendments.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Other REA Functions Transferred to RDA. (H.1202(b))

The House Bill adds a new subsection (g) to section 364 of the Consolidated Farm and Rural Development Act to–

(1) transfer the rights, interests, obligations, and duties of the REA Administrator to the RDA Administrator;

(2) provide that any reference in law to the REA be deemed to be a reference to the RDA;

(3) clarify that the transfer of such authorities shall not abate or effect any proceedings involving the REA; and

(4) transfer all REA personnel to the RDA.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Structure of the Rural Development Administration. (H. 1202(c))

The House Bill adds a new subsection (h) to section 364 of the Consolidated Farm and Rural Development Act to–

(1) require the appointment of a Deputy Administrator for rural utilities to administer the programs authorized under the REAct and the RDA ruralwater and waste disposal program; and

(2) authorize the appointment of 4 Assistant RDA Administrators responsible for electric; telephone; water and sewer; and rural utility engineering, management, and accounting programs and functions.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Rural Development Program Eligibility. (H. 1202(d); S. 1201(c))

****1114** The House Bill adds a new subsection (i) to section 364 of the Consolidated Farm and Rural Development Act to provide that a borrower of a loan or loan guarantee under the REAct shall be eligible for assistance under all programs administered by the RDA, and to require the RDA Administrator to encourage and facilitate the full participation of REA borrowers in RDA programs.

The Senate Amendment is identical to the House provision, except for technical differences.

The Managers agreed to adopt the House provision. However, the provision was deleted from the Conference Substitute in order to comply with the Byrd Rule.

Technical Assistance Unit. (H. 1202(d))

***425** The House Bill adds a new subsection (j) to section 364 of the Consolidated Farm and Rural Development Act to require the RDA Administrator to provide all RDA program borrowers advice and guidance on community and economic development activities. Section 1202(d)(2) repeals section 11A of the REAct.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Regulations; Electric Loan Prepayment. (H. 1202(e); CR. 1201)

The House Bill requires the RDA Administrator, not later than January 1, 1994, to issue interim final rules to implement the amendments made by section 1202.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

The Managers agreed to adopt the House provision. However, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

The Conference Substitute also adopts an amendment included in section 1201 of the Substitute to provide for the refinancing of Federal Financing Bank electric loans made under section 306 of the Rural Electrification Act.

The adoption of new section 306C shall not be construed to affect the ability of rural electric cooperatives to prepay without penalty outstanding Rural Electrification Act (REA) guaranteed loans from the Federal Financing Bank (FFB) outstanding on July 2, 1986 under REA section 306A (whereby, a cooperative can prepay without penalty so long as the Secretary of the Treasury does not determine that the prepayment will have an adverse effect on the operation of the FFB) and Public Law No. 100–202 (whereby, a cooperative can prepay without penalty based only on the affirmative approval of the Secretary of the Treasury).

SUBTITLE C–AGRICULTURAL TRADE

Acreage Reduction Requirements. (H. 1112(j); S. 1402; CR. 1301)

Minimum ARPs. (S. 1402(a); CR. 1301(a))

The House Bill contains no comparable provision.

The Senate Amendment amends section 1104 of the Omnibus Budget Reconciliation Act 1990 to eliminate the minimum set-aside requirements under the Acreage Reduction Programs for the 1991 through 1995 crops of grain sorghum and barley.

The Conference Substitute adopts the Senate provision.

Waiver Authority. (H:1112(j); S:1402(b); CR.1301(b))

The House Bill extends certain provisions of section 1302 of the OBRA–90 which authorize the Secretary to waive any minimum ARP for the 1993 through 1998 crops of wheat, feed grains, upland cotton, or rice.

The Senate Amendment amends section 1302 of the OBRA–90 to eliminate the "GATT Trigger" authority to waive minimum ARPs or agricultural spending cuts required by OBRA–90.

The Conference Substitute adopts the Senate provision.

The Omnibus Budget Reconciliation Act of 1990 (OBRA–90) gives the Secretary the authority to waive the minimum acreage reduction program (ARP) rates specified in law, because no GATT agreement was reached by dates specified in OBRA–90.

****1115*426** Title I eliminates the authority to waive minimum ARPs previously specified in law, but retains "GATT trigger" language with regard to wheat and feed grain marketing loans and spending on export programs.

Eliminating the "GATT trigger" authority has the effect of reestablishing minimum ARPs for wheat and corn put in place by OBRA–90. However, these minimum ARPs do not apply if market conditions indicate stock-to-use levels would fall below triggers established in OBRA–90 (20 percent for corn, and 34 percent for wheat). The Managers intend that the Secretary look ahead to the estimated stock-to-use ratio for the year in question. As a result, the Secretary should have adequate discretion to set ARPs that can properly respond to an expected small crop or high export demand.

The Managers strongly intend that the minimum ARPs established for the 1991 through 1995 period by OBRA–90 should not be assumed to apply to the 1996 and subsequent crops.

The Managers are aware of the mandate contained in section 1302 of the OBRA–90, requiring the Secretary of Agriculture to increase by $1 billion for the period beginning October 1, 1993, and ending September 30, 1995, the level of export promotion programs, since no agricultural trade agreement was reached under the General Agreement on Tariffs and Trade (GATT) by June 30, 1992. The Managers will aggressively pursue fulfillment of this mandate.

Marketing Loans for Wheat and Feed Grains. (H:1112(j))

The House Bill also extends the marketing loan requirement through 1998.

The Senate Amendment contains no comparable provision.

The Managers agreed to adopt the House provision, however, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

MARKET PROMOTION PROGRAM (H:1402; S:1502; CR.1302).

Maximum Expenditures Under the Market Promotion Program. (H:1401(a); S:1401(a); CR.1302(a))

The House Bill amends section 211(c)(1) of the Agricultural Trade Act of 1978 to reduce the minimum and the maximum amount of funds made available for the Market Promotion Program to $147,734,000 for each of the fiscal years 1994 through 1998.

The Senate Amendment amends subsection 211(c) of the Agricultural Trade Act of 1978 to reduce the funding level for fiscal years 1994 and 1995 for the Market Promotion Program to equal the sum of–

(A) not less than $33,000,000 for–

(1) branded promotion activities of small-sized commercial entities and medium-sized commercial entities that are beginning exporters; and

(2) non-branded promotion that only benefits small-sized commercial entities, medium-sized commercial entities, small-sized agricultural producers, and medium-sized agricultural producers; and

(B) not less than $77,000,000 for program activities by any eligible trade organization, including organizations specified above.

****1116*427** The Secretary has discretion to determine which commercial entities are beginning exporters; and which agricultural producers are small-sized or medium-sized.

The Conference Substitute adopts the Senate provision with an amendment to section 211(c)(1) of the Agricultural Trade Act of 1978 to reduce the minimum funding authorization for the Market Promotion Program established in section 203 of such Act (hereinafter the "program") to $110,000,000 for each of the fiscal years 1994 through 1997.

Extension of program. (H:1401; S:1401; CR.1302(a))

The House Bill extends funding for the Market Promotion Program through fiscal year 1998.

The Senate Amendment does not extend the funding level for the Market Promotion Program beyond fiscal year 1995.

The Conference Substitute adopts the House provision with an amendment to extend funding for the Market Promotion Program through fiscal year 1997.

Definitions. (S:1401(b))

The House Bill contains no comparable provision.

The Senate Amendment amends section 102 of the Agricultural Trade Act of 1978 to define a commercial entity as a cooperative or private organization that exports or promotes an agricultural commodity, including an entity that controls, is controlled by, or is under common control with such a cooperative or private organization. The section also defines a small-sized commercial entity as having not more than 50 employees, and a medium-sized commercial entity as having between 51 and 500 employees.

The Conference Substitute deletes the Senate provision.

Secretarial Actions to Achieve Savings. (CR. 1302(b))

Section 1302(b) of the Conference Substitute includes several actions to enable the Secretary of Agriculture (the "Secretary") to achieve the savings required by this section in the program as follows:

Requirement of Unfair Trade Practices

Section 1302(b)(1) amends section 203(c)(2) of such Act to require the Secretary to provide assistance under the program only to counter or offset the adverse effects of an unfair trade practice of a foreign country such as an unfair subsidy or import quota, or another unfair trade practice; except the Secretary may waive this requirement in the case of activities conducted by small entities operating through regional State-related organizations. The Managers agree that the Secretary may offset unfair trade practices by targeting markets other than those in which the unfair trade practice exists.

Guidelines

Section 1302(b)(2) provides that the Secretary should implement changes in the program beginning with fiscal year 1994 in order to improve the effectiveness of the program and to meet the following objectives:

****1117*428** Priority for Small Entities

Section 1302(b)(2)(A) provides that the Secretary should give priority under the branded program to small entities. The Secretary in determining what is a small entity for reason of granting priority funding should refer to the Standard Industrial Classification (SIC) Codes and Size Standards (13 CFR 121.601) issued by the Small Business Administration. Where the size or annual sales data are not listed in the SBA regulation, the Secretary should refer to the SIC for other agricultural products.

Graduation

Section 1302(b)(2)(B) provides that the Secretary should not provide assistance under the program to promote a specific branded product in a single market for more than 5 years unless the Secretary determines that further assistance is necessary in order to meet the objectives of the Program. The Managers agree that the Secretary may provide assistance for more than 5 years where necessary in order to meet the objectives of the program; for example, small entities beginning to export. The Secretary may terminate assistance in less than 5 years if warranted.

Contribution Level

Section 1302(b)(2)(C) provides that the Secretary should require a minimum contribution level of 10 percent from an eligible trade organization that receives assistance for nonbranded promotion, and that the Secretary may increase the contribution level in any subsequent year that an eligible trade organization receives assistance for nonbranded promotion. The Managers intend that the Secretary should take into account the ability of participants to increase their contribution beyond the minimum contribution.

Additionality

Section 1302(b)(2)(D) provides that the Secretary should require each participant in the program to certify that any federal funds received supplement, but do not supplant, private or third party participant funds or other contributions to program activities. The Managers agree that the Secretary should conduct spot checks to ensure compliance with this requirement, and may assess penalties for false certification, consistent with compliance provisions in section 402 of the Agricultural Trade Act of 1978 (7 U.S.C. 5662). Also, the Secretary may take into account marketing strategies, including planned variations in expenditures from year to year in various countries, market and crop conditions, and other factors, in implementing this requirement.

Independent Audits

Section 1302(b)(2)(E) provides that if, as a result of an evaluation or audit of activities of a participant under the program, the Secretary determines that a further review is justified in order to ensure compliance with the requirements of the program, the Secretary should require the participant to contract for an independent audit of the program activities, including activities of any subcontractor. The Managers agree that any costs of an evaluation or audit required by the Secretary under this paragraph shall be solely ****1118*429** the responsibility of the participant, and not paid with program funds.

Tobacco ban

Section 1302(b)(3) requires that no funds made available under the program may be used for activities to develop, maintain, or expand foreign markets for tobacco.

Regulations

Section 1302(c) requires the Secretary to issue regulations to implement this section and the amendment made by this section not later than 90 days after enactment of this Act.

END-USE CERTIFICATES (S: 1403)

In General. (S: 1403(a))

The House Bill contains no comparable provision.

The Senate Amendment amends the Agricultural Trade Act of 1978 by adding a new section 404 to require end-use certifications on imported wheat and barley.

The Conference Substitute deletes the Senate provision.

The Managers agreed to adopt a substitute provision for section 1403 of the Senate Amendment, however, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

The deleted provision was a free-standing provision that established an end-use requirement for the following: (1) wheat imported into the United States from any foreign country or instrumentality that requires, as of the effective date of this section, end-use certificates on United States-produced wheat; and (2) barley imported into the United States from any foreign country or instrumentality that requires, as of the effective date of this section, end-use certificate on United States-produced barley. The purpose of the end-use requirements was to ensure that foreign agricultural commodities are not used in United States export programs.

Definitions. (S:1403(a))

The House Bill contains no comparable provision.

The Senate Amendment defines “covered foreign commodity” (imported wheat and barley) and “end-use certificate”.

The Conference Substitute deletes the Senate provision.

Purpose. S:1403(a))

The House Bill contains no comparable provision.

The Senate Amendment requires the Secretary to improve monitoring of the end use of the covered foreign commodity to ensure that agricultural exports under agriculture trade programs are entirely produced in the United States.

The Conference Substitute deletes the Senate provision.

Requirement of Certificate. (S:1403(a))

The House Bill contains no comparable provision.

The Senate Amendment requires the Commissioner of Customs to prohibit the entry of the covered foreign commodity unless the importer presents an end-use certificate consistent with this section.

The Conference Substitute deletes the Senate provision.

Maintenance of Certification. (S:1403(a))

The House Bill contains no comparable provision.

****1119*430** The Senate Amendment requires that the end-use certificate be maintained with the covered foreign commodity until it reaches its end use.

The Conference Substitute deletes the Senate provision.

Certification. (S:1403(a))

The House Bill contains no comparable provision.

The Senate Amendment requires importers or consignees of covered foreign commodities to certify every quarter to the Secretary of Agriculture whether those covered foreign commodities have been used or transferred.

The Conference Substitute deletes the Senate provision.

Compliance. (S:1403(a))

The House Bill contains no comparable provision.

The Senate Amendment ensures that the compliance requirements of section 402 of that Act apply to importers or consignees subject to this section.

The Conference Substitute deletes the Senate provision.

Effective Date. (S:1403(b))

The House Bill contains no comparable provision.

The Senate Amendment states that the amendments made by this section are effective 120 days after the date of enactment.

The Conference Substitute deletes the Senate provision.

EXPORTS OF VEGETABLE OIL. (S:1404)

The House Bill contains no comparable provision.

The Senate Amendment provides a sense of Congress that the Secretary of Agriculture should continue to aggressively promote the export of vegetable oil through the Export Enhancement Program and other available authorities.

The Managers agreed to adopt the Senate provision, however, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

SUBTITLE D–MISCELLANEOUS

ADMISSION, ENTRANCE, AND RECREATION FEES (H:1402; S:1503; CR.1401)

Authority to impose fees. (H:1402(a); S:1503(b)(1), (2); CR.1401(b))

The House Bill authorizes the Secretary of Agriculture to charge–

(a) entrance or admission fees at National Monuments, National Volcanic Monuments, National Scenic Areas, and areas of concentrated public use administered by the Secretary; and

(b) recreation use fees at lands administered by the Secretary for specialized outdoor recreation sites, equipment, services,

or facilities (including visitors' centers, picnic tables, boat launching facilities, or campgrounds).

****1120** The Senate Amendment is identical to the House provision, except for technical differences.

The Conference Substitute adopts the Senate provision.

Amount of fees. (H:1402(b); S:1503(c); CR.1401(c))

The House Bill clarifies that the amount of the admission, entrance, and recreation use fees will be determined by the Secretary.

***431** The Senate Amendment is identical to the House provision, except for technical differences.

The Conference Substitute adopts the Senate provision.

Definitions. (H:1402(c); S:1503(a); CR.1401(a))

The House Bill defines the terms "area of concentrated public use" "boat launching facility", "campground", and "Secretary" for purposes of section 1402.

The Senate Amendment is identical to the House provision, but for technical differences.

The Conference Substitute adopts the Senate provision.

STEWARDSHIP INCENTIVE PROGRAM. (S:1503(b)(2))

The House Bill contains no comparable provision.

The Senate Amendment requires the Forest Service to reimburse the Agricultural Stabilization and Conservation Service for administrative costs of the Stewardship Incentive Program for actual costs of services, except that these costs shall not exceed 10 percent of total annual appropriations for the program.

The Managers agreed to include the Senate provision, however, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM AMENDMENTS (H:1404; S:1502; CR.1402)

Conservation Reserve Program. (H:1404(a)(1); S:1502(1) and (2); CR.1402(b))

The House Bill amends section 1231(d) of the Food Security Act of 1985 (FSA of 1985) to limit the enrollment of land in the Conservation Reserve Program to not more than 38 million acres through calendar year 1995 and to direct the Secretary to reserve 1 million acres for enrollment in the program during calendar year 1995.

The Senate Amendment is identical to the House provision, but for technical differences.

The Conference Substitute adopts the Senate provision.

Wetlands Reserve Program. (H:1404(a)(2); S:1502(3); CR.1402(c))

The House Bill amends section 1237(b) of the FSA of 1985 to require the Secretary to enroll in the Wetlands Reserve Program not less than 330,000 acres by the end of calendar year 1995, and not less than 975,000 acres through the year 2000.

The Senate Amendment is identical to the House provision, but for technical differences.

The Conference Substitute adopts the Senate provision.

Use of Commodity Credit Corporation. (H:1404(b); S:1502(4); CR.1402(d))

The House Bill amends section 1241 of the FSA of 1985 to require the Secretary to use the funds of the Commodity Credit Corporation to fund conservation programs in subtitle D of such Act.

The Senate Amendment is identical to the House provision, but for technical differences.

The Conference Substitute adopts the Senate provision with an amendment to clarify that Commodity Credit Corporation funds are to be used for the Conservation Reserve Program and Wetlands Reserve Program only, however the provision was subsequently deleted ****1121*432** from the Conference Substitute in order to comply with the Byrd Rule.

CROP INSURANCE (H:1405(a), (b), (c); CR. 1403))

Levels of Coverage. (H:1405(a))

The House Bill adds a new section 508B to the Federal Crop Insurance Act (FCIA).

New section 508B(a) directs the Federal Crop Insurance Corporation (FCIC) to make available four levels of insurance coverage to producers of agricultural commodities based upon the percentage loss in yields.

Level I coverage is available only to producers who do not purchase insurance at coverage levels II, III, or IV. Coverage level I must provide indemnification to producers for losses in yields to the extent such losses exceed 65 percent of the determined yield of the commodity for the farm.

Level II, III, and IV must provide indemnification to producers for losses in yield to the extent these losses exceed 50, 35, and 25 percent, respectively, of the average proven yield for the commodity for the farm based on the actual documented production history, or, if such records are unavailable or insufficient, on an approved adjusted recorded or appraised yield for a representative period.

New FCIA section 508B(b) defines the term “determined yield” as ASCS yield for program crops and recorded or appraised average yield, as adjusted, for other commodities.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

ASCS Yields. (H:1405(a))

The House Bill provides that a producer may elect to use the ASCS yield for a crop of a commodity for a farm rather than the determined yield for the farm for coverage levels II, III, and IV, subject to an additional premium for the coverage. The FCIC may not provide any premium subsidy or administrative subsidy for such additional coverage.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Price Elections. (H:1405(a))

The House Bill provides that the FCIC must establish a high and low price election for each commodity for which insurance is available. The high price may not be less than the projected market price of the commodity. Level I coverage may be offered only at the low price election. Levels II, III and IV shall be offered at a price election which is equal to or less than the high price election.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Information/Annual Reports. (H:1405(a))

The House Bill provides that the FCIC must provide producers with adequate insurance-related information at the time of application. New section 508B(f) requires FCIC to file annual reports to Congress.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Premium Subsidies. (H:1405(b))

The House Bill revises paragraph (3) of FCIA section 508(e) to require the FCIC to pay the full premium for each producer Level ****1122*433** I coverage, and, for Levels II, III, and IV, a premium equal to the amount that would have been paid under Level I coverage.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Reinsurance. (H:1405(c))

The House Bill revises subsection (h) of FCIA section 508 to direct the FCIC to provide reinsurance to private and governmental insurers, subject to principles under the Office of Federal Procurement Policy Act (41 U.S.C. 401, et seq.).

Payment of operating and administration costs authorized, but for coverage level I policies, insurers will be paid only $50 per policy, of which $25.50 shall be paid by the policyholder at the time of application and $24.50 shall be paid by the corporation.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Actuarial Soundness. (S:1501(a); CR. 1501(a))

The House Bill contains no comparable provision.

The Senate Amendment adds a new subsection (n) to FCIA section 506 which requires the FCIC to take such actions as are necessary to improve the actuarial soundness of Federal multiperil crop insurance to achieve, on and after October 1, 1995, an overall loss ratio of not greater than 1.1. These steps include those discussed under items (117), (118), (119) and (120), below.

The Conference Substitute adopts the Senate provision.

Actual Production History Records. (S:1501(a); CR. 1403(a))

The House Bill contains no comparable provision.

The Senate Amendment requires that FCIC must institute appropriate requirements for documentation of the actual production history of agricultural producers to establish recorded or appraised yields for Federal crop insurance coverage that

better reflect the associated actuarial risks, except that the FCIC may not carry out this paragraph in a manner that would prevent beginning farmers, as defined by FCIC, from obtaining adequate Federal crop insurance (See item below that describes Conforming Amendments/Implementing Rules).

The Conference Substitute adopts the Senate provision. In so doing, the Managers reiterate the expectation stated in the report of the Senate Committee on Agriculture, Nutrition, and Forestry with respect to this provision that the FCIC, in finalizing plans to go forward with the program outlined in its May 26, 1993 "Informational memorandum" for the 1994 crop years, will make appropriate adjustments to its actual production history (APH) rules to avoid drastic impacts on a producer's insured yield resulting from catastrophic loss during the development of the producer's multi-year history. The Managers stress that the relevant statutory language is intended to be broad enough to accommodate such adjustment.

A possible "catastrophic yield adjustment" was considered in the earlier FCIC Managers' Bulletin MGR–92–056; others have suggested so-called "caps" and "cups" in annual changes to an individual participant's yield. This issue is an important concern to the Managers and to a wide range of program users. A resolution of this issue as part of the package prior to implementation will ****1123*434** greatly enhance the viability of the new rules and their acceptance among farm producers.

The Managers expect that the FCIC will analyze promptly these issues and concerns raised by the APH program outlined in the May 26, 1993 memorandum and appraise them of how it has resolved them before it finalizes its plans and rules for applying that program to the 1994 crop year. Should the FCIC be unable to resolve these issues and concerns on time for implementation for some or all of the 1994 crop year, the Managers expect that the FCIC will delay that implementation temporarily.

Area Yield Pilot Program. (S:1501(a); CR.1403(a))

The House Bill contains no comparable provision.

The Senate Amendment requires that FCIC shall establish in counties, to the extent practicable, a crop insurance option to individual multiperil coverage based on area yields that allows an insured producer to qualify for an indemnity if a loss has occurred in a specified area in which the producer's farm is located.

The Conference Substitute adopts the Senate provision.

Tracking System. (S:1501(a); CR.1403(a))

The House Bill contains no comparable provision.

The Senate Amendment requires that FCIC must create a database that contains the social security account numbers of participating producers and use the numbers to identify producers who are high risk for actuarial purposes and producers who have not documented at least four years of production history, to assess the performance of insurance providers, and for other purposes permitted by law.

The Conference Substitute adopts the Senate provision.

Other Measures Necessary to Achieve a Loss Ratio of 1.1. (S:1501(a); CR.1403(a))

The House Bill contains no comparable provision.

The Senate Amendment requires that FCIC must take other measures authorized by law to improve the actuarial soundness of the Federal crop insurance program while maintaining fairness and effective coverage for producers.

The Conference Substitute adopts the Senate provision.

Conforming Amendments/Implementing Rules. (S:1501(b); CR.1403(b))

The House Bill contains no comparable provision.

The Senate Amendment contains amendments to FCIA sections 508 and 508A to provide FCIC with flexible authority to implement items described above under Actual Production History Records and Area Yield Pilot Program items. Yield coverage shall be offered based on 4-building-to-10 years of actual production history, or, in the absence thereof, not less than 65% of the transition yield.

The Conference Substitute adopts the Senate provision.

Regulations. (S:1501(c)(2); CR.1403(c)(2))

The House Bill contains no comparable provision.

The Senate Amendment requires that not later than 30 days after the date of enactment, the Secretary of Agriculture shall publish for public comment proposed regulations to implement the amendments made by this section.

The Conference Substitute adopts the Senate provision.

Effective Date. (H:1405(d); S:1401(c)(1); CR.1403(c)(1))

****1124*435** The House Bill provides that the amendments made by section 1405 apply beginning with crops to be harvested in 1995.

The Senate Amendment provides that, except as provided by section 1501(c)(2), the new section and the amendments made by it shall become effective on October 1, 1993.

The Conference Substitute adopts the Senate provision.

Consistent with the concern for greater actuarial soundness and the required improvement in overall program loss ratio mandated under this legislation and in order to explore various alternatives to providing risk protection for agricultural producers, the Managers encourage the Federal Crop Insurance Corporation to carry out, beginning in 1994, a pilot program to make available to producers in States (including Minnesota, North Dakota, and Mississippi) revenue insurance under which producers may be indemnified based on their average cost of production. At the conclusion of the pilot program, the Corporation would be expected to evaluate the program and report to Congress thereon.

SENSE OF THE SENATE REGARDING DEFICIT REDUCTION. (S:1504)

The House Bill contains no comparable provision.

The Senate Amendment is a sense of the Senate that farmers should not have to pay more than their fair share necessary to achieve the desired level of deficit reduction, including consideration of any energy or other tax, user fees and reduction in interest rates which affect agriculture, of any budget reduction measure.

The Managers agreed to include the Senate provision in the Conference Substitute, however, the provision was subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

TITLE II–COMMITTEE ON ARMED SERVICES

The House bill contained a provision (sec. 2001) that would provide a full cost of living adjustment (COLA) on a delayed schedule for all nondisabled military retirees. COLAs would be delayed by four months in fiscal year 1994 and by three additional months for each of the next four years. The House provision would exclude survivor benefits and disabled retirees from the COLA delay.

The Senate bill contained a provision (sec. 2001) that would delay COLAs for nondisabled retirees in fiscal years 1994

through 1997 by nine months, from January 1 of each year to October 1. In fiscal year 1998, the COLA would be delayed eight months, from January 1 until September 1. The Senate provision would also exclude survivor benefits and disabled retirees from the delay.

The conferees agree to delay COLAs for nondisabled retirees by three months in fiscal year 1994 and by nine months in fiscal years 1995, 1996, 1997 and 1998. The fiscal year 1994 COLA would be paid on April 1, 1994. COLAs for fiscal years 1995 through 1998 would be paid on October 1. COLA increases would revert to their normal date under current law on January 1, 1999, beginning with the fiscal year 1999 COLA.

COLAs for disabled retirees and for survivor benefits would not be affected by this provision and will continue to be paid at the same dates provided under current law. The COLA delay applies to all members of the uniformed services, including the Coast ****1125*436** Guard and commissioned members of the Public Health Service and the National Oceanic and Atmospheric Administration.

The House bill also contained a provision (sec. 2002) that would freeze military pay in fiscal year 1994 and reduce the amount of the pay raise by one percentage point in fiscal years 1995 through 1998.

The Senate bill contained no similar provision.

The House recedes. The savings in the defense budget that would have resulted from the House provision will be achieved through reductions contained in the National Defense Authorization Act for Fiscal Year 1994.

TITLE III–BANKING AND HOUSING PROGRAM PROVISIONS

SECTION 3001–Depositor Preference

This provision amends the Federal Deposit Insurance Act to give depositors a preference over general and subordinated creditors and shareholders when a receiver distributes assets from failed banks and thrifts. Currently, the FDIC pays depositors on a pro rata basis with general creditors when distributing the assets of a failed national bank or of a state bank or thrift in a state that does not have a depositor preference law. Depositor preference will increase the amount of the distribution to depositors of failed institutions. Because the FDIC is subrogated to the claims of insured depositors, it will increase its recovery and therefore realize a savings under a depositor preference scheme.

Twenty-nine states have depositor preference laws. Under this provision, state laws that govern the distribution of receivership assets for thrifts and state-chartered banks will be preempted if, and to the extent, they are inconsistent with this law.

The House and Senate passed similar provisions to implement depositor preference. However, the House specifically referenced the payment of claims of employees of the failed institution as a priority for payment after depositors have been paid. The Senate is silent on this issue. The House recedes to the Senate on this provision.

By remaining silent on this issue, it is the conferees' intent that the FDIC interpret the depositor preference provision for the payment of administrative expenses of the receiver as including ordinary and necessary expenses of the institution that are unpaid at the time of failure, but only those that the receiver determines are necessary to maintain services and facilities to effect an orderly resolution of the institution. Thus, the conferees intend that the FDIC continue its current practice of paying these expenses prior to paying deposits or other expenses if it determines such payment is required for an orderly resolution of the institution. These expenses are limited to pre-existing obligations of the institution for expenses such as the salaries of employees, utility bills and data processing. Golden parachutes or other expenses that do not preserve the value or the operation of the failed institution in preparation for resolution are not considered administrative expenses of the receiver.

The conferees intend that the FDIC promulgate regulations regarding the meaning of "administrative expenses." Prior to the implementation ****1126*437** of such regulations, it is the conferees' intent that the FDIC continue its current practice of paying these expenses before paying depositors.

The terms of this provision also apply to the RTC and its resolution of institutions.

SECTION 3002–Federal Reserve Surplus Funds

This provision requires the Federal Reserve Board to transfer $106 million in fiscal year 1997 and $107 million in fiscal year 1998 from the surplus funds of Federal Reserve banks to the Treasury. At the end of 1992, the Federal Reserve System had in excess of $3 billion in surplus funds. The Federal Reserve's practice has been to match the dollar amount of its surplus funds with that of its paid in capital. Under this provision, in fiscal years 1997 and 1998, surplus accounts of the Federal Reserve banks are limited to 3% of member banks' paid up capital stock and surplus less the amounts required to be transferred to the Treasury from these accounts by this provision.

The Committee intends that the $213 million to be transferred to the Treasury in fiscal years 1997 and 1998 from the surplus accounts of the Federal Reserve banks be in addition to, and not in any way diminish, the amounts the Federal Reserve Board would otherwise transfer to the Treasury. Additionally, once the funds are transferred to the Treasury from the surplus account, the Federal Reserve is prohibited from replenishing those funds during fiscal years 1997 and 1998.

SECTION 3003–Use of Return Data for Income Verification Under Certain Housing Assistance Programs

GENERAL

Both House and Senate bills contain a provision amending section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, aimed at preventing fraud and abuse in housing programs. The legislation authorizes HUD to utilize income return data, pursuant to the Internal Revenue Code and to verify or cross-match the income of applicants and participants of HUD programs. The differences between the two bills were primarily technical in nature. The conference report contains the Senate provision, as amended.

CONSENT FORMS

The House bill amended section 904(b) of the McKinney Act to give HUD the authority to require applicants and participants of HUD programs that involve initial and periodic review of income (including the Indian Housing Program under title II of the Untied States Housing Act of 1937), to sign a consent form authorizing HUD to request the Commissioner of Social Security and the Secretary of the Treasury to release return information pursuant to the Internal Revenue Code. The Senate bill had a similar amendment to section 904(b), but made no specific reference to "Indian housing programs" in that section. Instead, the Senate bill adds a new section 904(a)(4) of the McKinney Act, defining the term "program ****1127*438** of the Department of Housing and Urban Development" to include "Indian housing programs assisted under title II of the United States Housing Act of 1937." The conference report contains the Senate provision. The sole purpose for the release of information is to verify the applicant's or participant's eligibility or level of benefits.

APPLICANT, PARTICIPANT, AND PUBLIC HOUSING AGENCY PROTECTIONS

The House bill, in a subsection entitled "Applicant and Participant Protections", amended section 904(c)(2)(A) of the McKinney Act to protect applicants for, and recipients of, benefits under HUD programs from improper use of return information. The Senate bill contained a similar provision except that the subsection in the Senate bill was entitled "Applicant, Participant, and Public Housing Agency Protections." The conference report contains the Senate provision. The legislation limits the use of this information to: (1) verification of eligibility for, or level of, benefits; and (2) informing an owner or public housing agency that an applicant's or participant's eligibility for or level of benefits is uncertain, and requesting the verification of income information.

HEARING REQUIREMENT

The House bill amended section 904(c)(2)(C) of the McKinney Act to require that an applicant or participant be given the opportunity to contest findings based on verified information made by the agency or owner at a hearing that provides the basic elements of due process. The Senate chose to subject eligibility and recertification decisions made with information obtained through this program to the same due process and fair hearing requirements which ordinarily apply to these determinations. For this reason, the Senate bill did not contain a similar provision. The conference report adopts the Senate position.

After implementation of the changes to section 904 of the McKinney Act, the conferees direct HUD to include in the subsequent annual report to Congress, under section 8 of the Department of Housing and Urban Development Act, a report describing and analyzing the use of information, obtained pursuant to the HUD–IRS income matching program (i.e., section 6103(1)(7)(D)(ix) of the Internal Revenue Code and section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988).

The report should include: (1) an analysis of the effect of this program upon applicants for and participants in covered housing assistance programs, including an analysis of any erroneous rejections, terminations or reductions of assistance; (2) a review of the adequacy of procedures used to protect applicants for and participants in covered housing assistance programs from adverse actions due to erroneous determinations of income; (3) a description of the inadequacies in such procedures and proposals for correcting such inadequacies; (4) a review of any privacy rights consideration raised by this section; (5) a description of the costs and savings associated with the program under this section.

This report is necessary because of concerns that potential errors in the implementation of this new income-matching program ****1128*439** could have a negative impact on low-income tenants through possible criminal prosecutions, rent increases, payments for unreported income, terminations of assistance and possible evictions.

The conferees note that there is currently no uniformity in tenant protections through hearings or other methods across the various HUD assisted housing programs. The conferees are concerned that tenants under all assisted housing programs have access to adequate procedures to challenge terminations of assistance or evictions.

The conferees believe that public housing authorities and entities administering subsidized housing assistance, as covered under this program, should have the flexibility to enter into repayment plans, in lieu of requiring lump-sum payments, when tenants are found to have underreported income and to owe additional rent. The conferees direct HUD to issue guidelines making it clear that such flexibility exists.

PENALTY PROVISION

Both the House and Senate bills contain a provision amending section 904(c) of the McKinney Act to provide penalties for misuse of this program. Both bills: 1) make it a misdemeanor, punishable by fine of up to $5000, to obtain information through this program under false pretenses or to disclose such information to an unauthorized person; 2) authorize civil actions for damages against owners and public housing agencies who have violated the requirements of this program. The conference agreement contains a provision originally included in the Senate bill in another form which would extend the penalty provision to include requesting information pursuant to the section without first obtaining the signed consent of the concerned individual.

OPERATING SUBSIDY ADJUSTMENTS

The Senate bill amended section 9(a) of the United States Housing Act of 1937 to require that adjustments to a public housing agency's operating subsidy, made by HUD, reflect actual changes in rental income collections resulting from the application of section 904 of the McKinney Act. The House bill did not contain a similar provision. The conference report does not contain the Senate provision.

The conferees direct HUD to make adjustments to a public housing agency's operating subsidy only to reflect actual changes in rental income collections resulting from the application of section 904 of the McKinney Act.

AMENDMENTS TO IRS CODE

Title III of the Senate bill included amendments to section 6103(1)(7)(D) of the Internal Revenue Code to permit the IRS to provide these data to the HUD Secretary. Similar provisions were also included in Title VII of the Senate bill and Title XIV of the House bill. This conference report includes a similar provision in another title.

****1129*440** SECTION 3004–Government National Mortgage Association Real Estate Mortgage Investment Conduit Fees

GENERAL

Both House and Senate bills amended section 306(g)(3) of the National Housing Act to give the Government National Mortgage Association (GNMA) the authority to charge flexible fees in a new multiclass security program known as Real Estate Mortgage Investment Conduits (REMICs), with some differences. The conference report contains the Senate provision.

FEES

The House bill specifically required that fees charged for the guarantee of, or commitment to guarantee, multiclass securities backed by a trust or a pool of securities or notes guarantied by GNMA, shall be charged by GNMA in an amount not to exceed the value, as determined by GNMA, of the guarantee or commitment to guarantee. The Senate bill contained a similar provision. The conference report contains the Senate provision.

ACCRUAL OF BENEFIT TO FUTURE MORTGAGORS

The House bill required GNMA to take such action as may be necessary to reasonably assure that such portion of the value of the guarantees or commitments to guarantee as GNMA determines is appropriate accrues to the benefit of future mortgagors under the mortgages by or upon which such securities or notes are backed. The Senate bill contained a similar provision. The conference report contains the Senate provision.

Consistent with this provision, the conferees expect GNMA to take such action that it deems appropriate to ensure that as much as possible of the value of the GNMA guarantee is passed on to future Farmers Home Administration (FmHA), Federal Housing Administration (FHA), and Veterans Administration (VA) homeowners.

REPORTING REQUIREMENTS

The House bill required GNMA to submit a report to Congress for each fiscal year, describing any activities of GNMA with respect to guaranteeing and making commitments to guarantee multiclass securities. The Senate bill contained a similar provision, but required the information to be provided in GNMA's annual report, rather than a separate annual report to Congress.

The conferees direct GNMA, in its annual report, to provide a summary of each activity of GNMA pertaining to GNMA's multiclass securities program. Each summary shall contain a description of the activity and shall include: 1) information pertaining to the size of the transactions closed, the number of mortgages involved, the amount of fees charged and earned, those persons or entities receiving payments for services provided and the amounts of such payments; and 2) an estimate of the portion of the benefit of the multiclass securities program accruing to mortgagors as well as a description of any action taken by GNMA to ensure such accrual.

****1130*441** CONSULTATION

The Senate bill requires GNMA to consult with persons or entities as it deems appropriate, to ensure the efficient

commencement and operation of the multiclass securities program. The House bill did not contain a similar provision. The conference report contains the Senate provision.

The conferees anticipate that GNMA, in designing its REMICs program, will wish to consult with the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and other entities experienced in REMICs markets. The conferees encourage such discussions and the conference report grants GNMA explicit authorization for them. However, care should be taken to ensure that such consultation does not result in the provision of an unfair competitive or financial advantage. GNMA is also given authority to contract with persons or entities to perform certain functions in the administration of its ongoing multiclass securities program. GNMA should be careful to avoid contracting for advice or assistance in connection with the administration of its REMIC program with persons or entities whose other financial interests significantly conflict those of GNMA.

GNMA CONTRACTING RIGHTS

The Senate bill provided that no State, local or Federal law shall preclude or limit the exercise by GNMA of its power to contract with persons or entities, and its rights to enforce such contracts, for the purpose of ensuring the efficient commencement and continued operation of the multiclass securities program. The House bill did not contain a similar provision. The conference report contains the Senate provision.

The conferees understand that similar language has been in existing law since 1980, in section 306(g)(1) of the National Housing Act, with regard to the GNMA Mortgage-Backed Securities program. The conferees have thus added this provision to apply similarly to the GNMA REMIC program.

REPORT TO CONGRESS PRIOR TO COMMENCEMENT OF PROGRAM

The Senate bill required GNMA, prior to the commencement of the multiclass securities program, to provide the Senate and House Banking Committees, a report describing GNMA's design of the program, including program elements that ensure minimization of risks arising from the operation of the program. The House bill did not contain a similar provision. The conference report does not contain the Senate provision.

The conferees direct that prior to the commencement of the multiclass securities program, GNMA shall provide to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs a report describing GNMA's design of the multiclass securities program, including program elements that ensure the minimization of risks arising from the operation of the multiclass securities program, such as: 1) any industry proven safeguards, including capital standards for sponsors and provisions for indemnification from private ****1131*442** parties for events that may result in GNMA's liability under its guaranty or commitment to guaranty; and 2) the sufficiency of GNMA's staff resources to administer the multiclass securities program.

SECTION 3005–Mutual Mortgage Insurance Fund Programs

Both House and Senate bills had identical provisions.

TITLE IV–STUDENT LOAN AND ERISA PROVISIONS

Unless otherwise noted section references are to sections of the Higher Education Act of 1965, as proposed to be added or amended by the conference report.

CONTRACTUAL RIGHT

House bill

No provision.

Senate amendment

Section 452(c) clarifies that an eligible borrower has a contractual right to receive a direct loan if they attend an institution that participates in direct lending.

Conference agreement

The Senate recedes.

DELIVERY OF FUNDS

House bill

No provision.

Senate amendment

Section 452(d) provides that funds under the direct student loan program shall be delivered to the institution in the same manner as Pell funds are delivered to the institution.

Conference agreement

The House recedes. The conferees believe that the Department of Education should allow the use of a master disbursement check in the part B programs, so that all institutions can receive the benefit of the efficiencies available to institutions able to use electronic funds transfer for loan disbursement. A master check disbursement would allow a lender or disbursement agency to combine the funds of all students at an institution into a single check.

PHASE-IN

House bill

Section 453 provides that the phase-in schedule for the direct student loan program would be 4% of the sum of the new student loan volume under parts D and B in 1994–95, 25% in 1995–96, 60% in 1996–97 and 100% in 1997–98.

****1132*443** Senate amendment

Section 453 provides that the phase-in schedule for the direct student loan program would be 5% of the new student loan volume in 1994–95, 30% in 1995–96, 40% in 1996–97 and 50% in 1997–98 and fiscal year 1998. Section 453 also defines new student loan volume as the estimated sum of loans made under parts D and B, where the Secretary will base the estimate on the most recent available data.

Conference agreement

The conference agreement provides that the phase-in schedule for the direct student loan program would be 5% of the new student loan volume in 1994–95, 40% in 1995–96, 50% in 1996–97, 50% in 1997–98 and 60% in the academic year

beginning in fiscal year 1998. Beginning in 1996–97, the percent phase-in goal may be exceeded, if the Secretary determines that a higher percentage is warranted by the number of institutions that want to participate in the programs and meet the eligibility criteria. The agreement also defines new student loan volume as the estimated sum of loans made under parts D and B, where the Secretary will base the estimate on the most recent available data.

PARTICIPATING INSTITUTIONS

House bill

Section 453(b) requires the Secretary to categorize institutions according to anticipated loan volume, length of academic program and control of institution.

Senate amendment

Section 453(b) is similar to the House provision. In addition, the Senate amendment requires the Secretary, to the extent possible, to categorize institutions according to highest degree offered, size of student enrollment, percentage of students borrowing under part B, geographic location, annual loan volume, default experience and composition of the student body. The Senate amendment also postpones these requirements until the 1995–96 academic year.

Conference agreement

The House recedes with an amendment striking "percentage of students borrowing under part B" and "composition of the student body" from the Senate's list. It is the intent of the conferees that the Secretary, in selecting institutions for participation, is required to ensure that a representative and proportional sample of all types of eligible postsecondary institutions of higher education are included in each academic year beginning with 1995–96. The conferees further note that the Secretary can only require the participation of institutions in the program if the requirement for a representative and proportional sample of all types of eligible postsecondary institutions is not achieved. The conferees emphasize their commitment to a varied and balanced selection of all eligible institutions as the Federal Direct Student Loan Program is phased-in and during the selection of additional institutions as the program expands. It is further the understanding of the conferees that ****1133*444** an institution withdrawing or terminated from the program under this part shall not be penalized for such action, unless the institution was terminated because of fraud and abuse. The conferees expect that the Department will ensure that procedures that an institution withdrawing from the part D program will not be excluded from participation in the programs authorized under part B.

30-Day Delayed Disbursement

House bill

Section 454(a) provides that first year students will not have the first disbursement of their loan delayed 30 days.

Senate amendment

Section 454(a) contains a similar provision.

Conference agreement

The conference agreement deletes both of these provisions.

SIMULTANEOUS PARTICIPATION

House bill

Section 454(a) provides that institutions cannot participate in part D and part B at the same time.

Senate amendment

Section 454(a) provides that, at the discretion of the Secretary, institutions may participate in part D and part B at the same time.

Conference agreement

The House recedes with an amendment clarifying that a student may only borrow under one program per period of enrollment.

CONSULTATION WITH INSTITUTIONS OF HIGHER EDUCATION

House bill

No provision.

Senate amendment

Section 454(a)(5) requires the Secretary to consult with institutions of higher education in establishing a quality assurance system.

Conference agreement

The House recedes.

SUPPLEMENTAL LOANS FOR STUDENTS

House bill

Section 455(a) provides that Federal Direct Supplemental Loans for Students under part D are to have the same terms, conditions and benefits as Supplemental Loans for Students under part B.

****1134*445** Senate amendment

Section 455(a) merges the Federal Supplemental Loans for Students program and the Federal Unsubsidized Stafford loan program into one loan program under part D–Federal Direct Unsubsidized Stafford loans.

Conference agreement

The House recedes with an amendment providing that an independent student’s loan limit under the Federal Direct

Unsubsidized Loan program would equal the student's loan limit under the Federal Supplemental Loan for Students program (as in effect upon enactment) plus his or her loan limit under the Federal Direct Stafford Loan program minus the amount of any assistance the student received under Federal Direct Stafford Loan program.

DESIGNATION OF LOANS

House bill

Section 455(a)(2) names the part D loans that are similar to section 428 loans as Federal Direct Student Loans and loans that are similar to section 428H loans as Federal Direct Unsubsidized Student Loans.

Senate amendment

Section 455(a)(2) names these loans Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans.

Conference agreement

The House recedes.

INTEREST RATE CAP

House bill

No provision.

Senate amendment

Section 455(b) changes the interest rate cap on Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans from 9 percent to 8.25 percent beginning with loans first disbursed on or after July 1, 1994.

Conference agreement

The House recedes.

INTEREST RATES

House bill

No provision.

Senate amendment

Section 455(b) sets the interest rate on Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans at the 91-day T-bill + 2.5 percent while the student is in school and during ****1135*446** any grace or deferment period. This provision applies to loans first disbursed on or after July 1, 1994.

Conference agreement

The House recedes with an amendment that maintains current law for academic year 1994–95 and applies this provision to loans first disbursed on or after July 1, 1995.

INTEREST RATES (Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans)

House bill

Section 455(b) changes the interest rate on Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans to the bond equivalent rate of the security with a comparable maturity plus one percent for loans made on or after July 1, 1997.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment to apply this to loans made on or after July 1, 1998.

INTEREST RATE (Federal Direct Supplemental Loans for Students)

House bill

Section 455(b) changes the interest rate on Federal Direct Supplemental Loans for Student loans to the bond equivalent rate of the security with a comparable maturity plus 1.5 percent for loans made on or after July 1, 1997.

Senate amendment

No provision.

Conference agreement

The House recedes.

INTEREST RATE FOR PLUS LOANS

House bill

Section 455(b) changes the interest rate on Federal Direct PLUS Loans to the bond equivalent rate of the security with a comparable maturity plus 2.1 percent for loans made on or after July 1, 1997.

Senate amendment

Section 455(b) lowers the interest rate cap on Federal Direct PLUS Loans to 9 percent for loans first disbursed on or after July 1, 1994.

Conference agreement

The conference agreement incorporates both provisions, changing the effective date of the House provision to July 1, 1998.

****1136*447** ORIGINATION FEE

House bill

Section 455(c) sets the student's loan fee at 5 percent for years 1994–95 through 1996–97 and at 3.65 percent for years 1997–98 and beyond under part D.

Senate amendment

Section 455(c) the student's loan origination fee at 4 percent under part D, beginning in academic year 1994–95.

Conference agreement

The House recedes.

INCOME CONTINGENT REPAYMENT PLAN

House bill

Section 455(d) designates the income contingent repayment plan an EXCEL Account and permits the Secretary to determine the length of repayment.

Senate amendment

Section 455(d) limits the income contingent repayment term to 20 years.

Conference agreement

The House recedes on the name. The Senate recedes on the length with an amendment permitting the Secretary to determine the length of the repayment but providing that the repayment terms will not exceed 25 years.

REPAYMENT SCHEDULES

House bill

Section 455(e) provides that the income contingent repayments will be measured as a percentage of the appropriate portion of the borrower's annual income.

Senate amendment

Section 455(e) provides that the payments will vary in relation to the appropriate portion of the borrower's income.

Conference agreement

The House recedes.

ELIGIBLE INSTITUTIONS

House Bill

No provision.

Senate amendment

Section 455(f) specifies that an eligible institution is one as defined under section 435.

****1137*448** Conference agreement

The House recedes with an amendment providing that an eligible institution under part D must meet the definition under section 435(a).

REQUIREMENT FOR REGULATIONS

House bill

No provision.

Senate amendment

Section 455(g) requires the Secretary to establish the terms and conditions of the Federal Direct Consolidation Loan Program pursuant to regulations.

Conference agreement

The House recedes with an amendment to require this for academic years 1995–96 and beyond.

OPTICALLY IMAGED DOCUMENTS

House bill

No provision.

Senate amendment

Section 455(i) allows optically imaged documents to be used in any loan proceeding.

Conference agreement

The Senate recedes.

DISCHARGEABILITY IN BANKRUPTCY

House bill

Section 455(i) provides that loans under this part will not be dischargeable in bankruptcy.

Senate amendment

The Senate has a similar provision (section 455(j)).

Conference agreement

The conference agreement contains no provision with respect to dischargeability in bankruptcy. The conferees determined to delete these provisions from both the House bill and the Senate amendment. The conferees believe that current provisions of the Bankruptcy Code are sufficient to protect against unnecessary discharge of direct student loans in bankruptcy. Section 523(a)(8) of the Bankruptcy Code operates to prevent the discharge of federally guaranteed education loans except in cases where the loan first became due more than seven years before the date of the filing of the bankruptcy petition, or where failure to allow the discharge would impose an undue hardship on the borrower and the borrower's dependents. [11 U.S.C. 523 (a)(8)] This limitation on discharge of education loans applies to wage earner cases filed under Chapter 13 ****1138*449** of the Bankruptcy Code. [11 U.S.C. 1328(a)(2)] It is the intent of the conferees that loans made pursuant to the Federal Direct Student Loan Program would be subject to these same limitations on discharge.

COMMON FINANCIAL REPORTING FORM

House bill

No provision.

Senate amendment

Section 455(k) provides that the common financial reporting form will be the application form for part D loans and that the Secretary should develop, print and distribute a standard promissory note and loan disclosure form.

Conference agreement

The House recedes with an amendment to exclude PLUS loans from this requirement.

LOAN DISBURSEMENT

House bill

No provision.

Senate amendment

Section 455(1) specifies that loans will be disbursed to the student by crediting the student's account and that any remaining funds will be returned to the student in the same manner as under part B. The Senate amendment further specifies that the payment periods will be consistent with the Pell grant payment periods.

Conference agreement

The House recedes with an amendment requiring this disbursement to be applied, rather than credited, to a student's account and providing that the student must acknowledge that his or her loan proceeds will be disbursed in this manner. It is the intent of the conferees that direct loans be disbursed to students in a manner consistent with the Federal Pell Grant program except that a system shall be developed to ensure that students retain the authority to cancel or approve the final disbursement of loan proceeds as is currently provided by the requirement that students sign the loan check.

MAINTENANCE OF FUNDS

House bill

No provision.

Senate amendment

Section 455(m) provides that 1) an institution shall maintain financial records in a manner consistent with other Title IV programs; 2) that an institution may maintain part D loan funds in the same account as other student financial aid; 3) that reconciliation shall be in the same manner and schedule as the Pell quarterly ****1139*450** schedule; and 4) that transaction histories are maintained using the same system as used under the Pell grant program.

Conference agreement

The House recedes on the first provision. The House recedes on the second provision with an amendment allowing the Secretary to require separate accounts by regulation. The House recedes on the third provision with an amendment allowing for a different schedule than the Pell schedule, including monthly reconciliation of payments. The House recedes on the fourth provision. It is the intent of the conferees that institutions of higher education be able to maintain uniform financial records, distribution systems, and methods of reconciliation for all of their Federal student aid programs. The purpose of this and other amendments on this issue is to ease the burden on institutions and to make it clear to them as to how the Federal Direct Student Loan Program will operate by using the Federal Pell Grant delivery system that is a well known and efficient model.

CONTRACTUAL RIGHT

House bill

No provision.

Senate amendment

Section 455(n) stipulates that an eligible student has a contractual right against the United States for a loan made under this part if the student is attending an institution that participates in direct lending.

Conference agreement

The Senate recedes.

CONTRACTS FOR SUPPLIES AND SERVICES

House bill

Section 456(a)(1) specifically allows the Secretary to contract with lenders and guaranty agencies if they otherwise are qualified and comply with the applicable procedures.

Senate amendment

Section 456(a)(1) mandates, for the servicing of loans, the Secretary contract only with entities that have extensive experience and a demonstrated record in loan servicing and collection.

Conference agreement

The conference agreement incorporates both provisions. In addition, the conference agreement requires the Secretary, to the extent practicable and consistent with the purposes of the program, to give special consideration to state agencies with a history of quality performance. The conference agreement further allows state agencies to apply for contracts in consortia. The conferees note the importance of ensuring that in contracting with alternative loan originators, the Department of Education shall require ****1140*451** that such originators equitably serve all students attending eligible institutions.

CONTRACTING EXEMPTIONS

House bill

Section 456(a)(2) provides that, in order to obtain an exemption from the Federal Property and Administrative Services Act, the Office of Federal Procurement Policy Act and the Small Business Act, the Secretary must determine in writing that the Government's need for the services and supplies to be provided under the contract is of such an unusual and compelling urgency that sources from which the Secretary solicits bids or proposals must be limited, that the Secretary notifies Congress in writing in not more than 30 days after the award of the contract, and that the exemption from the requirements is in the public interest and necessary for the orderly transition from the loan programs under part B to direct lending.

Senate amendment

Section 456(2) provides for these exemptions if the exemption is in the public interest and necessary for the orderly transition from part B to part D.

Conference agreement

The conference agreement contains neither provision.

GAO REPORT

House bill

No provision.

Senate amendment

Sections 459(c), (d), and (e) require the General Accounting Office to submit an interim final report by January 1, 1997 on the Federal Direct Student Loan Program that includes–1) administrative costs, including costs per loan, incurred by participating institutions; 2) administrative costs, including costs per loan, incurred by the Department of Education and its contractors for origination, data systems, servicing and collection; 3) an evaluation of its effectiveness in providing services, including organization, financial aid packaging, tracking of student status, responsiveness to student inquiries and processing of deferments, forbearances and repayments; 4) frequency and cost of borrower delinquency and default and associated costs to institutions and servicers, including costs incurred by improper origination or servicing; 5) timeliness of capital availability and cost of loan capital; 6) effectiveness of the income contingent repayment option; 7) comparison of institutions participating in the direct loans with the control group concerning items 1–6; 8) evaluation of the administrative performance of the Department; 9) reasons why institutions chose not to participate or withdrew or were terminated from the Federal Direct Student Loan Program; 10) and analysis of the experience of borrowers with loans under both parts B and D and recommendations of effective repayment procedures for them; 11) comparison of the cost of loan ****1141*452** capital for parts B and D; 12) an analysis of institutions which participate as part of a consortia; and 13) recommendations for modifications, continuation, expansion, suspension or termination of the part D program or the replacement of all or some of the part B programs. The Senate amendment further provides for a final report from the General Accounting Office by May 1, 1998 including the same matters discussed above. Further, the Senate amendment requires the Secretary to select a control group of institutions participating in part B which is comparable to the institutions participating in part D. Finally, the Senate amendment provides that in reporting costs, the General Accounting Office should report separately nonrecurrent costs, administrative costs incurred by institutions because of the General Accounting Office's reporting requirements, and normal operating costs for the Federal Direct Student Loan Program.

Conference agreement

The Senate recedes.

CONSULTATION

House bill

No provision.

Senate amendment

Section 458 requires the Secretary to develop the notices implementing the Federal Direct Student Loan program in academic year 1994–95 in consultation with the higher education community.

Conference agreement

The House recedes.

NEGOTIATED RULEMAKING

House bill

No provision.

Senate amendment

Section 458(a)(2) requires that regulations for years 1995–96 and beyond be developed through negotiated rulemaking, including consolidation loans.

Conference agreement

The House recedes with an amendment making this requirement applicable to the extent practicable. It is the intention of the conferees that the Secretary immediately begin the negotiated rulemaking process so as to develop through that process the standards, criteria, procedures and regulations necessary to implement the Federal Direct Student Loan program for the 1995–96 academic year and subsequent academic years. However, should the Secretary find it necessary to develop such standards, criteria, procedures, and regulations outside of that process in order to avoid violating the Master Calendar provided in section 482 of the Higher Education Act relative to the 1995–96 academic year, the conferees ****1142*453** intend that the Secretary do so. Nevertheless, should the Secretary find it necessary to exercise this option for the 1995–96 academic year, the conferees intend that such standards, criteria, procedures, and regulations for the 1996–97 academic year and subsequent academic years by subject to the negotiated rulemaking process.

ADMINISTRATIVE EXPENSES

House bill

Section 459 provides $261 million in funding for administrative costs in FY 1994, $346 million in FY 1995, $552 million in FY 1996, $596 million in FY 1997 and $749 million in FY 1998, with a four year cap of $2.504 billion.

Senate amendment

Section 460 provides $20 million in funding for administrative costs in FY 1994, $70 million in FY 1995, $170 million in FY 1996, $305 million in FY 1997 and $480 million in FY 1998, with a four year cap of $1.045 billion.

Conference agreement

The conference agreement provides $260 million in funding for administrative costs in FY 1994, $345 million in FY 1995, $550 million in FY 1996, $595 million in FY 1997 and $750 million in FY 1998, with a four year cap of $2.5 billion. The conferees intend that these caps not apply to funds recovered from guaranty agency reserves and used for the purposes specified in section 459.

BUDGET JUSTIFICATION

House bill

No provision.

Senate amendment

Section 460(c) requires the Secretary to include, in the Department's annual budget justification, a detailed description of use of administrative funds.

Conference agreement

The House recedes.

NOTIFICATION

House bill

No provision.

Senate amendment

Section 460(d) requires the Secretary to notify the authorizing and appropriations committees in the House and Senate when the Secretary draws funds from future years allocations for administrative expenses.

Conference agreement

The House recedes.

****1143*454** STUDENT LOAN REFORM COMMISSION

House bill

No provision.

Senate amendment

Section 460A establishes the National Student Loan Reform Commission to monitor, evaluate, and report on the implementation of the Federal Direct Student Loan Program and the continued operation of the Federal Family Education Loan Program. The Senate amendment authorizes up to $2 million per year in mandatory spending, for each of fiscal years 1994–1998, for the expenses of the bipartisan 15 member commission. The Senate amendment further requires the commission to submit to the Congress and the President no later than January 1, 1997, its final recommendations on the advisability of replacing the Federal Family Education Loan Program with a full-scale direct lending program.

Conference agreement

The Senate recedes. The conferees intend, however, that the duties that would have been assigned to the National Student Loan Reform Commission pursuant to the Senate bill be performed instead by the Advisory Committee on Student Financial Assistance (established by section 491 of the Higher Education Act). Specifically, it is the intent of the conferees that the Advisory Committee on Student Financial Assistance advise the Secretary and the Congress on the operation of the Federal Direct Student Loan Program and the Federal Family Education Loan Program. The conferees further intend that the Advisory Committee evaluate and report to the Congress on these programs on not less than an annual basis, with final recommendations on the advisability of proceeding to full direct lending to be submitted to the Secretary and the Congress no later than January 1, 1997.

STUDENT LOAN MARKETING ASSOCIATION

House bill

Section 4021(d) of the House bill requires the Student Loan Marketing Association (Sallie Mae) to make lender-of-last-resort loans. The House bill stipulates that Sallie Mae does not have to make these loans to institutions with high default rates, institutions that have participated in part B less than 18 months, or institutions currently subject to an emergency action or an L, S or T proceeding.

Senate amendment

Section 12041 of the Senate amendment is similar. The Senate amendment does not include the House exceptions. The Senate further stipulates that Sallie Mae must begin making these loans by no later than July 1, 1994.

Conference agreement

The conference agreement requires the Student Loan Marketing Association to make lender-of-last-resort loans beginning no ****1144*455** later than 90 days after date of enactment. The conference agreement does not include the exemptions contained in the House bill. The conference agreement further provides that lender-of-last-resort loans will be delivered in a timely fashion and that students will have no additional eligibility requirements than they do for the other part B loans. The conferees note that this section and section 4041(a) of this Act would expand the "lender-of-last-resort" provisions in the Higher Education Act, under which a lender is designated to make loans to eligible students who are unable to obtain loans from eligible lenders through the usual process. However, certain Federal Trade Commission (FTC) regulations, commonly known as the "Holder Rule," require a notice be included in consumer loan contracts in which the lender and the seller have a business or referral arrangement notifying the consumer that the holder of the contract may be subject to defenses to repayment raised by the consumer. The Holder Rule applies to student loan borrowers attending for-profit institutions, and the new Federal Family Education Loan promissory note includes the required notice. It is the conferees' understanding that the Holder Rule does not create liability for a lender-of-last-resort if the institution provides information to a student regarding the lender-of-last-resort services available in a state. The conferees understand that the FTC has provided an informal opinion to the Department that the Holder Rule is not applicable if the institution provides such information. The conferees urge the FTC to confirm this interpretation in formal guidance to ensure that student loan access under the lender-of-last-resort provisions is not jeopardized.

RESERVE FUNDS

House bill

No provision.

Senate amendment

Section 422(g) allows the Secretary to require the return of all of the reserve funds of a guaranty agency in order to ensure the proper maintenance of such agency's funds or assets.

Conference agreement

The House recedes with an amendment requiring that regulations for this provision be developed through negotiated rulemaking and that these regulations contain a provision for administrative due process. The amendment provides that the Secretary, in making a determination to direct a guaranty agency to return assets, shall make such determination based on standards developed through the negotiated rulemaking process and published by the Secretary in regulations, and that those standards shall include procedures for administrative due process. The conferees have included this language so that the Secretary and the higher education community will engage in a full and open discussion of this issue, and actively cooperate

to develop these standards, However, the conferees wish to emphasize that this language is not intended to diminish the longstanding and judicially-supported view that a guaranty agency's assets are dedicated to the loan programs and ****1145*456** may not be used for unauthorized purposes. It is the conferees further intention that all references to guaranty agencies reserves contained in amendments to section 422 refer only to the "Federal portion" of such reserves.

GUARANTY AGENCY ACTIVITY

House bill

No provision.

Senate amendment

Section 422(g) allows the Secretary to direct a guaranty agency to cease activities involving its reserve funds if the Secretary determines there may be a misapplication, misuse or improper expenditure of these funds.

Conference agreement

The House recedes. While this language does not cover the ability of the Department to recover reserve funds in the case of misuse, misapplication or improper expenditure of the funds, it is the intent of the conferees that when negotiated rulemaking is conducted on the issue of reserve funds, the issue of recovery in the case of misuse, misapplication or improper expenditure will be addressed. However, it is the intent of the conferees that the Department has the ability to recover reserve funds in the case of misuse, misapplication or improper expenditure without regulations developed through negotiated rulemaking.

SUSPENSION OF CONTRACT

House bill

No provision.

Senate amendment

Section 422(g) allows the Secretary to suspend or cease a guaranty agency contract if the Secretary finds misuse of guaranty agency's funds or unnecessary and improper benefits to the officers or directors of a guaranty agency.

Conference agreement

The House recedes.

PENALTIES

House bill

No provision.

Senate amendment

Section 422(g) provides that violations relating to misuse of guaranty agency reserve funds are subject to the same criminal penalties as fraud and abuse in the student aid programs (section 490 of the Higher Education Act).

Conference agreement

The House recedes.

****1146*457** ELIGIBILITY OF GUARANTY AGENCIES FOR FILE FOR BANKRUPTCY

House bill

Section 4025(7) prohibits a guaranty agency from filing for bankruptcy.

Senate amendment

Section 12045(7) contains a similar provision.

Conference agreement

The conference agreement removes these provisions from both bills. The conferees do not intend that bankruptcy serve as a vehicle to frustrate or delay the policies embedded in Higher Education Act relative to the Federal Family Education Loan program and the transition from the Family Federal Education Loan program to the Federal Direct Student Loan program. The conferees intend that the Department retain and use its considerable power and authority with respect to the guaranty agency and its assets in the event a guaranty agency is threatened with insolvency and/or is eligible to file for bankruptcy protection.

ADMINISTRATIVE COST ALLOWANCE

House bill

Section 4026 of the House bill eliminates guaranty agency's administrative cost allowance after fiscal year 1994.

Senate amendment

No provision.

Conference agreement

The Senate recedes. It is the understanding of the conferees that the Department of Education will pay on a timely basis to each guaranty agency an amount equivalent to that which they otherwise would have received under the administrative cost allowance provision terminated in this legislation. It is the intention of the conferees that funding for this payment will come from the administrative funds provided under section 458.

DIRECT CONSOLIDATION LOANS

House bill

Section 428C allows a borrower to obtain a direct consolidation loan from the Secretary, if he or she is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower.

Senate amendment

Section 428C allows a borrower to obtain a direct consolidation loan from the Secretary, if he or she is unable to obtain a consolidation loan. The Senate amendment allows these direct consolidation loans to have repayment provisions similar to regular consolidation loans as well as the income contingent repayment plan provided by both bills.

****1147*458** Conference agreement

The conference agreement allows a borrower to obtain a direct consolidation loan from the Secretary, if he or she is unable to obtain a consolidation loan or a consolidation loan with income-sensitive repayment terms acceptable to the borrower. The conference agreement further allows these direct consolidation loans to have repayment provisions similar to regular consolidation loans as well as the income contingent repayment plan provided by both bills. The conference agreement also includes a conforming amendment to prevent institutions from using consolidation loans to circumvent the default rate cut off provisions of the Higher Education Act.

INTEREST RATES (Consolidation Loans)

House bill

Section 4027(3) of the House bill changes the interest rates on consolidation loans to the weighted average rounded upward to the nearest whole percent, effective July 1, 1994.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

STUDY OF THE STUDENT LOAN MARKETING ASSOCIATION

House bill

Section 4028 of the House bill directs the Secretaries of Education and Treasury to conduct a study of the future of the Student Loan Marketing Association.

Senate amendment

No provision.

Conference agreement

The House recedes.

OPTICALLY IMAGED DOCUMENTS

House bill

No provision.

Senate amendment

Section 12047 of the Senate amendment provides for the use of optically imaged documents, including promissory notes and repayment agreements, in any proceeding with respect to these programs or loans. This section also provides that an optically imaged copy of any document or record may be introduced as evidence in any proceeding with respect to these programs or loans in any court.

Conference agreement

The Senate recedes.

****1148*459** CONSOLIDATION OF PROGRAMS

House bill

No provision.

Senate amendment

Section 10248 the Senate amendment changes the annual loan limits on unsubsidized loans to equal the loan limits on the Federal Supplemental Loans for Students program for independent students and students whose parents are unable to borrow under the Federal PLUS program. For these same students, the aggregate loan limit would be raised to reflect the increases in the annual limits.

Conference agreement

The House recedes with an amendment providing that an independent student's loan limit under the Federal Unsubsidized Stafford Loan program would equal the student's loan limit under the Federal Supplemental Loan for Students program plus his or her loan limit under Federal Stafford Loan program minus the amount of any assistance the student received under the Federal Stafford Loan program.

AMORTIZATION OF INTEREST RATES

House bill

No provision.

Senate amendment

Section 12048(a)(3) of the Senate amendment sets the interest rate used to calculate the amortized interest prior to repayment as the applicable interest rate at the time of repayment. The Senate amendment further defines the repayment period to commence when the first payment of principal is due.

Conference agreement

The House recedes.

CONSOLIDATION OPTIONS

House bill

No provisions.

Senate amendment

Section 12048(a)(4) of the Senate amendment allows lenders to consolidate all Federal Unsubsidized Stafford, Federal Supplemental Loan for Students and Federal PLUS loans into a single repayment schedule, with interest set at the weighted average of the interest rates on the loans rounded to the nearest whole percent. This provision allows for the extension of the repayment period but forbids the payments of additional insurance premiums.

Conference agreement

The Senate recedes.

****1149*469** REFINANCING (Variable Interest Rate)

House bill

No provision.

Senate amendment

Section 12048(a)(4) of the Senate amendment allows a lender to refinance a Federal Unsubsidized Stafford loan, a Federal Supplemental Loan for Students or Federal PLUS loan in order to obtain more favorable interest rates for the borrower. The lender could charge an administrative fee of up to $100. If the borrower is denied refinancing from the borrower's original lender, another lender may refinance the loan and may charge additional insurance in place of the administrative costs. Holders must notify borrowers of refinancing options.

Conference agreement

The Senate recedes.

REPEAL OF SUPPLEMENTAL LOANS FOR STUDENTS PROGRAM

House bill

No provision.

Senate amendment

Section 12048(b) of the Senate amendment repeals the Supplemental Loans for Students program effective July 1, 1994.

Conference agreement

The House recedes.

ORIGINATION FEE; INSURANCE PREMIUM

House bill

No provision.

Senate amendment

Section 12049 of the Senate amendment changes the 6.5 percent origination fee/insurance premium in the Unsubsidized loan program to a 3 percent origination fee. The Senate amendment also provides for up to a 1 percent guaranty agency insurance premium for unsubsidized loans. Both of these provisions take effect in the 1994–95 academic year.

Conference agreement

The House recedes.

DELAYED DISBURSEMENT

House bill

No provision.

****1150*461** Senate amendment

Section 12050 of the Senate amendment eliminates the 30-day delayed disbursement requirement for first year borrowers in the Federal Family Education Loan program.

Conference agreement

The Senate recedes.

SECRETARY'S EQUITABLE SHARE

House bill

No provision.

Senate amendment

Section 12021 of the Senate amendment lowers the percentage of collections that guaranty agencies may retain from 30 percent to 27 percent.

Conference agreement

The House recedes.

INTEREST RATES

House bill

No provision.

Senate amendment

Section 12022 of the Senate amendment lowers the cap on PLUS loan interest rates from 10 percent to 9 percent and lowers the cap on Federal Stafford Loan program and Federal Unsubsidized Stafford Loan program interest rates from 9 percent to 8.25 percent, effective July 1, 1994.

Conference agreement

The House recedes.

INTEREST RATES (In-School Grace Period)

House bill

No provision.

Senate amendment

Section 12022(4) of the Senate amendment lowers the interest rate on all loans in the Federal Family Education Loan Program during the in-school and deferment and grace periods to 91-day T-bill plus 2.5 percent, effective July 1, 1994.

Conference agreement

The House recedes with an amendment applying this to loans first disbursed on or after July 1, 1995.

****1151*462** ORIGINATION FEES (Stafford, SLS, and PLUS)

House bill

No provision.

Senate amendment

Section 12023(1) of the Senate amendment lowers the origination fee from 5 percent to 3 percent on Federal Stafford, Supplemental Loans for Students and PLUS loans.

Conference agreement

The House recedes.

LENDER ORIGINATION FEE

House bill

No provision.

Senate amendment

Section 12023(4) of the Senate amendment institutes a 0.5 percent lender origination fee to be collected from the lenders and distributed in the same manner as student loan origination fees.

Conference agreement

The House recedes.

OFFSET FEE

House bill

No provision.

Senate amendment

Section 12024 of the Senate amendment provides that the Student Loan Marketing Association should pay an annual fee (paid on a monthly basis) of 0.3 percent of the principal amount of each part B loan which the Student Loan arketing Association holds.

Conference agreement

The conference agreement provides that the Student Loan Marketing Association should pay an annual fee (paid on a monthly basis) of 0.3 percent of the principal amount of each part B loan which the Student Loan Marketing Association acquires on or after date of enactment. The conference agreement further provides that the Secretary shall increase this fee to 1.0 percent if he determines that the Student Loan Marketing Association has substantially failed to comply with the requirement to make lender-of-last-resort loans.

TAX EXEMPT FLOOR

House bill

No provision.

****1152*463** Senate amendment

Section 12025 of the Senate amendment lowers the guaranteed special allowance for secondary markets from a minimum of 9.5 percent to 8.5 percent of the special allowance for other lenders.

Conference agreement

The conference agreement lowers the guaranteed special allowance for secondary markets from a minimum of 9.5 percent to the special allowance for other lenders.

INTEREST RATES

(CONSOLIDATION LOANS)

House bill

No provision.

Senate amendment

Section 12026(a)(1) of the Senate amendment changes the interest rate for consolidation loans to the 91-day t-bill plus 3.1 percent, with a maximum of 9 percent.

Conference agreement

The Senate recedes.

INTEREST PAYMENT REBATE FEE

House bill

No provision.

Senate amendment

Section 12026(a)(2) of the Senate amendment requires holders of consolidation loans to pay the Secretary an annual rebate fee (calculated and paid on a monthly basis) of 0.7 percent of the principal plus accrued interest on the consolidation loan.

Conference agreement

The conference agreement requires holders of consolidation loans obtained after October 1, 1993 to pay the Secretary an annual rebate fee (calculated and paid on a monthly basis) of 1.05 percent of the principal plus accrued interest on the

consolidation loan.

INSURANCE PREMIUM

House bill

No provision.

Senate amendment

Section 12027(a) of the Senate amendment lowers the maximum guaranty agency insurance premium from 3 percent to 1 percent.

Conference agreement

The House recedes.

****1153*464** REINSURANCE FEES

House bill

No provision.

Senate amendment

Section 12027(b) of the Senate amendment eliminates guaranty agency reinsurance fees, effective July 1, 1994.

Conference agreement

The House recedes with an amendment changing the effective date to October 1, 1993.

LOAN TRANSFER FEE

House bill

No provision.

Senate amendment

Section 12028 of the Senate amendment provides for a loan transfer fee of 0.25 percent of the principal and accrued unpaid interest on any loan sold, payable by the buyer of the loan. This provision is effective October 1, 1993 and exempts the sale of loans to an affiliate of the lender, the sale of loans pursuant to a merger, or the sale that results from the sale of a substantial portion of the lender's total business or student loan business.

Conference agreement

The Senate recedes.

GUARANTY AGENCY REIMBURSEMENT PERCENTAGE

House bill

No provision.

Senate amendment

Section 12029(a) of the Senate amendment lowers the guaranty agency reimbursement percentages from 100/90/80 percent to 98/88/78 percent. However, loans made under a lender-of-last-resort program and loans made under an agreement resulting from guaranty agency insolvency are exempt from this reduction.

Conference agreement

The House recedes.

RISK SHARING

House bill

No provision.

Senate amendment

Section 12029(b) of the Senate amendment provides that the Student Loan Marketing Association would receive 95 percent payment on defaulted loans from the Federal Government, effective October 1, 1993.

***465** Conference agreement

****1154** The conference agreement provides that all holders of loans be allowed 98 percent payment on defaulted loans from the guaranty agency or the Secretary, as appropriate, effective October 1, 1993. Lender-of-last-resort loans would receive 100 percent insurance from the guaranty agency or the Secretary, as appropriate.

PLUS LOAN MAXIMUM

House bill

No provision.

Senate amendment

Section 12030(a) of the Senate amendment sets the maximum PLUS loan at $10,000, effective July 1, 1994.

Conference agreement

The Senate recedes.

MULTIPLE DISBURSEMENT OF PLUS LOANS

House bill

No provision.

Senate amendment

Section 12030(b) of the Senate amendment requires multiple disbursement of PLUS loans.

Conference agreement

The House recedes.

BALANCED BUDGET ACT AMENDMENT

House bill

Section 4029 of the House bill amends the Balanced Budget and Emergency Deficit Control Act of 1985 to provide for a mandatory increase of 0.5 percent for fees paid by students in the Federal Direct Student Loan Program in the event of a sequestration.

Senate amendment

No provision.

Conference agreement

The House recedes.

EFFECTIVE DATE

House bill

Section 4031(a) of the House bill specifically provides an effective date for all of the student loan amendments as the date of enactment.

Senate amendment

No provision.

****1155*466** Conference agreement

The conference agreement provides a general effective date and separate effective dates for many provisions.

EFFECTIVE DATE (Section 428C Amendments)

House bill

Section 4031(b) of the House bill provides an effective date for the changes to section 428C of July 1, 1994. The House bill also provides that the changes made with respect to deferments of consolidation loans would be effective upon enactment.

Senate amendment

The Senate amendment provides only the July 1, 1994, effective date.

Conference agreement

The Senate recedes.

IRS STUDY

House bill

Section 4032 of the House bill directs the Secretary of Education in consultation with the Secretary of Treasury to conduct a study on the feasibility of having I.R.S. collect student loans, the results of which the Secretary of Education shall report to Congress in 6 months.

Senate amendment

Section 457 directs the Secretaries of Education and Treasury to submit a plan to the President to provide for I.R.S. collection of student loans and to evaluate other options for wage withholding. If the President determines that options contained in the plan would further the purposes of this part, the Secretaries of Education and Treasury would implement those options. The Senate amendment further provides a method for funding the implementation of the plan.

Conference agreement

The conference agreement deletes both provisions. Accordingly, the managers request that the Secretaries of Education and Treasury jointly develop a plan for the involvement of the Internal Revenue Service in the collection of student loans, including an analysis of its feasibility, the additional resources that would be required for the IRS, the enforcement procedures that should be used, the effect on the collection of ordinary income taxes, and the effect on the management of Federal student loan collections and on borrower repayment of such loans. The Secretaries are further requested to submit to the Congress the plan for implementing such a collection system, together with the results of the feasibility analysis and any legislative recommendations they may deem advisable, no later than six months after the date of enactment of this bill.

****1156*467** IRS COLLECTION

House bill

Section 4033 of the House bill expresses the sense of the Committee on Education and Labor to support I.R.S. collection of

student loans.

Senate amendment

No provision.

Conference agreement

The House recedes. The House bill contained a section expressing the sense of the Education and Labor Committee that although it lacked jurisdiction over amendments to the International Revenue Code, it would support provisions providing for the collection of student loans using the Internal Revenue Service, as well as amendments to the Higher Education Act, in the manner proposed by H.R. 2073, introduced by Mr. Petri on May 11, 1993. The managers on the part of both Houses reaffirm that IRS collection of student loans should be explored and that the following principles behind H.R. 2073 provide a useful guide to that exploration:

1. That IRS collection should be as convenient as possible for borrowers.

2. That it should impose no additional burden on employers.

3. That to produce the simplest, most efficient program and minimize burdens on the IRS, it should conform as closely as possible to the operations of the IRS in collecting the regular individual income tax, self employment tax, and social security taxes on tip income not reported to an employer.

4. That in the case of income dependent loans:

a. the repayment schedules should accommodate large loan volumes,

b. payments should be kept manageable for borrowers, including borrowers with dependents,

c. no payments should be required of borrowers whose incomes fall below the income tax filing threshold,

d. payments should generally be directly proportional to the amount borrowed (to discourage overborrowing),

e. borrowers should be excused from further payments when they have repaid their loans at some effective interest rate,

f. most borrowers should finish in a reasonable period of time,

g. borrowers should be allowed to repay, without penalty, in any year, more than they owe under the income-dependent schedules, in order to complete their obligations more rapidly, and

h. there should be adequate treatment of marriage, including:

no excessive marriage penalties or subsidies,

no ability to avoid payment by shifting income between spouses,

equal payments for couples with equal joint income and borrowing, and

****1157*468** fair allocation of a joint payment between two spouses' accounts (in case of later divorce).

5. That the combination of IRS collection and an income-dependent repayment option provides an opportunity further to streamline student loan programs and to target subsidies more fairly based on the ability to repay loans, which can be determined by post-school income.

DISCLOSURE OF TAX RETURN INFORMATION

House bill

No provision.

Senate amendment

Section 12055 describes the income tax return disclosure process for borrowers choosing income contingent repayment by amending the Internal Revenue Code.

Conference agreement

The Senate recedes. The conferees note that this provision appears in the section of this Act amending the Internal Revenue Code.

COST SHARING BY STATES

House bill

Section 428(n) permits States to pass on to institutions State default fees.

Senate amendment

Section 428(n) requires states to charge institutions a fee based on their cohort default rate.

Conference agreement

The Senate recedes. The conferees attempted to find other means to generate the cost savings produced by this part, but the conferences were unable to find other sources of revenue. This provision is not intended to place undue burdens on states. States will be reimbursed for the costs of performing the functions contained in section 494B of the Higher Education Act.

TEMPORARY RULES GOVERNING PREEMPTION OF CERTAIN STATE LAWS

House bill

Section 4203 of the House bill amends section 514(b) of ERISA to provide 2-year exemptions from preemption for certain provisions of state law, as follows:

(1) the Hawaii Prepaid Health Care Act;

(2) subtitle 2 of title 19 of the Annotated Code of Maryland, which establishes the Health Services Cost Review Commission and authorizes an all-payer hospital rate setting system;

(3) Section 295.52 of the Minnesota Statutes (relating to the 2% gross revenues tax on providers), section 19 of Article **1158 9 of the Minnesota Health Right Act (permitting providers to pass the above tax), and other specified sections of

such Act (relating to data collection); and

(4) specified sections of the New York Public Health Law relating to the all-payer hospital rate setting system, the 13% surcharge, uniform hospital charges, the variable surcharge for HMOs, and the allowances for bad debt, charity care, health services, financially distressed hospitals, and excessive malpractice insurance.

Senate amendment

No provision.

Conference agreement

The House recedes.

COORDINATION OF ERISA PREEMPTION RULES

House bill

Section 4201 of the House bill amended section 514(b)(8) of ERISA to exempt from preemption certain additional provisions of state laws.

In 1986, ERISA was amended to add subsection (b)(8) in order to facilitate the ability of the states to assure that Medicaid was the secondary payor for all eligible individuals also covered under group health plans. Under the amendments to title XIX of the Social Security Act contained in Title V of the House bill, additional requirements relating to third-party payors are imposed on the states as a condition of receiving Federal matching Medicaid funds. The amendments to ERISA under section 4201 permit states to enforce laws enacted as a result of these additional Medicaid requirements.

Senate amendment

Similar to House bill.

Conference agreement

The Senate recedes with an amendment.

Under the conference agreement, group health plans are required to pay benefits in accordance with any assignments of rights on behalf of participants and beneficiaries that is required by Title XIX of the Social Security Act. In enrolling individuals under group health plans, plans are precluded from taking into account the fact that an individual is eligible for or provided assistance under Title XIX.

In addition, under the conference agreement and consistent with provisions Title V of this Act, to the extent that payment has been made under Title XIX, states would acquire the right of any other party to payment. State laws enforcing these rights must be honored by group health plans since those laws would be exempt from ERISA's preemption.

****1159*470** MEDICAL CHILD SUPPORT ORDERS

House bill

No provision.

Senate amendment

Section 12301(a) of the Senate amendment amends section 514(b)(8) of ERISA to require group health plans to comply with state laws relating to assignment of rights of payment and child health insurance support.

Conference agreement

The House recedes with an amendment.

Under the conference agreement, group health plans are required to honor "qualified medical child support orders." The term "medical child support order" means generally any judgment, decree, or order (including approval of a settlement agreement) issued by a court of competent jurisdiction providing for child support or health benefit coverage for a child of a participant. The child on whose behalf such an order is issued is an "alternative recipient" and will be treated as a participant under the plans. An order is "qualified" and must be honored by the plan if it meets certain specified requirements.

In addition, group health plans that provide for coverage for dependent children must treat dependent children placed for adoption in the home of participants under the plan the same as dependent children who are the natural children of participants, irrespective of whether that adoption has become final. For purposes of these provisions, a child is defined as an individual who has not attained age 18 as of the date of adoption or placement for adoption.

MEDICAL AND MEDICAID COVERAGE DATA BANK

House bill

Section 5117 of the House bill, as reported by the Committee on Energy and Commerce, established a Health Coverage Clearinghouse in order to identify third parties which may be liable for payment as primary payors for health care items and services for Medicaid beneficiaries. Under the House bill, qualified employers are required to provide information to the clearinghouse with respect to every individual who has received wages from such employers and for whom group health plan coverage is available. The information to be provided includes the name and taxpayer identification number of the individual, the name, address, and taxpayer identification number of the employer, and whether the employer has made available group health plan coverage for the individual and his or her family.

Senate amendment

Sections 7904 and 12101 of the Senate amendment (as reported by the Senate Finance and Senate Labor and Human Resources Committee, respectively) establish similar clearinghouses and impose similar requirements on employers.

****1160*471** Conference agreement

A full description of the conference agreement appears in the statement of managers describing section 13581. Conforming amendments to ERISA, ensuring that group health plans furnish required data needed for employer compliance, are adopted as part of section 4301 of the conference agreement.

TEA INSPECTION FEES

Current law

The Tea Importation Act (21 U.S.C. 41 et seq.) establishes a program under which the Secretary of Health and Human

Services sets standards for tea, through the Board of Tea Experts, and operates a program under which tea and tea products are examined for inspection into the United States. Under the law, a fee of 3.5 cents for each hundredweight of tea is required from each importer or consignee.

Conference agreement

Under the conference agreement, the fee on imported tea is increased from 3.5 cents to 10 cents per hundredweight of tea. This increase should provide that expenses of the Food and Drug Administration associated with the standardization and inspection of tea, including expenses associated with the Board of Tea Experts, will be funded by fees paid by the industry. Provision is made such that the fees will not exceed the actual cost of these activities.

TITLE V–TRANSPORTATION AND PUBLIC WORKS PROVISIONS

SEC. 5001. Recreational User Fees

House bill

Authorizes the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. New fees established under the authorization are limited to $3 per private, noncommercial vehicle. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Senate amendment

Authorizes the Secretary of the Army to charge fees for the use of developed recreation sites and facilities, and deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Conference agreement

Adopts a combination of the two provisions authorizing the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. The new fees are limited to $3 per private, noncommercial vehicle transporting not more than 8 persons. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

****1161*472** Individual conferees on this issue want to make it clear that his or her position on the issue does not necessarily reflect his or her position on other issues of this conference report.

Aircraft registration fees (sec. 11001 of the House bill and sec. 313(f) of the Federal Aviation Act of 1958)

Present law

Under present law (sec. 313(f) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1354(f)), the Administrator of the Federal Aviation Administration (FAA) may establish and collect such fees as may be necessary to cover the costs associated with issuance of certificates of registration of aircraft, issuance of airman certificates to pilots, and processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The current FAA aircraft registration fee is a one-time fee of $5. The other fees are not being collected.

The maximum fee schedule authorized under present law is as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The amount of fees collected are to be credited to the FAA for expense of carrying out Titles V and VI of the Federal Aviation Act of 1958.

House bill

Imposition of fees.–The House bill (sec. 11001) replaces the current FAA fee schedule with the following fees:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
Exemptions.–The annual aircraft registration fee and the aircraft transfer fee do not apply to (1) commercial air carrier aircraft, (2) aircraft owned by, or operated exclusively for, the United States Government, (3) a dealer's registered aircraft, (4) aircraft without an engine driven electrical system, and (5) balloons or gliders.

Deposit of fee revenues.–The fees under the House bill are to be deposited in the Airport and Airway Trust Fund.

Effective date.–The provision applies to fiscal years beginning after September 30, 1993 (fiscal year 1994).

Senate amendment

No provision.

****1162*473** Conference agreement

The conference agreement is that the House recede to the Senate and not include these fees from the House bill.

Each conferee on this issue wants to make it clear that his or her position on the issue does not necessarily reflect his or her position on other issues of this Conference Report.

TITLE VI–COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION IMPROVEMENT

Section 6001 of H.R. 2264 provides for the orderly transfer of frequencies, including frequencies that can be licensed utilizing competitive bidding procedures, from the Federal Government to the Federal Communications Commission.

SECTION 6001–Transfer of Auctionable Frequencies

SECTION 111

House bill

Section 117 defines "allocation", "assignment", "commercial provider", and "the Act".

Senate amendment

Section 4011 of the Senate Amendment is virtually identical, except this section also defines the terms "Commission" and "Secretary".

Conference agreement

The conferees adopted the House provision, except the term "commercial provider" was deleted

FINDINGS

House bill

Section 111 sets forth congressional findings concerning the Federal Government's use of the spectrum, the scarcity of assignable frequencies for licensing by the Commission, and the fact that reassignment of the spectrum can produce significant economic returns.

Senate bill

Section 4002(1)–(7) of the Senate Amendment sets forth congressional findings with respect to reallocation of spectrum that are similar to the House provision, except the Senate amendment finds that a reassignment of Federal Government spectrum can be accomplished without an adverse impact on amateur radio licenses that currently share spectrum with Government users.

Conference agreement

The Conference Agreement eliminates the findings section of the House bill and Senate Amendment because these provisions do not have a budgetary impact and could violate the Byrd rule. However, the conferees believe that these findings and conclusions are ****1163*474** important and lay the predicate for this legislation, and incorporate the findings of both bills herein by reference.

SECTION 112

House bill

Section 112(a) requires the Assistant Secretary and the Chairman of the Commission to meet at least biannually to conduct joint spectrum planning. Section 112(b) requires a report by the Assistant Secretary and the Chairman to the Committee on Energy and Commerce and the Committee on Commerce, Science, and Transportation, the Secretary, and the Commission, on the joint planning activities. Section 112(c) sets forth the analysis that should be included in the first annual report.

Senate amendment

Section 4003(a) of the Senate Amendment is essentially the same as the House provision. Section 4003(b) requires a similar report as the House provision, but includes the requirement of recommendations for actions developed pursuant to the planning activities. The Senate Amendment also requires recommendations for the reform of the process of allocating spectrum between Federal uses and non-Federal uses.

Conference agreement

Section 112 of the Conference Agreement contains the provision on national spectrum allocation planning. The conferees adopted the language from both the House bill and the Senate Amendment with respect to the requirement of annual meetings between the Assistant Secretary and the Chairman of the Commission. One of the purposes of these annual meetings is to plan for the shared use of spectrum between commercial and Federal Government users. Such planning will provide certainty to potential bidders for commercial licenses and will thus increase the value of such licenses.

The conferees also added an issue for the joint spectrum planning activity, namely the extent to which licenses for spectrum use can be issued subject to the Commission's auction authority under section 309(j) of the 1934 Act. The purpose of this

provision is to ensure that the Secretary and the Commission are reviewing all relevant issues of spectrum management.

Due to concerns about the non-budgetary impact of the reporting requirements, the Conference Agreement removes the statutory requirement concerning reports by the Secretary and the Commission about the scope of their planning activities and what progress had been made. Nonetheless, the conferees find this report necessary and expect the Assistant Secretary and the Chairman of the Commission to submit a joint annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, and to include an analysis of the effect on spectrum efficiency and the cost of equipment to Federal spectrum users of maintaining separate allocations for Federal Government and non-Federal licensees for the same or similar services.

****1164*475** SECTION 113

House bill

Section 113(a) requires the Secretary to submit a report within 24 months to the President and Congress, identifying and recommending for reallocation frequencies that are assigned to Federal Government stations and are not required for the present or identifiable future needs of the Federal Government. The frequencies are to be those which are, or will be, feasible to make available during the next 15 years and have the greatest potential for commercial use.

Subsection (b) requires that the spectrum identified for reallocation must be located below 5 gHz, except that a maximum of 20 megahertz of the identified frequencies may be located between 5 and 6 gigahertz. Subsection (c) requires the Secretary to consider a number of factors affecting the usefulness and appropriateness of identified spectrum. Subsection (c)(4) provides additional criteria which the Secretary must consider in identifying reallocable spectrum, including the requirement that frequencies that Federal power agencies are licensed to use may only be eligible for mixed use in geographically separate areas and shall not be subject to withdrawal as part of the minimum 200 Mhz that is required by section 113(b) of this chapter.

Subsection (d) describes the procedures for the identification of frequencies. The Secretary is required to prepare and submit to Congress, within 12 months, a report which makes preliminary identification of frequencies to be reallocated. The Secretary is to convene an Advisory Committee to review the frequencies identified in the preliminary report.

Subsection (e) requires the Secretary to include a timetable for reallocation that recommends immediate and delayed effective dates by which the President shall withdraw or limit assignments on the frequencies specified in the report. To expedite the availability of at least a portion of the spectrum to be reassigned, this section authorizes the Secretary to identify an initial 30 megahertz of spectrum to be made available for reallocation immediately upon issuance of the report.

Senate amendment

Section 4004 of the Senate Amendment is similar to the House provision, with a number of exceptions. First, section 4004(b)(1) requires that all of the 200 megahertz identified by the Secretary be below 5 gigahertz. Next, it adds the requirement that at least one-half of the 200 megahertz identified by the Secretary for reallocation fall below 3 gigahertz. Paragraph (b)(2)(C) also requires any sharing of spectrum between Federal and non-Federal users be subject to coordination procedures established by both the Commission and the Secretary. The Senate Amendment also directed the Secretary to seek to avoid excessive disruption of amateur licensees.

With respect to frequencies assigned to Federal power agencies, paragraph (c)(4) provides that the criteria for eligibility of spectrum shall be deemed not to be met for any frequency assigned to such an agency.

****1165*476** The timetable for the preliminary report on allocable frequencies in subsection (d)(2) of the Senate Amendment is for 6 months; the House provision allowed 12 months. Subsection (d)(5) provides that within 18 months of enactment the Secretary shall prepare and submit a final report that recommends reallocation of at least 170 megahertz. In addition, the Senate Amendment provided for public comment on the report and direct discussion among commercial representatives and

Federal Government users, but did not provide for an advisory committee.

In order to ensure the spectrum identified by the Secretary would be of maximum use, subsection (d)(6) requires that none of the 200 megahertz may be frequencies identified for reallocation by international agreement. Moreover, the Senate Amendment requires that none of the spectrum identified for immediate reallocation as part of the Secretary's 6-month report be allocated for mixed use, and that at least one-half of the spectrum identified for immediate reallocation must be below 3 gigahertz.

Conference agreement

Section 113 of the Conference Agreement reflects the House provision with a number of key portions of the Senate Amendment. The conferees adopted the Senate position regarding 6 months as the time period in which the Secretary must prepare and submit a preliminary report identifying reallocable spectrum, and 18 months in which to submit a final report. Given the fact that this legislation has passed the House three times in six years, the conferees are confident that this legislation comes as no surprise for the Secretary, and that this deadline can be met.

The Conference Agreement adopts the Senate language requiring that all spectrum identified by the Secretary be below 5 gigahertz, and that one-half be below 3 gigahertz. This provision was included since it guarantees that the spectrum identified by the Secretary will be useful to the commercial sector, and this will advance the primary goals of the legislation.

In order to encourage the maximum usefulness of the spectrum that will be reallocated in the near future, the conferees increased the amount of spectrum subject to this expedited process from 30 megahertz to 50 megahertz. Moreover, the conferees agreed to the Senate language requiring that one-half of such spectrum be below 3 gigahertz, and that none of the spectrum be allocated for mixed use.

The Conference Agreement adopts the Senate language that any operational sharing permitted under this paragraph must be subject to coordination and interference standards worked out by the Secretary and the Commission.

With respect to obtaining input on the Secretary's preliminary identification of reallocable spectrum, the Conference Agreement adopts the Senate language on public comment and direct discussions between commercial representatives and Federal Government users in lieu of the House provision on advisory committees. However, the conferees also added a provision requiring the Commission to submit to the Secretary its analysis of the public comments received by the Secretary and its recommendations for responses to such comments. The intent of this provision is to ensure that the ****1166*477** Secretary gets another expert analysis of the numerous technical, regulatory and commercial issues that will be generated by the preliminary identification report. The Commission's processes and analysis will serve the same purposes as the Advisory Committee that was required by the House bill, but will not cause delays and increase expenditures.

In order to afford some protection to amateur licensees, the Conference Agreement adopts the Senate language directing the Secretary to seek to avoid excessive disruption of existing use of Federal Government frequencies by amateur radio licensees. The conferees believe the concerns of amateurs should be taken into consideration, and that the Secretary should seek to avoid excessive disruption.

The Conference Agreement adopts the Senate language providing that spectrum scheduled for reallocation by international agreement would not be eligible for identification by the Secretary. With respect to the Federal power agencies, the Conference Agreement incorporated the Senate language.

The conferees note that in assessing the criteria for identifying reallocable spectrum, the Secretary must assume that there will be reasonable rates of scientific progress and growth in demand for telecommunications services, and that the frequencies identified for reassignment will be assigned by the Commission within a fifteen-year period. These assumptions will help to assure that the frequencies that are reallocated will be able to be utilized as the state of radio art advances, as well as help stimulate the development of new spectrum-dependent technologies.

The conferees also observe that these delayed effective dates shall permit the earliest possible reallocation of the frequency bands, while taking into consideration the relationship between the cost to the Federal Government of changing to different

frequencies and the commercial benefits of reassignment of these frequencies.

SECTION 114

House bill

Section 114(a) requires the President to withdraw the assignment to a Government station of any frequency recommended in the Secretary's report for immediate reallocation within six months after receiving such report. The President also is required to limit the assignment to a Government station of any frequency the report recommends for immediate mixed use. Subsection (b) recognizes that exceptions may be required to the recommendations made by the Secretary and provides procedures to be utilized by the President when the criteria established in subsection (b) are met. Subsection (c) limits the ability of the President to delegate the functions assigned by the Act.

Senate amendment

Section 4005 of the Senate Amendment is similar to the House provision, with these exceptions. The Senate Amendment provides that a ground for the President removing spectrum from the list identified by the Secretary and substituting other spectrum is that the identified spectrum will disrupt amateur radio licensees. Subsection ****1167*478** (c) authorizes those Federal users who are displaced by virtue of a reallocation to be reimbursed, from the revenues generated by the competitive bidding, for their incremental costs directly attributable to the displacement. Subsection (d) clarifies that nothing in this subtitle prevents or limits additional reallocation of spectrum from the Federal Government to commercial or other users. The subsection also provides that the Secretary can permit the sharing of its frequencies to facilitate implementation of new technologies, and that the Commission shall expedite the allocation and associated licensing of any such frequencies.

Conference agreement

Section 114 of the Conference Agreement reflects the decision of the conferees to adopt the House provision with the following changes. The conference agreement incorporated the Senate language regarding disruption to amateur licensees as a grounds for substituting identified spectrum.

With regard to federal agencies getting reimbursed for costs associated with any reallocation of spectrum, the conference agreement does not include any statutory authorization in the Conference Agreement. However, the conferees believe that any Federal agency whose operation is displaced from a frequency assignment should be reimbursed for the incremental costs such agency incurs. Such costs must be directly attributable to the displacement from the frequency.

The Senate language with respect to implementation of new technologies and additional reallocation is generally incorporated in the Conference Agreement in section 117. However, the conferees concluded that the Commission should make any allocation decisions pertinent to such sharing in a timely manner and in accordance with the expedited timetable set forth in section 7 of the Communications Act of 1934.

The conferees find that the timetables authorized under this section will allow optimal use of frequencies that have been selected for reallocation and should impose only a minimal financial burden on the Government.

SECTION 115

House bill

Section 115 states that no less than one year after the President notifies the Commission of a frequency band to be reallocated, pursuant to section 114(a)(5), the Commission is required to submit to the President and Congress a plan for distribution of the reassigned frequencies. This plan shall not propose the immediate distribution of frequencies, and must

take into account the timetable recommended by the Secretary.

Senate amendment

The differences between the Senate Amendment and the House Bill are few. Section 4006(b) requires consultation by the Commission with the Assistant Secretary, whereas the House language leaves such consultation at the Commission's discretion. More significantly, the Senate requires the Commission to not just submit ****1168*479** a plan, but to implement it as well. Subsection (b)(2) directs the Commission to contain appropriate provisions to ensure the safety of life and property. Finally, subsection (c) amends section 303 of the Communications Act of 1934 by stipulating that any frequencies reallocated could be licensed by the Commission, but that any such assignment shall be expressly subject to the right of the President to reclaim that frequency.

Conference agreement

The Conference Agreement adopted the Senate language with one significant change. In order to ensure that the 50 megahertz of spectrum identified for immediate reallocation by section 113(e)(2) be allocated and assigned on an expedited basis by the Commission, the conferees agreed that the Commission shall have rules in place in 18 months allocating such spectrum and shall propose regulations to assign such frequencies.

The Conference Agreement provides that the Commission shall both submit a plan and begin to implement that plan on distribution and allocation of frequencies, and consequently adopted the Senate language. The Conference Agreement also provides that in developing its plan, the Commission shall contain appropriate provisions to ensure the safety of life and property in accordance with section 1 of the 1934 Act. The conferees agreed to delete subsection (c) of the Senate Amendment.

The Conferees note that advances in low power (e.g., below 5 mW) biomedical telemetry systems may greatly improve the quality and significantly decrease the cost of certain health care services. These systems are designed to operate in either the VHF or UHF bands. The Conferees believe that the NTIA and the FCC should carefully consider the needs of hospitals and other health care providers for inference-free radio spectrum in their respective allocation decisions made pursuant to this Act.

SECTION 116

House bill

This section establishes the process by which the President can reclaim frequencies which already have been reallocated to the Commission for reassignment. Subsection (e) stipulates that nothing contained in this chapter limits or otherwise affects the President's authority under sections 305 and 706 of the Communications Act, including the ability to withdraw or limit the use of all frequencies utilized by Government users.

Senate amendment

Section 4011 of the Senate Amendment is virtually identical to the House provision, except that subsection (e) sets forth a rule of construction that nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706.

Conference agreement

The conferees adopted the Senate provision.

****1169*480** SECTION 117

House bill

No provision.

Senate amendment

Section 4005(d) clarifies that nothing in this subtitle prevents or limits additional reallocation of spectrum from the Federal Government to commercial or other users. The subsection also provides that the Secretary can permit the sharing of Government frequencies to facilitate implementation of new technologies, and that the Commission shall expedite the allocation and associated licensing of any such frequencies.

Conference agreement

Section 117(a) of the Conference Agreement is similar to the Senate provision in section 4005(d). Subsection (b) adds a new section 104(e) to the NTIA Organization Act (47 U.S.C. 903), to require the Secretary and the NTIA to amend their rules and regulations to require that any person (other than an agency or instrumentality of the United States) utilizing a frequency that is allocated for the use of government stations, or utilizing a radio station belonging to the United States for any non-government application, must submit proof to the NTIA that such person has obtained a license from the Commission. The subsection further requires that the NTIA retain on file proof that such licenses have been obtained, and that the Secretary and the NTIA certify to Congress that such licenses have been obtained.

The conferees find it necessary to include this provision because it has become evident that some persons, despite clear law to the contrary, make use of frequency assigned to government stations without obtaining a license from the Commission. This practice offends the essence of Title III of the Communications Act of 1934, circumvents the licensing fee process, and undermines the mission of the FCC as the agency charged with licensing all non-Federal users of the spectrum. The conferees are committed to terminating this practice immediately, and thus have placed these obligations on the Secretary as well as NTIA.

SECTION 6002. Authority to use Competitive Bidding

Section 6002 of H.R. 2264 amends the Communications Act of 1934 (47 U.S.C. 151 et seq.) to permit the Federal Communications Commission (FCC) to utilize a system of competitive bidding to issue licenses for the use of frequencies. Specifically, section 6002 amends section 309 of the Act (47 U.S.C. 309) by adding a new subsection (j) that would permit such competitive bidding, and limits the circumstances under which existing authority to license frequencies utilizing a system of random selection could be used.

House bill

Section 5202 of H.R. 2264 contained four findings.

****1170*481** Senate amendment

Section 4002 of the Senate Amendment contained thirteen findings.

Due to the circumstances governing the consideration of the Conference Report, the Conferees have omitted them from the statutory text. They are, however, incorporated herein by reference.

SECTION 309 (j) (1) and 309 (j) (2)

House bill

Subsection 309(j) confers the authority for the FCC to utilize a system of competitive bidding to issue licenses, and establishes the general criteria that the FCC must meet in order to utilize such authority. The Commission is restricted to utilizing competitive bidding procedures only when mutually exclusive applications are filed for subscription-based services.

Senate amendment

Subsection 309(j) would require the Commission to utilize a system of competitive bidding, but exempts certain classes of licenses from the requirement. Specifically, paragraph (4) of subsection 309(j) prohibits the use of the competitive bidding authority for license renewals and modifications thereof; for issuing new licenses to state and local government entities; for issuing new licenses in the amateur radio service, for over-the-air terrestrial radio and television licenses; for public safety and radio astronomy services; for non-mutually exclusive applications (such as specialized mobile radio, maritime and aeronautical end-user licenses); and for the modification of any non-Federal license that is required in order to make spectrum available for new technologies.

Conference agreement

The Conference Agreement adopts the provisions of the House bill, with an amendment to clarify the terms and conditions that must be met in order for the Commission to carry out its responsibilities under this Act.

Under the terms of the Conference Agreement, competitive bidding procedures would be utilized for a limited number of licenses. These procedures will only be utilized when the Commission accepts for filing mutually exclusive applications for a license, and the Commission has determined that the principal use of that license will be to offer service in return for compensation from subscribers.

The House Committee Report (H.R. Rept. 103–111) contains many examples of the types of licenses that would be covered by the competitive bidding procedures authorized in this Act, which are incorporated herein by reference.

The Conferees note that the principal use of licenses in the Instructional Television Fixed Service is the provision of educational television programming services to public school systems, parochial schools and other educational institutions. The fact that the Commission's rules permit licensees in this service to allow MMDS operators to utilize these frequencies when they are not needed for their principal use will not alter the manner by which these licenses ****1171*482** will be issued as the result of the enactment of this legislation. Similarly, although such licensees are permitted to receive payments from such MMDS operators, such payments are not to be construed by the Commission to indicate that ITFS licensees are receiving compensation from "subscribers" as that term is used in section 309(j)(2).

SECTION 309 (j)(3)

House bill

Paragraph (3) of the House bill requires the Commission to establish competitive bidding systems that meet the requirements of this section. In particular, the Commission is required to develop methodologies that promote the development and rapid deployment of new technologies; promote economic opportunity and competition and ensure that new and innovative technologies are available to the American people by avoiding excessive concentration and by disseminating licenses among a wide variety of applicants, including small business and businesses owned by members of minority groups and women; recover for the public a portion of the value of the public spectrum resource made available to the licensee and the avoidance

of unjust enrichment; and promote the efficient and intensive use of the spectrum.

Senate amendment

Section 309(j)(2) requires the Commission seek to adopt rules to implement competitive bidding, and requires that such rules include safeguards to protect the public interest and ensure the opportunity for successful participation by small businesses and minority-owned businesses.

The original House provision requires the Commission to disseminate licenses to a wide variety of applicants, including small businesses and businesses owned by minority groups and women. The Amendment adds rural telephone companies to the list of examples of the term "wide variety of applicants."

Conference agreement

The Conference Agreement adopts the provisions of the House bill with an amendment. The amendment requires that the Commission disseminate licenses among a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women.

SECTION 309(j)(4)

House bill

Section 309(j)(4) contains requirements for the rules that the Commission must issue in order to implement this section. The Commission is required to consider alternative payment schedules and methods of calculation, including initial lump sums, installment or royalty payments, guaranteed annual minimum payments, or other schedules or methods (including combinations of methods) that promote the objectives of this Act.

****1172*483** In addition, the Commission is required to include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural and other areas, and to prevent stockpiling of frequencies.

Consistent with the public interest, the purposes of this Act, and the characteristics of the proposed service, the Commission is also required to prescribe area designations and bandwidth assignments that promote an equitable distribution of licenses and services among geographic areas; economic opportunity for a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women; and investment in and rapid deployment of new technologies and services.

Finally, the Commission must require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses.

Senate amendment

Section 309(j)(2)(C) requires that the Commission's rules implementing the amendments to section 309(j) establish the method of bidding (including but not limited to sealed bids) and the basis for payment (such as installment of lump payments, royalties on future income, a combination thereof, or other reasonable forms of payment as specified by the Commission).

Section 309(j)(3) requires the Commission to establish at least one license per market as a "rural program license" for any service that will compete with telephone exchange service provided by a qualified common carrier. This section also stipulates the terms and conditions for any such license, including requirements to pay an amount equal to the value of

comparable licenses issued utilizing competitive bids.

Conference agreement

The Conference Agreement adopts the House provisions, with several amendments.

First, the Conference Agreement modifies the requirements regarding the use of installment or royalty payments and guaranteed annual minimum payments. The modification clarifies that the Commission can utilize payment schedules that include lump sums or guaranteed installment payments, with or without royalty payments.

The reason for the modification is to ensure that the Commission is not placed in the position of evaluating bids that are submitted solely in the form of promises to pay a royalty on future income, and attempting to determine which bid is greater based on speculation about the amount of money that will be generated thereby. Such a situation would force the Commission to assume all of the risk that is properly borne by the licensee and its financial underwriters, and force the Commission to make determinations that surely would be litigated, further delaying the availability of service to the public.

The Conferees anticipate that under some circumstances, the Commission will require bidders to agree to pay a stipulated lump sum or annual minimum, and, in addition to those amounts, a percentage ****1173*484** of future revenues that are derived from the use of the license. Such an approach will reduce the likelihood of protracted litigation that could delay the availability of service to the public, and hold the Commission harmless in the event that projections of future revenue fall short.

The Conferees also agreed to require that the Commission provide economic opportunities for rural telephone companies in addition to small business and businesses owned by members of minority groups and women.

The Conference Agreement also modifies the House provision to include a provision, based on but not identical to a Senate provision, that requires the Commission to ensure that small businesses, rural telephone companies, and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences and other procedures.

SECTION 309(j)(5)

House bill

Section 309(j)(5) requires the Commission to adopt procedures that will assure that no license is accepted for filing that does not meet the Commission's requirements. It provides that no license shall be granted unless the Commission determines that the applicant is qualified pursuant to subsection (a) of section 309 and sections 308(b) and 310 of the Communications Act of 1934. Finally, it requires the Commission to adopt expedited procedures for the resolution of any substantial and material issues of fact concerning qualifications.

Senate bill

Section 309(j)(2)(B) instructs the Commission to prescribe rules that require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process, and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission must require the winner to submit such other information as it deems necessary in order to determine that the bidder is qualified.

This section also clarifies that participants in the competitive bidding process shall be subject to the schedule of charges contained in section 8 of the Communications Act.

Conference agreement

The Conference Agreement adopts the House provisions.

SECTION 309(j)(6)

House bill

Section 309(j)(6) contains rules of construction, and stipulates that nothing in the use of competitive bidding for the award of licenses shall limit or otherwise affect the requirements of the Communications Act that limit the rights of licensees, or require the Commission to adhere to other requirements. In particular, the ****1174*485** adoption of competitive bidding procedures does not affect the requirements of sections 301, 304, 307, 309(h), 310, 706, or any other provision of the Act other than subsections (d)(2) and (e) of Section 309.

In addition, the House bill requires that nothing in this subsection, or in the use of competitive bidding, shall be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection, or construed to prohibit the Commission from issuing nationwide licenses or permits.

Senate amendment

Section 309(j)(5) states that nothing in the competitive bidding provisions of this Act shall be construed to alter spectrum allocation criteria and procedures established by the other provisions of the Communications Act; allow the Commission to consider potential revenues from competitive bidding when making decisions concerning spectrum allocation; diminish the authority of the Commission under the other provisions of the Communications Act to regulate or reclaim spectrum licenses; grant any right to a licensee different from the rights awarded to licensees who obtained their license through assignment methods other than competitive bidding; or prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology.

Conference agreement

The Conference Agreement adopts the House provisions with an amendment. The amendment includes three provisions from the Senate Amendment, including the provision of section 309(j)(5)(E) concerning the so-called “Pioneer’s Preference.”

In addition, the Conference Agreement includes a provision that requires the Commission to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.

The Conference Agreement also includes the provisions contained in the House Bill that retains for the Commission its ability to issue nationwide licenses or permit, but clarifies that the Commission retains its discretion to issue nationwide, regional, or local licenses or permits.

Finally, the Conference Agreement includes the provision of the Senate Amendment 309(j)(2)(B)(iii) that requires applicants to pay any fee imposed pursuant to section 8 of the Communications Act.

SECTION 309(j)(7)

House bill

Section 309(j)(7) limits the ability of the Commission to base allocation decisions, or its decisions concerning payment schedules, area designations and bandwidth assignments, solely or predominantly on expectations of Federal revenues.

****1175*486** Senate amendment

Section 309(j)(5)(B) prohibits the Commission from considering potential revenues from competitive bidding when making decisions concerning spectrum allocation.

Conference agreement

The Conference Agreement prohibits the Commission from basing a finding of public interest, convenience, and necessity on the expectation of Federal revenues from competitive bidding when making allocation decisions pursuant to section 303(c) or paragraph 4(C) of subsection 309(j).

In prescribing regulations pursuant to paragraph (4)(A) of subsection 309(j), the Conference Agreement prohibits the Commission from basing a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of competitive bidding.

Finally, the Conference Agreement recognizes that the Commission historically has attempted to project demand for services as part of its determinations, and preserves that ability for the Commission in the future.

SECTION 309(j)(8)(a)

House bill

Section 309(j)(8) requires that all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, U.S. Code.

This section also stipulates that a license or permit issued by the Commission shall not be treated as the property of the licensee for tax purposes by any State or local government entity.

Senate amendment

Section 309(j)(6) requires that moneys received from competitive bidding pursuant to this subsection shall be deposited in the general fund of the Treasury.

Section 4008(c) of the Senate Amendment to H.R. 2264 amends the Communications Act by creating a new section 714, which states that a license or permit issued by the Commission under the Act shall not be treated as the property of the licensee for property tax purposes, or other similar tax purposes, by any State or local government entity.

Conference agreement

The Conference Agreement adopts the language contained in the House Bill pertaining to the treatment of revenues derived from competitive bidding.

The Conferees agree to drop the language contained in both the House bill and the Senate Amendment relating to State and

local government tax treatment of parties who have obtained licenses under the Communications Act. It is the intent of the Conferees to clarify that nothing in this Act alters or affects the authority or lack of authority of State and local governments to assess ad valorem property, or other taxes on the licensee. The Conferees ****1176*487** do not intend for the deletion of the proposed House and Senate language to create any other inference regarding the subject matter of the proposed provisions.

SECTION 309(j)(8)(b)

House bill

No provision.

Senate amendment

Section 4008(a)(2) of the Senate Amendment to H.R. 2264 permits the Commission to retain as an offsetting collection such sums as may be necessary from the receipts received pursuant to section 309(j) for the costs of developing and implementing the competitive bidding procedures required by this Act.

Conference agreement

The Conference Agreement includes the Senate provision.

SECTION 309(j)(9)

House bill

No provision.

Senate amendment

No provision.

Conference agreement

Section 309(j)(9) of the Conference Agreement requires that, within 5 years after the enactment of this section, the Commission issue licenses and permits, utilizing the provisions of section 309(j), that in the aggregate span not less than 10 megahertz, and that have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

SECTION 309(j)(10)

House bill

No provision.

Senate amendment

No provision.

Conference agreement

Section 309(j)(10) stipulates the conditions that must have been met in order for the Commission to commence issuing licenses pursuant to section 309(j), and in order that the Commission continue to have such authority over the course of the next five years.

The initial authority for the Commission to utilize competitive bidding procedures is conditioned on the Secretary of Commerce submitting to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act; that such report recommends for immediate reallocation bands of frequencies that, in the aggregate, ****1177*488** span not less than 50 megahertz; and that such bands of frequencies meet the criteria required by section 113(a) of such Act.

In addition, in order to utilize the competitive bidding procedures authorized by section 309(j), the Commission must have completed the rulemaking required by section 332(c)(1)(D) of H.R. 2264.

Subparagraph (B) of this subsection stipulates that the Commission's authority to utilize competitive bidding procedures on and after two years after the enactment of this Act shall cease to be effective if the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act; if the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of such Act; or if the Commission has failed to issue the regulations required by section 115(a) of such Act.

In addition, the Commission's authority to utilize competitive bidding procedures shall cease to be effective if the Commission has failed to complete and submit to Congress, not later than 18 months after the date of enactment of this subsection, a study of current and future spectrum needs of state and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees, or the Commission has failed, under section 332(c)(3), to grant or deny within the time required by such section any petition that a State has filed within 90 days after the enactment of this subsection. The authority to reinstate competitive bidding procedures is conditioned on the correction of the failure that required that such authority cease to be effective.

SECTION 309(j)(11)

House bill

Section 309(j)(9) of the House bill terminates the competitive bidding authority contained in section 309(j) on September 30, 1998.

Senate amendment

Section 4008(a) of the Senate Amendment to H.R. 2264 requires the Commission to utilize competitive bidding procedures under appropriate circumstances, but terminates that requirement when the Secretary of the Treasury determines that competitive bidding has resulted in or is reasonably expected to result in the receipt of $7,200,000,000 by the end of fiscal year 1998, or at the end of fiscal year 1998, whichever is earlier. The Senate Amendment contains no provision that terminates the Commission's discretionary authority to utilize competitive bidding procedures.

Conference agreement

The Conference Agreement includes the House provision.

****1178*489**SECTION 309(j)(12)

House bill

Section 309(j)(9) includes a provision that requires the Commission to conduct a public inquiry and submit to the Congress a report concerning the implementation of section 309(j). The report must describe the methodologies established by the Commission; compare the relative advantages and disadvantages of such methodologies in terms of attaining the objectives stipulated in this Act; evaluates the extent to which such methodologies have secured prompt delivery of service to rural areas; and contain a statement of the revenues obtained, and a projection of the future revenues that are derived from the use of competitive bidding.

Senate amendment

Section 4008(a)(1)(C) of the Senate Amendment contained a similar reporting requirement.

Conference agreement

The Conference Agreement adopts the House provisions with an amendment,which contains several provisions required by the Senate Amendment. In addition to the reporting requirements required by the House Bill, the Conference Agreement requires that such report evaluate whether and to what extent competitive bidding significantly improved the efficiency and effectiveness of the licensing process; facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market; and enabled small business, rural telephone companies, and businesses owned by members of minority groups and women to participate successfully in the competitive bidding process. In addition, the Conference Agreement requires that the Commission include any recommendations for statutory changes that may be necessary to improve the competitive bidding process.

SECTION 6002(B)

House bill

Section 5204 of the House bill contains conforming amendments that limit the ability of the Commission to utilize the provisions of section 309(i) to award licenses by random selection. These amendments condition the use of the provisions of section 309(i) on a prior determination that the Commission cannot utilize the competitive bidding authority contained in section 309(j) because the use of the license is not one for which the Commission is authorized to use competitive bidding procedures.

In addition, the House bill contains a requirement that, within 180 days of the date of the enactment of this section, the Commission adopt regulations that include such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses that are issued by a system of random selection.

****1179*490** Senate amendment

No provision.

Conference agreement

The Conference Agreement includes the provisions of the House Bill.

SECTION 332(c)(1)

House bill

Section 332(c)(1)(A) states that any person providing commercial mobile service shall be treated as a common carrier subject to the requirements of title II of the Communications Act. The Commission is given authority to specify by rule which provisions of title II may not apply. In specifying sections or provisions of sections that shall not apply, the Commission may not specify sections 201, 202, or 208. In addition, the Commission may not specify a provision that is necessary to ensure charges are just and reasonable and not unjustly or unreasonably discriminatory, or otherwise in the public interest.

The House bill requires in section 332(c)(1)(B) that the Commission shall order a common carrier to establish interconnection with any person providing commercial mobile service, upon reasonable request. Nothing here shall be construed to expand or limit the Commission's authority under section 201, except as this paragraph provides.

Senate amendment

Section 332(c)(1)(A) of the Senate Amendment is the same as the House provision except:

the Senate amendment states expressly that the Commission may waive the requirements of sections 203, 204, 205, and 214, and the 30-day notice requirement of section 309(a):

the Senate amendment specifies that the Commission may not waive sections 201, 202, 206, 208, 209, 215(c), 216, 217, 220(d) or (e), 223, 225, 226(a), (b), (c), (d), (e), (f), (g), or (i), 227 or 228.

Section 332(c)(1)(B) of the Senate provision is identical to the House provision.

Section 332(c)(7) as added by the Senate bill states that the Commission, in any proceeding under this subsection, (i) shall consider the ability of new entrants to compete in the services to which such proceeding relates, and (ii) shall have the flexibility to amend, modify, or forbear from any regulation of new entrants under this subsection, or consistent with the public interest, take other appropriate action, to provide a full opportunity for new entrants to compete in such services.

Conference agreement

With regard to section 332(c)(1)(A), the Conference Agreement adopts the House approach with some modifications. The intent of this provision, as modified, is to establish a Federal regulatory framework to govern the offering of all commercial mobile services. The Conference Agreement adds two additional requirements that ****1180*491** the Commission must meet before specifying any provision as inapplicable. In addition to requiring that the Commission determine that enforcement of the provision is not necessary in order to ensure that charges are reasonable, the Conference Agreement requires the FCC to determine that enforcement of the provision is not necessary for the protection of consumers and that specifying such provision is consistent with the public interest. The Conference Agreement adopts the House provision of section 332(C)(1)(B). Differential regulation of providers of commercial mobile services is permissible but is not required in order to fulfill the intent of this section.

By dropping the list of provisions in the Senate Amendment that the Commission may not specify by rule, the Conferees do not intend to diminish the importance of these provisions to consumers. The Conferees intend to give the Commission the flexibility to determine whether or not the enforcement of these provisions is necessary, in light of their significance to

consumers.

The fact that all commercial mobile services will be treated as common carriers under this provision is not intended to affect the telephone-cable cross-ownership provision contained in Section 613(b) of the Communications Act.

Section 332(c)(1)(C) of the Conference Agreement directs the Commission to review and analyze competitive market conditions with respect to commercial mobile services in its annual report. This section also states that the Commission, as part of determining whether a provision is consistent with the public interest under subparagraph (A)(iii), shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions. If the Commission determines that such regulation will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation is in the public interest.

The purpose of this provision is to recognize that market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services. While this provision does not alter the treatment of all commercial mobile services as common carriers, this provision permits the Commission some degree of flexibility to determine which specific regulations should be applied to each carrier. For instance, the Commission may, under the authority of this provision, forbear from regulating some providers of commercial mobile services if it finds that such regulation is not necessary to promote competition or to protect consumers against unjust or unreasonable rates or unjustly or unreasonably discriminatory rates. At the same time, the Commission may determine that it should not specify some provisions as inapplicable to some commercial mobile services providers, or may choose to "unspecify" certain provisions for certain providers, if it determines, after analyzing the market conditions for commercial mobile services, that application of such provisions would promote competition and protect consumers.

Section 332(c)(1)(D) of the Conference Agreement provides that the Commission shall conduct a rulemaking to implement this paragraph with respect to the licensing of personal communications services within 180 days after the enactment of this Act. This provision ****1181*492** is necessary because the Act elsewhere requires the Commission, in order to speed the licensing of personal communications services, to complete two other proceedings concerning the rules for personal communications services within 180 days. Completion of a rulemaking regarding the regulatory treatment of personal communications services prior to the issuance of licenses through competitive bidding for these services will provide regulatory certainty that will enhance the value of the licenses.

SECTION 332(c)(2)

House bill

Section 332(c)(2) as added by the House bill clarifies that a party engaged in private land mobile service shall not be treated as a common carrier. This section also clarifies that parties deemed common carriers by virtue of paragraph (1)(A) can continue to offer radio dispatch service. In addition, this section authorizes the FCC to decide whether all common carriers should be able to provide dispatch service in the future.

Senate amendment

The provision of the Senate bill is almost identical to the House provision.

Conference agreement

The Conference Agreement adopts the House language.

SECTION 332(c)(3)

House bill

Section 332(c)(3)(A) added by the House bill provides that state or local governments cannot impose rate or entry regulation on private land mobile service or commercial mobile services; this paragraph further stipulates that nothing shall preclude a state from regulating the other terms and conditions of commercial mobile services. Section 332(c)(3)(B) permits states to petition the Commission for authority to regulate rates for any commercial mobile services where mobile services have become a substitute for telephone service, or where market conditions are such that consumers are not protected from unreasonable and unjust rates. The FCC is required to respond to any state's petition within 9 months of filing.

Senate amendment

Section 332(c)(3)(A) of the Senate Amendment is identical to the House provision except that it explicitly recognizes that nothing in this subparagraph exempts providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the continued availability of telephone exchange service at affordable rates.

Similarly, section 332(c)(3)(B) as added by the Senate Amendment permits the State to petition for the right to regulate, but ****1182*493** under slightly different standards. Under the Senate Amendment, a state may obtain regulatory authority if the state demonstrates that the commercial mobile service is a substitute for land line telephone exchange service for a substantial portion of the communications within such State (rather than substantial portion of the public).

Section 332(c)(3)(C) of the Senate Amendment is a "grandfathering" provision that permits states that regulate the rates for any commercial mobile services as of June 1, 1993 to continue to exercise such authority until the Commission issues a final order in response to a petition filed by the State requesting that the State be authorized to continue exercising authority over such rates. The Commission must rule on such a petition within nine months and must grant the petition if the State satisfies the showing required under subparagraph (B)(i) or (B)(ii). Section 332(c)(3)(D) of the Senate Amendment permits any interested party to petition the Commission, after a reasonable period of time after the issuance of an order under subparagraph (B) or (C), for an order that the State authority to regulated rates is no longer necessary. After receiving public comment on the petition, the Commission must rule on such petition within 9 months.

Conference agreement

The Conference Agreement retains the Senate language concerning universal service, with slight modifications to clarify that universal service can be provided by any provider of telecommunications service. The Conference Agreement adopts the language "substantial portion of the telephone land line exchange service" rather than either "communications" or "public" to more accurately describe the situation in which state authority to regulate commercial mobile services should be granted. For instance, the Conferees intend that the Commission should permit States to regulate radio service provided for basic telephone service if subscribers have no alternative means of obtaining basic telephone service. If, however, several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumers can choose among alternative providers of this service, it is not the intention of the conferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means.

The Conference Agreement merges subparagraphs (C) and (D) of the Senate Amendment into subparagraph (B) to provide regulatory certainty to potential bidders for licenses to provide commercial mobile services. The Conference Agreement clarifies that State authority to regulate is "grandfathered" only to the extent that it regulates commercial mobile services "offered in such State on such date". The Conference Agreement also clarifies that the State authority continues in effect until the Commission completes all action on the petition (including reconsideration). The Commission must complete all action on any state petition (including action on petitions for reconsideration) within 12 months after the petition is filed. The Conference Agreement further clarifies that State authority to regulate is only "grandfathered" if the State files a petition seeking such authority within 1 year after the date of enactment; ****1183*494** if the State fails to file a petition within this time, the State authority is preempted as all other States are preempted under subsection (c)(3)(A).

It is the intent of the Conferees that the Commission, in considering the scope, duration or limitation of any State regulation shall ensure that such regulation is consistent with the overall intent of this subsection as implemented by the Commission, so that, consistent with the public interest, similar services are accorded similar regulatory treatment.

SECTION 332(c)(4)

House bill

Section 332(c)(4) of the House Bill states that nothing in this provision affects the regulation of Comsat pursuant to title IV of the Communications Satellite Act of 1962.

Senate amendment

The Senate provision is identical to the House provision.

Conference agreement

The Conference Agreement accepts the House provision.

SECTION 332(c)(5)

House bill

No provision.

Senate amendment

Section 332(c)(5) as added by the Senate Amendment provides that the Commission shall continue to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

Conference agreement

The Conference Agreement adopts the Senate provision with slight modification to clarify that the Commission may continue to use its existing procedures to determine whether the provision of space segment capacity to providers of commercial mobile services shall be treated as common carriage. Under section 332(c)(1)(A), however, the provision of space segment capacity directly to users of commercial mobile services shall be treated as common carriage.

SECTION 332(c)(6)

House bill

No provision.

Senate amendment

Section 332(c)(6) as added by the Senate Amendment states that the foreign ownership restrictions of Section 310(b) shall not apply to any lawful foreign ownership in a provider of commercial mobile services prior to May 24, 1993, if that provider was not regulated as a common carrier prior to the date of enactment of this Act and is deemed a common carrier as a result of this Act.

****1184*495** Conference agreement

The Conference Agreement adopts a modified version of the Senate provision. The purpose of this provision is to "grandfather" any foreign ownership in a provider of private land mobile services that existed prior to May 24, 1993 if that provider becomes a common carrier under this Act. Section 310(b) of the Communications Act limits the amount of private foreign ownership in a common carrier service but does not impose any such limits on the foreign ownership in private radio service. Currently, some foreign-owned companies provide private radio services. Some of these companies will become common carriers as a result of section 332(c)(1)(A). Without this "grandfathering" provision, these companies would be forced to divest themselves of any foreign ownership when this Act becomes effective.

In order to avoid this result, the Conference Agreement accepts the Senate provision with modifications to limit its application. First, Section 332(c)(6) as added by the Conference Report requires a person that may be affected by this provision to file a waiver request with the Commission within 6 months of enactment. The FCC may grant the waiver only on the following conditions:

(1) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(2) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b). In effect, this condition "grandfathers" only the particular person who holds the foreign ownership on May 24, 1993; the "grandfathering" does not transfer to any future foreign owners.

Section 310(b) addresses the permissible extent of foreign investment in certain radio licenses, including common carriers. One effect of the denomination of commercial mobile services as common carrier services is to broaden the range of services subject to limitations on foreign investment. In securing regulatory parity for commercial mobile services, the Conference Agreement does not restrict the FCC's discretion, pursuant to section 310(b)(4), to permit foreign investors to acquire interests in U.S.-licensed enterprises. These amendments in no way affect the Commission's authority under section 310(b).

SECTION 322(d)

House bill

Section 322(d) of the House bill defines the terms "commercial mobile service" and "private mobile service". "Commercial mobile service" is defined as a mobile service, as defined in section 3(n), that is interconnected with the Public switched telephone network offered for profit and held out to the public, or offered on an indiscriminate basis to classes of eligible users, or to such a broad class so as to equal the public. "Private mobile service" is defined as anything that does not fall under commercial mobile service. The provisions also direct the Commission to define "interconnected" and "public switched telephone network".

****1185*496** Senate amendment

Section 322(c)(8) as added by the Senate Amendment contains similar definitions of the terms "commercial mobile service" and "private land mobile service". The differences in the Senate definition of "commercial mobile service" are: (1) that

"offered on an indiscriminate basis" is not one of the tests for determining a "commercial mobile service" in the Senate Amendment; (2) the Senate definition expressly recognizes the Commission's authority to define the terms used in defining "commercial mobile service"; and (3) the Senate definition requires that "interconnected service" must be made available to the public, as opposed to the House definition which simply requires the service offered to the public to be "interconnected". In other words, under the House definition, only one aspect of the service needs to be interconnected, whereas under the Senate language, the interconnected service must be broadly available. The Senate Amendment defines "interconnected service" as a service that is interconnected with the public switched network or service for which an interconnection request is pending. The definition of "private land mobile service" in the Senate amendment is virtually identical to the definition of "private mobile service" in the House bill.

Conference report

The Conference Report adopts the Senate definitions with minor changes. The Conference Report deletes the word "broad" before "classes of users" in order to ensure that the definition of "commercial mobile services" encompasses all providers who offer their services to broad or narrow classes of users so as to be effectively available to a substantial portion of the public.

Further, the definition of "private mobile service" is amended to make clear that the term includes neither a commercial mobile service nor the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

The Commission may determine, for instances, that a mobile service offered to the public and interconnected with the public switched network is not the functional equivalent of a commercial mobile service if it is provided over a system that, either individually or as part of a network of systems or licensees, does not employ frequency or channel reuse or its equivalent (or any other techniques for augmenting the number of channels of communication made available for such mobile service) and does not make service available throughout a standard metropolitan statistical area or other similar wide geographic area.

SECTION (B)

House bill

Subsection (B) of the House bill adds a conforming amendment to the definition in Section 3(n) of the Communications Act of "mobile service" to clarify that the term includes all items previously defined as "private land mobile service" and includes the licenses to be issued by the Commission pursuant to the proceedings for personal communications services.

****1186*497** Senate amendment

The Senate Amendment makes almost the identical changes to the definition of "mobile service" in Section 3(n) of the Communications Act except that the Senate Amendment clarifies that the term does not include rural radio service or the provision by a local exchange carrier of telephone exchange service by radio instead of by wire.

Conference agreement

The Conference Agreement adopts the House definition.

SUBSECTION (b)(2)

House bill

Section (b)(2) of the House bill makes additional conforming amendments to clarify headings and spacing.

Senate amendment

The Senate Amendment does not contain the provisions contained in the House bill. The Senate Amendment contains a technical amendment to Section 2(b) of the Communications Act to clarify that the Commission has the authority to regulate commercial mobile services.

Conference agreement

The Conference Agreement adopts the Senate position.

SUBSECTION (c)

House bill

Section 5206 of the House bill established effective dates and deadlines for Commission action. Under the House bill, the amendments made by the above chapter are effective upon the date of enactment, except that the amendments made by section 5205 on regulatory parity take effect one year after enactment, and that persons that provide private land mobile services shall continue to be treated as a provider of private land mobile service until 3 years after enactment. The House bill directs the FCC to prescribe rules to implement competitive bidding within 210 days of enactment. The House bill directs the Commission to, within 180 days after enactment, issue a final report and order in two proceedings regarding personal communications services and begin issuing licenses within 270 days after enactment. Finally, the House bill directs the Commission, within 1 year after enactment, to alter its rules regarding private land mobile services to provide for an orderly transition of these services to regulation as common carrier services.

Senate amendment

Under the Senate Amendment, all provisions regarding regulatory parity take effect one year after enactment, except: (1) the provisions in 332(c)(1)(A) regarding the treatment of commercial mobile services as common carrier services take effect upon enactment; and (2) any person that provides private land mobile services before such date of enactment shall continue to be treated as a provider ****1187*498** of private land mobile service until 3 years after enactment. The deadlines for Commission action with regard to personal communications services are identical to the House deadlines. The Senate Amendment also directs the Commission to alter its rules regarding private mobile services to provide for a transition to the treatment of these services as common carrier services.

Conference agreement

The Conference Agreement adopts the House provisions that generally establish the effective date as the date of enactment, except that the provisions of section 332(c)(3)(A) shall take effect one year after enactment. The Conference Agreement adds that any private land mobile service provided prior to enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services shall be treated as a private mobile service until 3 years after enactment, except for the foreign ownership provisions of section 332(c)(6).

The Conferees included the specific references to paging services in order to clarify that if a paging service that was not offered prior to the enactment of this section is offered in a state that restricts entry for common carriers, and the Commission's regulations preempting such state entry regulation has not yet taken effect, the paging service is not to be treated as a common carrier and subjected to such entry regulation.

The Conference Agreement adopts the House language concerning the transitional rulemaking for mobile services with slight modifications to clarify that the rules are intended to ensure that services that were formerly private land mobile services and

become common carrier services as a result of this Act are subjected to technical requirements that are comparable to the technical requirements that apply to similar common carrier services.

SECTION (c)–special rule

House bill

The House bill provides that the Commission may not issue any license or permit by lottery after the date of enactment unless the Commission has made the determination required by paragraph (1)(B) that the use is not of a type described in subsection (2)(A).

Senate amendment

The Senate Amendment accomplishes the same purpose by requiring competitive bidding to be used for all except exempted communications licenses.

Conference agreement

The Conference Agreement adopts the House approach and adds additional language which permits the Commission to use lotteries for applications that were accepted for filing before July 26, 1993. This provision will permit the Commission to conduct lotteries for the nine Interactive Video Data Service markets for which applications have already been accepted, and several other licenses. ****1188*499** This provision does not permit the FCC to conduct lotteries of applications that were not filed prior to July 26, 1993.

House bill

Section 5241 of the House Bill contained a series of technical amendments to the Communications Act to make clerical corrections, transfer provisions of law, and eliminate expired or outdated provisions.

Senate amendment

No provision.

Conference agreement

The Conference Agreement does not contain this package of technical amendments.

SECTION 6003. Additional Communications Fees

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The Conference agreement contains a new section 9 of the Communications Act, which has a table of regulatory fees to be collected by the Commission from its licensees in order to recover for the Commission the costs of enforcement, policy and rulemaking, international coordination, and user information services with respect to those licensees. The Commission is given authority to review these fees after one year and make any recommendations for their adjustment. In addition, the Commission is required to adjust the fees to reflect proportionate changes in its appropriations, and is permitted through a rulemaking, to make changes to the fee schedule, including adding, deleting, or reclassifying services when the Commission determines that such changes are necessary to ensure such fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.

The Conference Agreement also authorizes late payment penalties, dismissal of application, and revocation. The Conference Agreement also authorizes the Commission to waive, reduce, or defer payment of a fee for good cause.

With the exception of the level of the fees themselves, the fee provisions contained in this section are virtually identical to those contained in H.R. 1674, which passed the House in 1991. To the extent applicable, the appropriate provisions of the House Report (H.R. Rept. 102–207 are incorporated herein by reference.

TITLE VII–NRC USER FEES AND ANNUAL CHARGES

Present law

Section 6101 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) requires the Nuclear Regulatory Commission (NRC) ****1189*500** to collect 100% of its budget authority (less amounts appropriated to the NRC from the Nuclear Waste Fund established by 42 U.S.C. 10222(c) and fees collected under the Independent Offices Appropriations Act of 1952) from annual charges on NRC licensees. This authority expires at the end of fiscal year 1995. After fiscal year 1995, the NRC is authorized to collect 33% of its costs from annual fees and charges, pursuant to Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99–272).

House bill

The House bill extends present law for three years, through fiscal year 1998.

Senate amendment

The language in the Senate amendment is identical to the language in the House bill.

Conference agreement

The Conference Agreement adopts the same language as in the House bill and the Senate amendment.

TITLE VIII–PATENT AND TRADEMARK OFFICE PROVISIONS

PATENT AND TRADEMARK FEES

The House bill contains language raising Patent Office Fees by $345 million through fiscal year 1998.

The Senate amendment contains identical language.

The conferees agreed to retain the language in the conference report.

TITLE IX–MERCHANT MARINE PROVISIONS

TONNAGE DUTIES

Current law

The United States imposes a tonnage duty on a vessel which enters the U.S. from any foreign port or place; the duty is also imposed on a vessel which departs from and returns to a U.S. port or place on a "voyage to nowhere".

The tonnage duty is imposed on the cargo-carrying capacity of the vessel and is assessed regardless of whether the vessel is empty or is carrying cargo.

A vessel arriving from a foreign port in the northern Western Hemisphere (Canada, Mexico, Central America, West Indies, Bahamas, Bermuda, and northern South America) and a vessel returning from a "voyage to nowhere" must pay a tonnage duty of nine cents per ton. However, the maximum payment for any vessel in a single year is 45 cents per ton.

A vessel arriving from a foreign port anywhere else in the world must pay a tonnage duty of 27 cents per ton, not to exceed $1.35 per ton in a single year.

Under current law, in Fiscal Year 1996, the tonnage duties will revert to earlier, lesser amounts (two cents per ton, not to exceed ten cents per ton in a single year for vessels entering from the ****1190*501** northern Western Hemisphere and from "voyages to nowhere;" six cents per ton, not to exceed 30 cents per ton for other vessels subject to the duty).

House bill

Section 8001 amends section 36 of the Act of August 5, 1909, and the Act of March 8, 1910, to maintain the tonnage duties at current levels through Fiscal Year 1998. Section 8001 also makes related technical corrections in relevant statutes.

Senate amendment

Section 4051 is substantively identical to the House provision.

Conference agreement

Section 9001 contains this provision.

SENSE OF CONGRESS ON INCREASES IN INLAND WATERWAYS FUEL TAXES

House bill

Section 8002 of the House Bill contains a Sense of the Congress Resolution which expresses the Congress' intention that the inland waterways fuel tax should not be further increased beyond those increases already mandated by law.

The inland waterways fuel tax is a tax paid by commercial cargo vessel operators on the inland waterway system and the intra-coastal waterway. Receipts from this tax are transferred to the Inland Waterways Trust Fund. Barge operators on these inland waterways currently pay a tax of 17 cents per gallon. Under current law, this amount will increase to 19 cents per gallon in 1994 and to 20 cents in 1995 and thereafter. In addition, these barge operators pay a one-cent-per-gallon tax on the

same fuel for the Leaking Underground Storage Tank Trust Fund.

Senate bill

The Senate had no comparable provision.

Conference agreement

The Conference Agreement does not include the House provision.

TITLE X–NATURAL RESOURCES PROVISIONS

RECREATIONAL USER FEES

ENTRANCE FEES

House bill

The House bill made no changes in current law.

Senate amendment

The Senate amendment would authorize entrance fees at National Recreation Areas, National Monuments, National Volcanic Monuments, National Scenic Areas, BLM National Conservation Areas and areas of concentrated public use.

****1191*502** Conference agreement

The Conference agreement authorizes entrance fees at Congressionally designated Forest Service and BLM areas and at up to 21 areas of concentrated public use administered by the Secretary of Agriculture.

GOLDEN AGE PASSPORT

House bill

The House bill would impose a one-time processing fee of $10.

Senate amendment

The Senate amendment did not contain a similar provision.

Conference agreement

The Conference agreement adopts the House provision.

USER FEES

House bill

The House bill would authorize user fees at day use recreation sites including swimming areas, boat ramps and managed parking lots on Department of the Interior, Department of Agriculture and Army Corps of Engineers outdoor recreation sites. The bill would retain the current prohibition on fees for drinking water, wayside exhibits, roads and overlooks, visitor centers, scenic drives and picnic tables. In addition, the bill would authorize overnight camping fees if 5 of 8 criteria (tent or trailer space, drinking water, access roads, refuse containers, toilet facilities, fee collection, visitor protection, campfire facilities) are met.

Senate amendment

The Senate version contained a similar provision, except the prohibition on picnic tables and visitor centers was not retained and camping fees would be charged if 5 of 9 criteria were met.

Conference agreement

The Conference agreement includes the Senate provision, but retains the prohibition on visitor centers and prohibits charging fees solely for the use of picnic tables.

COSTS OF COLLECTION

House bill

The House bill would authorize the Secretary of the Interior and the Secretary of Agriculture to retain costs of fee collection from additional fee revenues.

Senate amendment

The Senate amendment contained an identical provision.

Conference agreement

The Conference agreement authorizes the Secretaries to retain all direct costs of collection associated with existing and additional ****1192*503** fee revenues, but caps the amount that may be retained at 15% of the fee revenues collected for that year.

COMMERCIAL TOUR FEES

House bill

The House bill would authorize commercial tour use fees for vehicles and aircraft entering National Park System units for the sole purpose of providing commercial tour services.

Senate amendment

The Senate amendment would authorize commercial tour use fees for vehicles only.

Conference agreement

The Conference agreement authorizes commercial tour use fees for vehicles and aircraft at certain park system units with high levels of overflight activity.

NON-FEDERAL GOLDEN EAGLE PASSPORT SALES

House bill

The House bill contained no provision.

Senate amendment

The Senate amendment would authorize the sale of Golden Eagle Passports by non-federal entities, with such entities retaining 7% of gross receipts as reimbursements for actual expenses.

Conference agreement

The Conference agreement includes the Senate provision, except that non-federal entities would retain 8% of gross receipts, with proceeds to be divided among agencies based on a share of entrance fee revenues. The Managers intend that all fee revenues derived from the non-federal sale of the Golden Eagle Passport will be used solely for resource protection, rehabilitation and conservation projects carried out by conservation corps pursuant to Public Law 91–378, or other related programs or authorities, on lands administered by the Secretary of the Interior and the Secretary of Agriculture.

CORPS FREE CAMPGROUND

House bill

The House bill would repeal the existing statutory requirement that all Army Corps of Engineers lakes and reservoirs have one free campground.

Senate amendment

The Senate amendment contained no similar provision.

Conference agreement

The Conference agreement adopts the House provision.

****1193*504** RIGHTS-OF-WAY

House bill

The House bill would require the National Park Service to charge fair market rental fees for rights-of-way in units of the National Park System.

Senate amendment

The Senate amendment did not contain a similar provision.

Conference agreement

The Conference agreement deletes this provision.

COMMUNICATION SITE FEES

House bill

The House bill would provide for the payment of fair market value, as determined by the Secretary of the Interior or Secretary of Agriculture, for the use of BLM-managed public lands and National Forest lands for commercial telephone transmission facilities.

Senate amendment

The Senate amendment contains a fee schedule for commercial radio and television facilities and establishes an advisory committee for certain other site users.

Conference agreement

The Conference agreement provides that the fees assessed and collected in FY 1994 by the Secretaries of the Interior and Agriculture for the utilization of radio, television, and commercial telephone transmission communication sites located on Forest Service and BLM lands shall be 10% above the fee assessed and collected during FY 1993.

HARDROCK MINING CLAIMS MAINTENANCE FEE

House bill

The House provision would permanently extend the $100 per claim maintenance fee in lieu of annual assessment work. In addition, the House bill would allow the Secretary of the Interior to waive or reduce the fee for claimants holding 50 or fewer claims. Finally, the House bill would impose a $25 location fee for all new claims.

Senate amendment

The Senate amendment would extend the $100 fee for fiscal years 1994–1998 and require the Secretary to waive the maintenance fee for claimants holding 10 or fewer claims. The Senate amendment would also impose the $25 location fee.

Conference agreement

The Conferees agreed to extend the $100 claim maintenance fee for fiscal years 1994–1998 and provided the Secretary with discretion to waive the fee for claimants holding 10 or fewer claims. The Conference agreement also imposes the $25 location fee for ****1194*505** new claims. The Conference notes that the discretionary fee waiver for 10 claims in the House language and the mandatory fee waiver for 10 claims in the Senate amendment were scored as receiving the same level of savings.

MINERAL RECEIPTS

House bill

The House provision would amend the Mineral Leasing Act of 1920, as amended, (MLA) to direct the Secretary of the Interior to deduct 50 percent of the costs to the federal government of administering the onshore mineral leasing programs from the gross receipts of such programs prior to statutory disbursement to the states and federal treasury. The deduction would be made on a pro rata sharing of revenues.

Senate amendment

The Senate amendment would also amend the MLA to direct the Secretary to deduct 50 percent of the administrative costs from the gross receipts. However, the Senate amendment also provides that in the event the pro rata deduction for a state exceeds 50 percent of the annual amount attributable to onshore leasing in a state, that state's deduction would be based on actual costs associated with federal administrative costs in that state.

Conference agreement

The Conference agreement adopts the Senate amendment.

FEDERAL RECLAMATION PROJECT OPERATION AND MAINTENANCE CHARGES

House bill

The House Bill would require that entities receiving water from reclamation or certain Corps projects, exempting the Central Valley Project in California, pay an annual operation and maintenance fee. These funds would be deposited into the Natural Resources Restoration Fund and would be used for the restoration of fish and wildlife resources and related habitat adversely affected by the construction and operation of reclamation projects.

Senate amendment

The Senate had no similar provision.

Conference agreement

The Conferees agreement deletes the House provision.

UNFUNDED LIABILITIES OF THE FEDERAL GOVERNMENT

House bill

The House Bill would require the President to transmit with the budget estimates the unfunded future liabilities of the Federal government.

Senate amendment

The Senate amendment did not include a parallel provision.

****1195*506** Conference agreement

The Conference agreement deletes the House provision.

ANNUAL DIRECT GRANT ASSISTANCE TO INSULAR AREAS

House bill

The House bill would have repealed the annual federal entitlement of $27.72 million to the Commonwealth of the Northern Mariana Islands (CNMI) and require Congressional approval for future funding. The bill also would have authorized $3 million for the American Memorial Park in the CNMI and $19 million for capital improvement projects in other insular areas at the discretion of the Secretary. Finally, the House bill would have required federal agencies to report to the Congress on such matters as immigration, revenue burden and minimum wage.

Senate amendment

The Senate amendment would have reduced, but not repealed, federal annual assistance to the CNMI to between $6–12 million over the next three years. After 1996, the annual federal commitment of $27.72 million would have been restored.

Conference agreement

The Conference agreement deletes this provision.

TITLE XI–CIVIL SERVICE AND POST OFFICE PROVISIONS

SUBTITLE A–CIVIL SERVICE

RETIREMENT COLA DELAY

House bill

Section 10001 of the House bill delays by three months the cost-of-living adjustments (COLAs) that are scheduled to take effect under certain Federal employee retirement systems during fiscal years 1994, 1995, and 1996. Under existing laws, COLAs are effective December 1 of each year. Under this provision, COLAs would not take effect until March 1 in fiscal years 1994, 1995, and 1996. The COLA delay applies to all annuities payable under the Civil Service Retirement System, the Federal Employees' Retirement System, the Foreign Service retirement systems, and the CIA retirement systems. The provisions of section 10001 affect only the effective date of the COLAs, and nothing in section 10001 should be construed to affect the amount of an adjustment or any individual's eligibility for an annuity increase.

Senate amendment

Sections 9001, 10001, and 12103 of the Senate amendment contain substantially the same provisions as the House bill.

Conference agreement

The Conference agreement includes the substance of the House and Senate provisions.

****1196*507** LUMP-SUM RETIREMENT OPTION

House bill

Section 10002 of the House bill amends the alternative-form-of-annuity provisions under the Civil Service Retirement System, the Federal Employees' Retirement System, and the retirement systems applicable to employees of the Foreign Service and the Central Intelligence Agency. The lump-sum option would remain in effect for employees who have a life-threatening affliction or other critical medical condition, but would be terminated for all other employees, effective January 1, 1994.

Senate amendment

Sections 9002, 10002, and 12104 of the Senate amendment contain substantially the same provisions as the house bill except, with respect to civil service and CIA employees, the lump-sum option would be terminated effective October 1, 1995. With respect to Foreign Service employees, the repeal would be effective January 1, 1994.

Conference agreement

The Conference agreement includes the substance of the House and Senate provisions. Under the conference agreement the lump-sum option is repealed effective October 1, 1994.

PAY LIMITATIONS

House bill

Section 10003 of the House bill eliminates the 2.2 percent annual pay adjustment for Federal civilian employees, including Members of Congress and Federal judges, that is scheduled to take effect in 1994. In addition, the section reduces by one percent the annual pay adjustments, based on the Employment Cost Index, scheduled to take effect in 1995, 1996, and 1997. In those years the pay adjustments would be based on the ECI minus 1.5 percent.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The House recedes to the Senate.

LOCALITY PAY LIMITS AND OTHER REDUCTIONS

House bill

Section 10004 of the House bill delays locality pay adjustments under section 5304 of title 5, United States Code, until July 1 of each year; limits the total amount payable for locality pay during the period 1994–1998; changes the effective date of the annual pay adjustments (based on the ECI) from January 1 to July 1 of each year during the period 1995 through 2003; limits

the amount of annual leave that senior executives (SES) may accumulate; prohibits the payment of performance awards and other cash awards to Federal employees during fiscal years 1994–1998; and establishes limitations ****1197*508** on the average total of civilian employees in the executive branch in fiscal years 1994–1998.

Senate amendment

The Senate amendment has no comparable provisions.

Conference agreement

The House recedes to the Senate.

MEDICARE PART B FEE LIMITS

House bill

Section 10005 of the House bill applies the Medicare Part B limiting charges for physicians' services to retirees enrolled in the Federal Employees Health Benefits Program (FEHBP) who are 65 years of age and older and do not participate in Medicare Part B. The Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, Sec. 7002(f)(1), November 5, 1990) amended the FEHBP law effective January 1, 1992, to require FEHBP plans which pay for covered health care services on a fee-for-service basis, to apply the Medicare Part A limitations on payments for hospital charges when FEHB benefits for the same services are provided to retired FEHB enrollees who are age 65 or older and are ineligible for Medicare (5 U.S.C. 8904(b)). Section 10005 would now apply the Part B fee schedule limits for physician services in the same manner.

Subsection 10005(a)(1) would redesignate current provisions for FEHB/Medicare Part A coordination of 5 U.S.C. 8904(b)(1) as 8904(b)(1)(A) and would add subparagraph (b)(1)(B) providing for FEHB/Medicare Part B coordination to parallel current provisions with respect to Medicare Part A. It would also add subparagraph (b)(1)(C) mandating exclusion of providers from the FEHB Program for violations of Section 8904(b) which have resulted in exclusion from Medicare participation. Under subparagraph (b)(1)(B), the Office of Personnel Management (OPM) would be required to notify any physician who is in violation of the law of the potential consequences and, as in the case of Medicare part A, to refer those guilty of repeated violations to the Department of Health and Human Services (DHHS) for possible sanction under the Medicare law.

Subsection 10005(a)(2) would amend current FEHB law at 5 U.S.C. 8904(b)(3)(B) to expand authority for DHHS and OPM to exchange necessary information for administration of that section to include Medicare fee schedule amounts and limiting charge information applicable to physicians and the identity of Medicare participating phyicians.

Subsection 10005(a)(3) would amend current FEHB law at 5 U.S.C. 8904(b) to add new paragraph (4) that requires OPM to certify by July 31 preceding the beginning of calendar year 1995 and every year thereafter, that an adequate arrangement with DHHS is in effect to ensure that, before the beginning of the contract year, necessary information for purposes of subsection 8904(b)(1)(B), including Medicare Program Information under section 8904(b)(3)(B), will be available to FEHB insurers and affected Medicare providers ****1198*509** and that enforcement procedures, including protection against overcharging beneficiaries, will be in place.

Subsection 10005(b) provides that the amendments shall apply with respect to contract years beginning on or after January 1, 1995.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The conference agreement includes the House provision with an amendment. The conference agreement retains the requirement that the OPM Director enter into an arrangement with DHHS as set forth in section 10005(a)(3) of the House bill, but eliminates the certification requirement.

EXTENSION OF PROXY PREMIUM LAW

House bill

Section 10006 of the House bill extends through contract year 1998 the method for determining the Government contributions under the Federal Employees Health Benefits Program in the absence of a Government-wide indemnity benefit plan (formerly Aetna).

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The conference agreement includes the House provision with an amendment. For each of contract years 1997 and 1998, the amount of the subscription charge deemed to be representing the premium of the government-wide indemnity benefit plan (i.e., the Aetna proxy premium) is reduced by 1 percent.

D.C. GOVERNMENT PAYMENTS FOR HEALTH BENEFITS

Senate amendment

Section 10003 of the Senate amendment requires the District of Columbia Government to pay the employer share of Federal Employee Health Benefits Program premiums, beginning on October 1, 1993, for certain retirees of the D.C. Government.

House bill

The House bill has no comparable provision.

Conference agreement

The Senate recedes to the House.

POST-RETIREMENT SURVIVOR ANNUITY ELECTIONS

Senate amendment

Section 10201 of the Senate amendment amends the Federal employees retirement provisions to provide for a permanent actuarial reduction in a retiree's annuity in the case of retirees who ****1199** marry after retirement and elect survivor benefits. Under existing law, retirees who ***510** marry after retirement and choose to elect survivor benefits must make a deposit into the retirement fund to cover the amount that their annuities would have been reduced if the survivor coverage had been in

effect since the date of retirement. The amendments take effect on the first day of the first month beginning 30 days after the date of enactment.

House bill

The House bill has no comparable provision.

Conference agreement

The House recedes to the Senate.

SUBTITLE B–POSTAL SERVICE

POSTAL SERVICE PAYMENTS

House bill

Section 10101 of the House bill requires the Postal Service to make certain payments for past retiree COLAs and health benefits. Subsection (a) requires a payment, over and above any other payments required by law, of $693 million to the Civil Service Retirement and Disability Fund. This payment would be made in three equal annual installments beginning in fiscal year 1995. Subsection (b) requires a payment, over and above any other payments required by law, of $348 million to the Employees Health Benefits Fund. This payment also would be made in three equal annual installments beginning in fiscal year 1995.

Senate amendment

Section 10101 of the Senate amendment requires the same Postal Service payments as the House bill except the installments are to be paid in fiscal years 1996, 1997, and 1998.

Conference agreement

The House recedes to the Senate.

The Senate and House conferees believed in 1990 that the 1990 Omnibus Budget Reconciliation Act represented the final chapter in Postal Service payments for past retiree COLAs and health benefits. With these additional payments the conferees believe that the Postal Service will have paid its debt completely for past retiree COLAs and health benefits.

REVENUE FORGONE REFORM

House bill

Sections 10201 through 10208 of the House bill repeal the authorization for revenue forgone appropriations for all mail except free-for-the-blind and overseas voting rights mail. These provisions create a new mechanism for rate setting which increases rates for nonprofit, in-county and library rate mail but also maintains reduced postage rates for that mail without an appropriation subsidy. The resultant rate increases would be phased-in over 6 years. The reform includes restrictions on commercial uses of nonprofit ****1200*511** second- and third-class mail and library rate mail. Finally, the reform authorizes a $29 million per year appropriation until 2035 to reimburse the Postal Service for losses incurred by the phase-in of the nonprofit rate increase and past revenue forgone appropriation shortfalls.

Senate amendment

The Senate amendment has no comparable provisions.

Conference agreement

The House recedes to the Senate.

TITLE XII–VETERANS' AFFAIRS PROVISIONS

EXTENSION OF AUTHORITY TO REQUIRE THAT CERTAIN VETERANS AGREE TO MAKE COPAYMENTS IN EXCHANGE FOR RECEIVING HEALTH-CARE BENEFITS

Current law

Sections 1710 and 1712 of title 38, United States Code, as amended by section 8013 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), establish categories for access to VA care and require certain veterans to pay a copayment in connection with their care. The OBRA 90 amendments are to expire on September 30, 1997.

Section 1722A of title 38 (a) requires a veteran (other than a veteran who has a service-connected disability rated 50 percent or more or whose income is at or below the maximum annual rate of VA pension) to pay $2 for each 30-day supply of a medication furnished on an outpatient basis, (b) prohibits reduction in the amount of the copayment if the initial amount of medication is less than a 30-day supply, and (c) requires that amounts collected under this authority be credited to VA's Medical Care Cost Recovery Fund. This requirement is to expire on September 30, 1997.

House bill

Section 12002 would extend for one year, through September 30, 1998, the OBRA 90 eligibility categories and copayment requirements and VA's authority to collect copayments for medication from certain veterans.

Senate amendment

Section 13007 would make the eligibility categories and copayments requirements permanent.

Compromise agreement

Section 12002 follows the House bill.

EXTENSION OF AUTHORITY FOR MEDICAL CARE COST RECOVERY

Current law

Section 1729(a) of title 38 authorizes VA, through August 1, 1994, to collect from a health care payment plan the reasonable cost of medical care furnished for a non-service-connected disability of a veteran who has a service-connected disability and who is entitled ****1201*512** to care (or payment of the costs associated with receiving care) under the health care payment plan.

House bill

Section 12003 would (a) extend for four years and two months, through September 30, 1998, VA's authority to collect from a health care payment plan the reasonable cost of medical care furnished to a veteran who has a service-connected disability for treatment of a non-service-connected disability, and (b) authorize VA, through September 30, 1998, to collect from a health care payment plan the reasonable cost of medical care furnished to such a veteran for treatment of a service-connected disability.

Senate amendment

Section 13006 would make permanent VA's authority to collect from a health care payment plan the reasonable cost of medical care furnished to a veteran who has a service-connected disability for treatment of a non-service-connected disability.

Compromise agreement

Section 12003 would extend for four years and two months, through September 30, 1998, VA's authority to collect from a health care payment plan the reasonable cost of medical care furnished to a veteran who has a service-connected disability for treatment of a non-service-connected disability.

EXTENSION OF CERTAIN INCOME VERIFICATION AUTHORITY

Current law

Section 5317 of title 38 authorizes the Secretary of Veterans Affairs to verify the eligibility of recipients of, or applicants for, VA need-based benefits using income data from the Internal Revenue Service and Social Security Administration. Section 6103(1)(7) of the Internal Revenue Code of 1986 provides the Secretary with access to that information.

These provisions expire on September 30, 1997.

House bill

Section 12004 would extend these provisions to September 30, 1998.

Senate amendment

Section 13008 would make these provisions permanent.

Compromise agreement

Section 12004 follows the House bill with regard to the portion of the provision amending title 38 and the expiration date of that amendment. Title XIII of the conference report contains a provision substantively identical to the House and Senate provisions amending the Internal Revenue Code and includes the House bill expiration date.

****1202*513** EXTENSION OF LIMITATION ON PENSION FOR CERTAIN RECIPIENTS OF MEDICAID-COVERED NURSING HOME CARE

Current law

Section 5503(f) of title 38 limits to $90 a month the maximum amount of VA need-based pension that may be paid to Medicaid-eligible veterans and surviving spouses who have no dependents and who are in nursing homes that participate in Medicaid.

This provision expires on September 30, 1997.

House bill

Section 12005 would extend this limitation to September 30, 1998.

Senate amendment

Section 13001 would make the limitation permanent.

Compromise agreement

Section 12005 follows the House bill.

EXTENSION OF PROCEDURES APPLICABLE TO LIQUIDATION SALES ON DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS

Current law

Section 3722(c)(1)(C) of title 38 defines the term "net value" for purposes of the "no-bid" formula, which the Secretary uses to determine whether it is less expensive to the government to purchase and resell a property securing a VA-guaranteed home loan in default, or simply pay off the VA guaranty. The subsection containing the no-bid formula would have expired on December 31, 1992, according to section 3732(c)(11).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Public Law 102–389) effectively extended the no-bid formula by applying it to loans closed before October 1, 1993, and modifying the formula to require VA to consider its "losses sustained on the resale of the property."

House bill

Section 13004 would codify the modification of the no-bid formula that was enacted in Public Law 102–389 and extend the expiration date of section 3732(c) to September 30, 1998.

Senate amendment

Section 13004 is substantively identical to the House bill, except that it would make permanent the modified no-bid formula.

Compromise agreement

Section 12006 contains the House provision.

****1203*514** LOAN FEES

Current law

Section 3729 of title 38 provides for VA to collect a fee from each veteran who does not have a service-connected disability obtaining a housing loan guaranteed, insured, or made under chapter 37 of title 38. The basic fee is 1.25 percent of the loan amount for a veteran and 2 percent for a reservist eligible for loans under section 3701(b)(5); 0.75 percent for a veteran and 1.5 percent for a reservist who makes a downpayment of at least 5 percent, but less than 10 percent, of the price or cost of the property; and 0.50 percent for a veteran and 1.25 percent for a reservist making a downpayment of at least 10 percent.

Different fees apply to assumptions of VA-guaranteed loans, vendee and other direct loans, interest-rate-reduction refinancing loans, and loans for the purchase of manufactured housing.

Section 3702(b) sets forth the requirements for a veteran to regain entitlement to a VA guaranty. Generally, the veteran must sell the property securing the VA-guaranteed loan and pay off the loan in full. Veterans also may obtain reinstatement of their entitlement when another person assumes the loan in accordance with the requirements of chapter 37 or to refinance an existing VA-guaranteed home loan.

House bill

Section 12008 would increase the fees borrowers pay to VA for a VA-guaranteed home loan by 0.75 percent of the loan amount. The fee increase would not apply to vendee, direct, manufactured-home, or interest-rate-reduction-refinancing loans, or to assumptions of a VA-guaranteed loan. The increased fee would apply to loans closed between October 1, 1993, and September 30, 1998.

Senate amendment

Section 13004 is substantively identical to the House bill, except it would make the increased fees permanent.

Compromise agreement

Section 12007(a) follows the House bill.

Section 12007(b) establishes a fee of 3 percent of the amount of the loan for a veteran who previously obtained VA-guaranteed home loan under section 3710 of title 38. The increased fee would not apply to loans obtained by a veteran who makes a downpayment of at least 5 percent of the price or cost of the property. The increased fee would apply in the case of second and subsequent loans closed between October 1, 1993, and September 30, 1998.

POLICY REGARDING COST-OF-LIVING ADJUSTMENT IN COMPENSATION RATES

Current law

Under chapter 11 of title 38, VA pays monthly cash benefits to veterans who have service-connected disabilities. The basic amounts of compensation paid are based on percentage-of-disability ratings–which are in multiples of 10 percentage points–assigned ****1204*515** to the veteran. Special monthly rates are payable to totally disabled veterans with certain specific, severe disabilities and combinations of disabilities. A veteran whose disability is rated 30 percent or more disabling also receives additional compensation for a spouse, children, and dependent parents.

Under chapter 13 of title 38, VA pays dependency and indemnity compensation (DIC) to the survivors of servicemembers or veterans who died from a disease or injury incurred or aggravated during military service. DIC also is paid when the veteran's death was not service connected, if the veteran, immediately prior to death, had been receiving (or had been entitled to receive) compensation at the 100-percent rate continuously for 10 or more years or for at least 5 years from the date of discharge or release from active duty.

For deaths prior to January 1, 1993, surviving spouses may receive DIC at rates determined by the pay grade (service rank) of the deceased veteran. For deaths on or after January 1, 1993, surviving spouses receive $750 per month and, if the deceased veteran was totally disabled for a continuous period of at least eight years immediately prior to death, an additional $165 per month. Under section 1311(a)(3), surviving spouses of veterans who died prior to January 1, 1993, receive benefits under the prior DIC program if it would provide a higher monthly benefit.

Under both programs, VA pays the surviving spouse additional amounts (1) if the surviving spouse is so disabled as to be housebound or in need of regular aid and attendance; and (2) on behalf of the veteran's surviving dependent children. When there is no surviving spouse, DIC is paid to surviving children.

House bill

No provision.

Senate amendment

Section 13002 states that (1) each increased rate resulting from enactment of an FY 1994 COLA for veterans disability compensation and DIC would be rounded down to the next lower whole dollar; and (2) the effective date of the COLA would not be earlier than December 4, 1993.

Conference agreement

Section 12008(a) follows the Senate amendment, except that it contains no limitation on the effective date of the COLAs.

LIMITATION ON FISCAL YEAR 1994 Cost-of-Living Adjustment for Certain DIC Recipients

Current law

Under chapter 13 of title 38, VA pays dependency and indemnity compensation (DIC) to the survivors of servicemembers or veterans who died from a disease or injury incurred or aggravated during military service. DIC is also paid when the veteran's death was not service connected, if the veteran, immediately prior to death, had been receiving (or had been entitled to receive) compensation at the 100-percent rate continuously for 10 or more years ****1205*516** or for at least 5 years from the date of discharge or release from active duty.

For deaths prior to January 1, 1993, surviving spouses may receive DIC at rates determined by the pay grade (service rank) of the deceased veteran. For deaths on or after January 1, 1993, surviving spouses receive $750 per month and, if the deceased veteran was totally disabled for a continuous period of at least eight years immediately prior to death, an additional $165 per month. Under section 1311(a)(3), surviving spouses who had been receiving benefits under the prior DIC program are paid under whichever program will pay the higher benefit.

Under both programs, VA pays the surviving spouse additional amounts (1) if the surviving spouse is so disabled as to be housebound or in need of regular aid and attendance; and (2) on behalf of the veteran's surviving dependent children. When there is no surviving spouse, DIC is paid to surviving children.

House bill

Section 12006 would prohibit a cost-of-living adjustment for FY 1994 in the rates of DIC paid to survivors under section 1311(a)(3).

Senate amendment

No provision.

Conference agreement

Section 12008(b) would limit the FY 1994 COLA for DIC paid under section 1311(a)(3) to one-half of the COLA provided for DIC paid under section 1311(a)(1).

LIMITATION REGARDING COST-OF-LIVING ADJUSTMENTS FOR MONTGOMERY GI BILL BENEFITS

Current law

Section 3015(g)(1) of title 38 and section 2131(b)(2)(A) of title 10, United States Code, require the Secretary of Veterans Affairs, with respect to the fiscal year beginning on October 1, 1993, to provide a percentage increase in the monthly rates payable under the Montgomery GI Bill to participants in the active-duty and Selected Reserve programs, respectively, equal to the percentage by which the Consumer Price Index (CPI) for the 12-month period ending June 30, 1993, exceeds the Consumer Price Index for the 12-month period ending June 30, 1992. CBO currently estimates that the COLA will be 3 percent.

For fiscal years beginning on or after October 1, 1994, the Secretary is required to provide a percentage increase in such monthly rates equal to the percentage by which the CPI for the 12-month period ending on the June 30 preceding the fiscal year for which the increase is made, exceeds the CPI for the prior 12-month period.

House bill

Section 12009 would reduce the fiscal year 1994 cost-of-living adjustment for Montgomery GI Bill benefits for both active-duty and Selected Reserve participants by one percentage point. This ****1206*517** would have the effect of reducing the expected COLA to 2 percent, according to CBO.

Senate amendment

No provision.

Compromise agreement

Section 12009 would eliminate the COLA to be paid under section 3015(g)(1) for Montgomery GI Bill benefits for fiscal year 1994 and limit the FY 1995 COLA to one-half the amount otherwise authorized by such section.

TITLE XIII–REVENUE, HEALTH CARE, HUMAN RESOURCES, CUSTOMS AND TRADE PROVISIONS, FOOD STAMP PROGRAM, AND TIMBER SALES PROVISIONS

CHAPTER 1–Revenue Provisions

I. TRAINING AND INVESTMENT PROVISIONS

A. EDUCATION AND TRAINING PROVISIONS

1. Extension of employer-provided educational assistance (sec. 14101 of the House bill, sec. 8101 of the Senate amendment, sec. 13101 of the conference agreement, and sec. 127 of the Code)

Present Law

Prior to July 1, 1992, an employee's gross income and wages for income and employment tax purposes did not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts were paid or incurred pursuant to an educational assistance program that met certain requirements (sec. 127). This exclusion, which expired with respect to amounts paid after June 30, 1992, was limited to $5,250 of educational assistance with respect to an individual during a calendar year. Education that did not qualify for the exclusion (e.g., because it exceeded the $5,250 limit) was excludable from income if and only if it qualified as a working condition fringe benefit (sec. 132). To be excluded as a working condition fringe, the cost of the education must have been a job-related deductible expense.

In the absence of the exclusion, for purposes of income and employment taxes, an employee generally is required to include in income and wages the value of educational assistance provided by the employer unless the cost of such assistance qualifies as a deductible job-related expense of the employee.

House Bill

The House bill retroactively and permanently extends the exclusion for employer-provided educational assistance.

The House bill includes a number of transition rules to deal with cases in which employers provided educational assistance to employees between July 1, 1992, and December 31, 1992. First, no interest, penalty, or addition to tax is imposed on employers or employees ****1207*518** who continued to exclude from income educational assistance payments made after June 30, 1992. Second, if an employer included educational assistance payments made after June 30, 1992, in its employees' income and wages (for purposes of income or employment taxes) the amount included is deducted from income and wages paid in 1993 rather than requiring the taxpayers to file a request for refund for 1992.

The House bill also clarifies the rule under which educational assistance that does not satisfy section 127 may be excluded from income if and only if it meets the requirements of a working condition fringe benefit.

Effective date.–The extension of the exclusion is effective for taxable years ending after June 30, 1992. The clarification to the working condition fringe benefit rule is effective for taxable years beginning after December 31, 1988.

Senate Amendment

The Senate amendment is the same as the House bill except that the exclusion is extended retroactively and through June 30, 1994, and the Senate amendment does not contain special rules for educational assistance provided between July 1, 1992, and December 31, 1992.

Effective date.–The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, except that the exclusion for employer-provided educational assistance is extended retroactively and through December 31, 1994.

The conferees intend that the Secretary will use his existing authority to the fullest extent possible to alleviate any administrative problems that may result from the expiration and retroactive extension of the exclusion and to facilitate in the simplest way possible the recoupment of excess taxes paid with respect to educational assistance provided in the last half of 1992.

Effective date.–The conference agreement follows the Senate amendment.

2. Extension of targeted jobs tax credit (sec. 14102 of the House bill, sec. 8102 of the Senate amendment, sec. 13102 of the conference agreement, and sec. 51 of the Code)

Present Law

Tax credit

Prior to July 1, 1992, the targeted jobs tax credit was available to employers on an elective basis for hiring individuals from several targeted groups. The targeted groups consist of individuals who are either recipients of payments under means-tested transfer programs, economically disadvantaged, or disabled.

The credit generally is equal to 40 percent of up to $6,000 of qualified first-year wages paid to a member of a targeted group. Thus, the maximum credit generally is $2,400 per individual. With ****1208*519** respect to economically disadvantaged summer youth employees, however, the credit is equal to 40 percent of up to $3,000 of wages, for a maximum credit of $1,200.

The credit expired for individuals who began work for an employer after June 30, 1992.

Certification of members of targeted groups

Generally, an individual is not treated as a member of a targeted group unless certain certification conditions are satisfied. On or before the day on which the individual begins work for the employer, the employer has to have received or have requested in writing from the designated local agency certification that the individual is a member of a targeted group. In the case of a certification of an economically disadvantaged youth participating in a cooperative education program, this requirement is satisfied if necessary certification is requested or received from the participating school on or before the day on which the individual begins work for the employer.

The deadline for requesting certification of targeted group membership is extended until five days after the day the individual begins work for the employer, provided that, on or before the day the individual begins work, the individual has received a written preliminary determination of targeted group eligibility (a "voucher") from the designated local agency (or other agency or organization designated pursuant to a written agreement with the designated local agency). The "designated local agency" is the State employment security agency.

Authorization of appropriations

Appropriations for administrative and publicity expenses relating to the targeted jobs credit was authorized through June 30, 1992. These monies were to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

House Bill

Extension of credit

The House bill permanently and retroactively extends the targeted jobs tax credit for individuals who begin work for the employer after June 30, 1992. The House bill also extends the authorization of appropriations for administrative and publicity expenses relating to the credit.

Approved school-to-work program

In addition, the targeted jobs tax credit is expanded to include qualified participants in an approved school-to-work program, for participation beginning after December 31, 1993.

Effective date

The extension of the targeted jobs tax credit is effective for individuals who begin work for the employer after June 30, 1992. The approved school-to-work program is effective for individuals beginning work for an employer after December 31, 1993.

****1209*520** Senate Amendment

Extension of credit

The Senate amendment extends for 24 months the targeted jobs tax credit for individuals who begin work for the employer after June 30, 1992 and before July 1, 1994. Under the Senate amendment, the targeted jobs tax credit does not apply with respect to individuals who begin work for the employer after June 30, 1994. The Senate amendment also extends the authorization of appropriations for administrative and publicity expenses relating to the credit.

Approved school-to-work program

No provision.

Effective date

The extension of the targeted jobs tax credit is effective for individuals who begin work for the employer after June 30, 1992 and before July 1, 1994.

Conference Agreement

Extension of credit

The conference agreement extends for 30 months the targeted jobs tax credit for individuals who begin work for the employer after June 30, 1992 and on or before December 31, 1994.

Approved school-to-work program

The conference agreement does not include the House bill provision.

Effective date

The extension of the targeted jobs tax credit is effective for individuals who begin work for the employer after June 30, 1992 and before December 31, 1994.

B. INVESTMENT INCENTIVES

1. Extension of research tax credit; Modification of fixed base percentage for startup companies (secs. 14111 and 14112 of the House bill, secs. 8111 and 8112 of the Senate amendment, secs. 13111 (a) and (c) and 13112 of the conference agreement, and sec. 41 of the Code)

Present Law

The research and experimentation tax credit ("research tax credit") provides a credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceed its base amount for that year. The credit expired after June 30, 1992.

The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures ****1210*521** and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (such as "start-up" firms) are assigned a fixed-base percentage of .03.

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Qualified research expenditures eligible for the credit consist of: (1) "in-house" expenses of the taxpayer for research wages and supplies used in research; (2) certain time-sharing costs for computer use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf. The credit is not available for expenditures attributable to research that is conducted outside the United States. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

The 20-percent research tax credit also applies to the excess of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for basic research conducted by universities (and certain scientific research organizations) over (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation.

Deductions for expenditures allowed to a taxpayer under section 174 (or any other section) are reduced by an amount equal to 100 percent of the taxpayer's research tax credit determined for the taxable year.[1]

House Bill

The research tax credit (including the university basic research credit) is permanently extended.

The House bill also adds a new rule regarding the determination of the fixed-base percentage of start-up firms. Under the provision, a taxpayer that did not have gross receipts in at least three years during the 1984-1988 period will be assigned a fixed base percentage of .03 for each of its first five taxable years after 1993 in which it incurs qualified research expenditures. The taxpayer's fixed-base percentage for its sixth through tenth taxable years after 1993 in which it incurred qualified research expenditures will be as follows: (1) for the taxpayer's sixth year, its fixed-base percentage will be one-sixth of its ratio of qualified research expenditures to gross receipts for its fourth and fifth years; (2) for its seventh year, its fixed-base percentage will be one-third of its ratio for its fifth and sixth years; (3) for its eighth year, its fixed-base percentage will be one-half of its ratio for its fifth through seventh years; (4) for its ninth year, its fixed-base percentage will be two-thirds ****1211*522** of its ratio for its fifth through eighth years; and (5) for its tenth year, its fixed-base percentage will be five-sixths of its ratio for its fifth through ninth years. For subsequent taxable years, the taxpayer's fixed-base percentage will be its actual ratio of qualified research expenditures to gross receipts for five years selected by the taxpayer from its fifth through tenth taxable years.

The committee report to the House bill states that, in extending the research tax credit, the committee wishes to reaffirm

Congressional intent that neither the enactment of the credit in 1981 nor the "targeting" modifications to the credit in 1986 affect the definition of "research or experimental expenditures" for purposes of section 174. Thus, the various new credit limitations enacted in the Tax Reform Act of 1986 apply in determining eligibility for the credit (in taxable years beginning after December 31, 1985), and do not determine eligibility of product development costs under section 174.

Effective date.–The provision applies to expenditures paid or incurred after June 30, 1992.

Senate Amendment

The research tax credit (including the university basic research credit) is extended for 12 months (i.e., for expenditures paid or incurred during the period July 1, 1993, through June 30, 1994).

The Senate amendment also adds the same rule contained in the House bill regarding the determination of the fixed-base percentage of start-up firms in taxable years after the firm's start-up period. In addition, the committee report to the Senate amendment contains the same language as included in the House bill committee report regarding the effect on section 174 of the enactment of the research credit in 1981 and the targeting modifications to the credit in 1986.

Effective date.–The Senate amendment applies to expenditures paid or incurred during the period July 1, 1993, through June 30, 1994.

Conference Agreement

Under the conference agreement, the research tax credit (including the university basic research credit) is extended for three years (i.e., for expenditures paid or incurred during the period July 1, 1992, through June 30, 1995.)

The conference agreement also adds the rule contained in the House bill and the Senate amendment regarding the determination of the fixed-base of start-up firms in taxable years after the firm's start-up period. In addition, the conferees reiterate the intent expressed in the House bill committee report and the Senate amendment committee report that neither the enactment of the credit in 1981 nor the "targeting" modifications to the credit in 1986 affect the definition of "research or experimental expenditures" for purposes of section 174. Thus, the various new credit limitations enacted in the Tax Reform Act of 1986 apply in determining eligibility for the credit (in taxable years beginning after December 31, 1985), and do not determine eligibility of product development costs under section 174.

****1212*523** Effective date.–The conference agreement applies to expenditures paid or incurred during the period July 1, 1992, through June 30, 1995.

2. Capital gains exclusion for certain small business stock (sec. 14113 of the House bill, sec. 13113 of the conference agreement, and new sec. 1202 of the Code)

Present Law

Gain from the sale or exchange of stock held for more than one year generally is treated as long-term capital gain.

Net capital gain (i.e., long-term capital gain less short-term capital loss) of an individual is taxed at the same rates that apply to ordinary income, subject to a maximum rate of 28 percent.

House Bill

In general

The House bill generally permits a noncorporate taxpayer who holds qualified small business stock for more than 5 years to exclude 50 percent of any gain on the sale or exchange of the stock. The amount of gain eligible for the 50 percent exclusion is limited to the greater of (1) 10 times the taxpayer's basis in the stock or (2) $10 million gain from stock in that corporation.

Qualified small business stock

In order for stock held by a taxpayer to qualify as small business stock, the following requirements must be met.

Eligible stock and redemptions

The stock must be acquired by the taxpayer at the original issuance (directly or through an underwriter) in exchange for money, other property (not including stock) or as compensation for services provided to the issuing corporation (other than services performed as an underwriter of the stock).

In order to prevent evasion of the requirement that the stock be newly issued, the exclusion does not apply if the issuing corporation (1) purchases any stock from the stockholder (or a related person) within 2 years of the issuance of the stock or (2) redeems more than 5 percent (by value) of its own stock within 1 year of the issuance. For purposes of this anti-evasion rule, purchases by persons related to the issuing corporation are treated as purchases by the issuing corporation.

Qualified corporation

The issuing corporation must be a qualified small business as of the date of issuance and during substantially all of the period that the taxpayer holds the stock.

A qualified small business is a subchapter C corporation other than: a DISC or former DISC, a corporation with respect to which an election under section 936 is in effect, a regulated investment company, a real estate investment trust, a real estate mortgage investment conduit, or a cooperative. The corporation also generally cannot own (i) real property the value of which exceeds 10 percent ****1213*524** of its total assets or (ii) portfolio stock or securities the value of which exceeds 10 percent of its total assets in excess of liabilities.

Active business

During substantially all of the taxpayer's holding period for the stock, at least 80 percent (by value) of the corporation's gross assets (including intangible assets) must be used by the corporation in the active conduct of a qualified trade or business. If in connection with any future qualified trade or business, a corporation uses assets in certain start-up activities, research and experimental activities or in-house research activities, the corporation is treated as using such assets in the active conduct of a qualified trade or business.

Assets that are held to meet reasonable working capital needs of the corporation, or are held for investment and are reasonably expected to be used within 2 years to finance future research and experimentation, are treated as used in the active conduct of a trade or business. In addition, certain rights to computer software are treated as assets used in the active conduct of a trade or business.

A qualified trade or business is any trade or business other than one involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of the trade or business is the reputation or skill of 1 or more of its employees. The term also excludes any banking, insurance, leasing, financing, investing, or similar business, any farming business (including the business of raising or harvesting trees), any business involving the production or extraction of products of a character for which percentage depletion is allowable, or any business of operating a hotel, motel, restaurant or similar business.

A corporation that is a specialized small business investment company ("SSBIC") is treated as meeting the active business

test. An SSBIC is defined as any orporation (other than certain non-qualified corporations) that is licensed by the Small Business Administration under section 301(d) of the Small Business Act of 1958, as in effect on May 13, 1993.

Gross assets

As of the date of issuance of the stock, the excess of (1) the amount of cash and the aggregate adjusted bases of other property held by the corporation, over (2) the aggregate amount of indebtedness of the corporation that does not have an original maturity of more than one year (such as short-term payables), cannot exceed $50 million. For this purpose, amounts received in the issuance are taken into account.

If a corporation satisfies the gross assets test as of the date of issuance but subsequently exceeds the $50 million threshold, stock that otherwise constitutes qualified small business stock would not lose that characterization solely as a result of that subsequent event. If a corporation (or a predecessor corporation) exceeds the $50 million threshold at any time after December 31, 1992, the corporation cannot issue stock that would qualify for the exclusion.

****1214*525** Subsidiaries of issuing corporation

In the case of a corporation that owns at least 50 percent of the vote or value of a subsidiary, the parent corporation is deemed to own its ratable share of the subsidiary's assets for purposes of the "qualified corporation," "active business," and "gross assets" tests described above.

Pass-through entities

Gain from the disposition of qualified small business stock by a partnership, S corporation, regulated investment company or common trust fund that is taken into account by a partner, shareholder or participant (other than a C corporation) is eligible for the exclusion, provided that (1) all eligibility requirements with respect to qualified small business stock are met, (2) the stock was held by the entity for more than 5 years, and (3) the partner, shareholder or participant held its interest in the entity on the date the entity acquired the stock and at all times thereafter and before the disposition of the stock. In addition, a partner, shareholder, or participant cannot exclude gain received from an entity to the extent that the partner's, shareholder's, or participant's share in the entity's gain exceeded the partner's, shareholder's or participant's interest in the entity at the time the entity acquired the stock.

Certain tax-free and other transfers

If qualified small business stock is transferred by gift or at death, the transferee is treated as having acquired the stock in the same manner as the transferor, and as having held the stock during any continuous period immediately preceding the transfer during which it was held by the transferor. A partner can treat stock distributed by a partnership as qualified small business stock as long as (1) all eligibility requirements with respect to qualified small business stock are met by the partnership with respect to its investment in the stock, and (2) the partner held its interest in the partnership on the date the partnership acquired the stock and at all times thereafter and before the disposition of the stock. In addition, a partner cannot treat stock distributed by a partnership as qualified small business stock to the extent that the partner's share of the stock distributed by the partnership exceeded the partner's interest in the partnership at the time the partnership acquired the stock.

Transferees in other cases are not eligible for the exclusion. Thus, for example, if qualified small business stock is transferred to a partnership and the partnership disposes of the stock, any gain from the disposition will not be eligible for the exclusion.

In the case of certain incorporations and reorganizations where qualified small business stock is transferred for other stock, the transferor treats the stock received as qualified small business stock. The holding period of the original stock is added to that of the stock received. However, the amount of gain eligible for the exclusion is limited to the gain accrued as of the date of the incorporation or reorganization.

**1215*526 Special basis rules

If property (other than money or stock) is transferred to a corporation in exchange for its stock, the basis of the stock received is treated as not less than the fair market value of the property exchanged. Thus, only gains that accrue after the transfer are eligible for the exclusion.

Options, nonvested stock, and convertible instruments

Stock acquired by the taxpayer through the exercise of options or warrants, or through the conversion of convertible debt, is treated as acquired at original issue. The determination whether the gross assets test is met is made at the time of exercise or conversion, and the holding period of such stock is treated as beginning at that time.

In the case of convertible preferred stock, the gross assets determination is made at the time the convertible stock is issued, and the holding period of the convertible stock is added to that of the common stock acquired upon conversion.

Stock received in connection with the performance of services is treated as issued by the corporation and acquired by the taxpayer when included in the taxpayer's gross income in accordance with the rules of section 83.

Offsetting short positions

A taxpayer cannot exclude gain from the sale of qualified small business stock if the taxpayer (or a related person) held an offsetting short position with respect to that stock anytime before the 5-year holding period is satisfied. If the taxpayer (or a related person) acquires an offsetting short position with respect to qualified small business stock after the 5-year holding period is satisfied, the taxpayer must elect to treat the acquisition of the offsetting short position as a sale of the qualified small business stock in order to exclude any gain from that stock.

An offsetting short position is defined to be (1) a short sale of property substantially identical to the qualified small business stock (including writing a call option that the holder is more likely than not to exercise or selling the stock for future delivery) or (2) an option to sell substantially identical property at a fixed price.

Capital gains and investment interest

Any gain that is excluded from gross income under the bill is not taken into account in computing long-term capital gain or in applying the capital loss rules of sections 1211 and 1212. In addition, the taxable portion of the gain is taxed under section 1(h), which provides for a maximum rate of 28 percent.

The amount treated as investment income for purposes of the investment interest limitation does not include any gain that is excluded from gross income under the bill.

Minimum tax

One-half of any excluded gain is treated as a preference for purposes of the alternative minimum tax.

**1216*527 Effective date

The provision applies to stock issued after December 31, 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with the following modifications:

In general

The agreement clarifies that the $10 million limitation on eligible gain is applied on a shareholder-by-shareholder basis. The conferees also wish to clarify that for purposes of the 10-times-basis limitation, basis is determined by valuing any contributed property at fair market value (at the date of contribution).

Qualified small business stock

Redemptions.–The agreement eliminates the rule in the House bill that treats purchases by persons related to an issuing corporation as purchases by the corporation for purposes of determining whether there has been a redemption. In lieu of this rule, a corporation is treated as purchasing an amount of its stock equal to the amount of its stock treated as redeemed under section 304(a).

Qualified corporation.–The agreement excludes from the definition of eligible corporation any corporation that has a direct or indirect subsidiary with respect to which an election under section 936 is in effect.

Active business.–The agreement clarifies that the active business requirement is met by a corporation with 80 percent of its assets used in the active conduct of one or more qualified trades or businesses.

Gross assets.–The conference agreement provides that the $50 million size limitation is based on the issuer's gross assets (i.e., the sum of the cash and the adjusted bases of other property held by the corporation) without subtracting the short-term indebtedness of the corporation. For purposes of this rule, the adjusted basis of property contributed to the corporation is determined as if the basis of the property immediately after the contribution were equal to its fair market value.

Subsidiaries of issuing corporation

The agreement provides that corporations that are part of a parent-subsidiary controlled group (using a more than 50% ownership test) are treated as a single corporation for purposes of the gross assets test. The conferees also wish to clarify that, for purposes of the active business requirement, a parent's ratable share of a subsidiary's assets (and activities) is based on the percentage of outstanding stock owned (by value).

Certain tax-free and other transfers

The conference agreement follows the House bill by limiting the gain that is eligible for exclusion on the sale of stock that was ****1217** acquired through incorporation or reorganization where the stock acquired would not have been stock of a qualified small business (at the time acquired). The agreement, however, also provides that the limit will not apply to gain from stock that was ***528** acquired through incorporation or reorganization that would have been stock of a qualified small business.

Alternative minimum tax study

The conferees understand that the individual alternative minimum tax (AMT) may operate to disallow deductions that may be associated with the production of income, including section 212 expenses associated with income derived through partnerships. A provision was included in H.R. 11 last year to allow a certain amount of the distributive share of section 212 expenses of a partner in a partnership to be deductible for AMT purposes. Concern has been expressed that the present-law

AMT treatment of section 212 expenses might create a disincentive for the long-term investments that Congress has intended to foster through the capital gains exclusion. Accordingly, the conferees urge that the Treasury Department study the question whether the present-law AMT treatment of section 212 expenses creates such a disincentive, and provide the House Committee on Ways and Means and the Senate Finance Committee with a report of such study by March 1, 1994. The study should include the Treasury Department's views and recommendations as to whether a statutory amendment is appropriate insofar as the AMT treatment of section 212 expenses is concerned, along with a discussion of the merits and consequences of any such amendment.

Effective date

The conference agreement applies to stock issued after the date of enactment.

3. Rollover of gain from sale of publicly-traded securities into specialized small business investment companies (sec. 14114 of the House bill, sec. 13114 of the conference agreement and new sec. 1044 of the Code)

Present Law

In general, gain or loss is recognized on any sale, exchange or other disposition of property. The Internal Revenue Code contains provisions under which taxpayers may elect not to recognize gain realized on certain "like-kind" exchanges (sec. 1031), or for certain involuntary conversions (sec. 1033).

House Bill

The House bill permits any corporation or individual to elect to roll over without payment of tax any capital gain realized upon the sale of publicly-traded securities where the corporation or individual uses the proceeds from the sale to purchase common stock or a partnership interest in a specialized small business investment company ("SSBIC") within 60 days of the sale of the securities. To the extent the proceeds from the sale of the publicly-traded securities exceed the cost of the SSBIC common stock or partnership ****1218*529** interest, gain will be recognized currently. The taxpayer's basis in the SSBIC common stock or partnership interest is reduced by the amount of any gain not recognized on the sale of the securities.[2]

Estates, trusts, S-corporations, and partnerships are not eligible to make this election to roll over gains. In addition, "publicly-traded securities" are defined as stock or debt traded on an established securities market. An SSBIC is defined as any partnership or corporation that is licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958, as in effect on May 13, 1993.

The amount of gain that an individual may elect to roll over under this provision for a taxable year is limited to the lesser of (1) $50,000 or (2) $500,000 reduced by the gain previously excluded under this provision. For corporations, these limits are $250,000 and $1,000,000.

Effective date.–The provision is effective for sales of publicly-traded securities on or after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

4. Modification to minimum tax depreciation rules (sec. 14115 of the House bill, sec. 8115 of the Senate amendment, sec. 13115 of the conference agreement, and sec. 56 of the Code)

Present Law

A taxpayer is subject to an alternative minimum tax (AMT) to the extent that the taxpayer's tentative minimum tax exceeds the taxpayer's regular income tax liability. A taxpayer's tentative minimum tax generally equals 20 percent (24 percent in the case of an individual) of the taxpayer's alternative minimum taxable income in excess of an exemption amount. Alternative minimum taxable income (AMTI) is the taxpayer's taxable income increased by certain tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the deferral of income resulting from the regular tax treatment of those items.

One of the adjustments which is made to taxable income to arrive at AMTI relates to depreciation. For AMT purposes, depreciation on most personal property to which the modified Accelerated Cost Recovery System (MACRS) adopted in 1986 applies is calculated using the 150-percent declining balance method (switching to straight line in the year necessary to maximize the deduction) over the property's class life. The class lives of MACRS property generally are longer than the recovery periods allowed for regular tax purposes.

****1219*530** For taxable years beginning after 1989, the AMTI of a corporation is increased by an amount equal to 75 percent of the amount by which adjusted current earnings (ACE) of the corporation exceed AMTI (as determined before this adjustment). In general, ACE means AMTI with additional adjustments that generally follow the rules presently applicable to corporations in computing their earnings and profits. For purposes of ACE, depreciation is computed using the straight-line method over the class life of the property. Thus, a corporation generally must make two depreciation calculations for purposes of the AMT–once using the 150-percent declining balance method over the class life and again using the straight-line method over the class life. Taxpayers may elect to use either method for regular tax purposes. If a taxpayer uses the straight-line method for regular tax purposes, it must also use the straight-line method for AMT purposes.

House Bill

The House bill eliminates the depreciation component of the ACE adjustment. In addition, taxpayers, including individuals, will compute AMT depreciation by using the 120-percent declining balance method over the recovery periods applicable for regular tax purposes. The provision does not apply to property eligible only for the straight-line method for regular tax purposes (e.g., residential and nonresidential real property).

Effective date.–The provision is effective for property placed in service after December 31, 1993.

Senate Amendment

The Senate amendment eliminates the depreciation component of the ACE adjustment. Thus, corporations will compute AMT depreciation by using the rules generally applicable to individuals (i.e., the 150-percent declining balance method over the class life of the property for tangible personal property.)

Effective date.–The provision is effective for property placed in service after December 31, 1993.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Increase expensing deduction for small business (sec. 14116 of the House bill, sec. 8119 of the Senate amendment, sec. 13116 of the conference agreement, and sec. 179 of the Code)

Present Law

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $10,000 of the cost of qualifying property placed in service for the taxable year. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $10,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. In addition, ****1220*531** the amount eligible to be expensed for a taxable year may not exceed the taxable income of the taxpayer for the year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations).

House Bill

The House bill increases the $10,000 amount allowed to be expensed under section 179 to $25,000.

Effective date.–The provision is effective for property placed in service in taxable years beginning after December 31, 1992.

Senate Amendment

The Senate amendment increases the $10,000 amount allowed to be expensed under section 179 to $20,500.

Effective date.–The provision is effective for property placed in service in taxable years beginning after December 31, 1992.

Conference Agreement

The conference agreement increases the $10,000 amount allowed to be expensed under section 179 to $17,500 for property placed in service in taxable years beginning after December 31, 1992.

6. Bonds for high-speed intercity rail facilities (sec. 14121 of the House bill, sec. 13121 of the conference agreement, and sec. 146 of the Code)

Present Law

High-speed intercity rail facilities qualify for tax-exempt bond financing if trains operating on the facility are reasonably expected to carry passengers and their baggage at average speeds in excess of 150 miles per hour between stations. Such facilities need not be governmentally-owned, but the owner must irrevocably elect not to claim depreciation or any tax credit with respect to bond-financed property.

Twenty-five percent of each bond issue for high-speed intercity rail facilities must receive an allocation from a State private activity bond volume limitation. If facilities are located in two or more States, this requirement must be met on a State-by-State basis for the financing of facilities located in each State.

House Bill

The House bill repeals the requirement that 25 percent of each high-speed rail facility bond issue receive an allocation from a State private activity bond volume limitation.

Effective date.–The provision is effective for bonds issued after December 31, 1993.

****1221*532** Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification. Under the agreement, the requirement that 25 percent of each high-speed rail facility bond issue receive an allocation from a State private activity bond volume limitation would be repealed only if all the bond-financed property were governmentally owned. (Bonds issued for privately-owned property would remain subject to the current-law rules with respect to the 25-percent volume cap allocation requirement.)

Effective date.–The provision is effective for bonds issued after December 31, 1993.

7. Extension of qualified small-issue bonds (sec. 14122 of the House bill, sec. 8121 of the Senate amendment, sec. 13122 of the conference agreement, and sec 144 of the Code)

Present Law

Interest on certain small issues of private activity bonds is excluded from income if at least 95 percent of the bond proceeds is used to finance: (1) manufacturing facilities or (2) agricultural land or property for first-time farmers ("qualified small-issue bonds"). Qualified small-issue bonds are those for which (i) the aggregate authorized face amount of the issue is $1 million or less, or (ii) the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, does not exceed $10 million. Special limits apply to these bonds for first-time farmers. As private activity bonds, qualified small-issue are subject to the volume cap. Treasury Department regulation sec. 1.103–8(a)(5) generally requires that qualified small-issue bonds be issued within one year after the property being financed is placed in service.

Authority to issue qualified small-issue bonds expired after June 30, 1992.

House Bill

The House bill permanently extends the authority to issue qualified small-issue bonds.

Effective date.–The provision is effective for bonds issued after June 30, 1992.

Senate Amendment

The Senate amendment extends the authority to issue qualified small-issue bonds for 24 months (through June 30, 1994).

Effective date.–The provision is effective for bonds issued after June 30, 1992 and before July 1, 1994.

****1222*533** Conference Agreement

The conference agreement follows the House bill with a modification with respect to qualified small-issue bonds that could not be issued within the regulatory one-year placed-in-service period due to the lapse of the program. Specifically, the conference agreement provides that the one-year placed-in-service period does not expire before January 1, 1994 for property with respect to which this one year period, under Treasury Regulation sec. 1.103–8(a)(5) or any successor regulation otherwise would expire after June 30, 1992, and before January 1, 1994. Because these bonds must be issued no later than December 31, 1993 and because carryforwards of qualified small-issue bonds are not allowed under the State private activity bond volume limitation rules, the applicable State volume limitation from which an allocation is required is that for calendar

year 1993.

Effective date.–The extension is effective for bonds issued after June 30, 1992. The provision relating to Treasury regulation 1.103–8(a)(5) is effective on the date of enactment.

8. Extension of tax credit for orphan drug clinical testing expenses (sec. 13111(b) of the conference agreement and sec. 28 of the Code)

Present Law

The orphan drug tax credit (sec. 28) provides a 50-percent nonrefundable tax credit for a taxpayer's qualified clinical testing expenses paid or incurred in the testing of certain drugs for rare diseases, generally referred to as "orphan drugs." Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration (FDA) but before the drug has been approved for sale by the FDA. Present law defines a rare disease or condition as one that (1) affects less than 200,000 persons in the United States or (2) affects more than 200,000 persons, but there is no reasonable expectation that businesses could recoup the costs of developing a drug for such disease or condition from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).[3]

The orphan drug tax credit expired after June 30, 1992.

House Bill

No provision.

Senate Amendment

No provision.

****1223*534** Conference Agreement

The conference agreement extends the orphan drug tax credit for 30 months (i.e., for qualified clinical testing expenses incurred during the period July 1, 1992, through December 31, 1994).

Effective date.–The provision is effective for qualified clinical testing expenses incurred during the period July 1, 1992, through December 31, 1994.

C. Expansion and Simplification of Earned Income Tax Credit (sec. 14131 of the House bill, sec. 8131 of the Senate amendment, sec. 13131 of the Conference agreement, and secs. 32, 162, 213, and 3507 of the Code)

Present Law

Eligible low-income workers can claim a refundable earned income tax credit (EITC) of up to 18.5 percent of the first $7,750 of earned income for 1993 (19.5 percent for taxpayers with more than one qualifying child). The maximum amount of credit for 1993 is $1,434 ($1,511 for taxpayers with more than one qualifying child).

This maximum credit is reduced by 13.21 percent of earned income (or adjusted gross income, if greater) in excess of $12,200 (13.93 percent for taxpayers with more than one qualifying child). In 1993, the EITC is totally phased out for workers with earned income (or adjusted gross income, if greater) over $23,050. The maximum amount of earned income on

which the EITC may be claimed, and the income threshold for the phaseout of the EITC, are indexed for inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.

Present law provides that the credit rates for the EITC increase in 1994, as shown in the following table.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
A worker may elect to receive the EITC on an advance basis by furnishing a certificate of eligibility to his or her employer. For such a worker, the employer makes an advance payment of the credit at the time wages are paid.

A supplemental young child credit is available to taxpayers with qualifying children under the age of one year. This young child credit rate is 5 percent and the phase-out rate is 3.57 percent. It is computed on the same income base as the ordinary EITC. The maximum supplemental young child credit for 1993 is $388.

A supplemental health insurance credit is available to taxpayers who provide health insurance coverage for their qualifying children. This health insurance credit rate is 6 percent and the phase-out rate is 4.285 percent. It is computed on the same income base as the ordinary EITC, but the credit claimed cannot exceed the out-of-pocket cost of the health insurance coverage. In addition, the taxpayer is denied an itemized deduction for medical expenses ****1224*535** of qualifying insurance coverage up to the amount of credit claimed. The maximum supplemental health insurance credit for 1993 is $465.

House Bill

For taxpayers with one qualifying child, the EITC is increased to 26.60 percent of the first $7,750 of earned income in 1994. The maximum credit in 1994 is $2,062 which is reduced by 16.16 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. The credit is completely phased out for taxpayers with earned income (or adjusted gross income, if greater) over $23,760. For 1995 and thereafter, the credit rate is increased to 34.37 percent. The maximum amount of earned income on which the credit could be claimed is reduced to (an estimated) $6,170 (this is a $6,000 base in 1994, adjusted for projected inflation). Thus, the maximum credit in 1995 is projected to be $2,120 (which equals the maximum credit available in 1994, adjusted for projected inflation). The phase-out rate remains the same as in 1994.

For taxpayers with two or more qualifying children, the EITC is increased to 31.59 percent of the first $8,500 of earned income in 1994. The maximum credit is $2,685 which is reduced by 15.79 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. Thus, in 1994, the credit is completely phased out for taxpayers with earned income (or adjusted gross income, if greater) over $28,000. For 1995 and thereafter, the credit rate increases to 39.66 percent. The maximum amount of earned income on which the credit could be claimed is projected to be $8,730 in 1995 (which equals the 1994 level, adjusted for projected inflation). Thus, the maximum credit in 1995 is projected to be $3,460. The phase-out rate for 1995 and thereafter is 19.83 percent.

Under the House bill, the EITC is extended to low-income workers who (1) do not have any qualifying children (including workers with children who are not qualifying children with respect to that worker); (2) are age 22 or older; and (3) who may not be claimed as a dependent on another taxpayer's return. For these taxpayers, the EITC is 7.65 percent of the first $4,000 of earned income (for a maximum credit of $306 in 1994). The maximum credit is reduced by 7.65 percent of earned income (or adjusted gross income, if greater) above $5,000. In 1994 the credit is completely phased out for taxpayers with earned income (or adjusted gross income, if greater) over $9,000. This credit is not available on an advance payment basis.

As under present law, all dollar thresholds for years after 1994 are indexed for inflation.

The supplemental young child credit and the supplemental health insurance credit are repealed.

Effective date.–The provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment generally follows the House bill, with the following exceptions:

****1225*536** For taxpayers with one qualifying child, the EITC is 26.0 percent of the first $7,750 of earned income in 1994. The maximum credit in 1994 is $2,015 and is reduced by 16.16 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. For 1995 and thereafter, the credit rate increases to 34.0 percent. The maximum amount of earned income on which the credit could be claimed is (an estimated) $6,170 (this is a $6,000 base in 1994, adjusted for projected inflation).

For taxpayers with two or more qualifying children, the EITC is 30.0 percent of the first $8,500 of earned income in 1994. The maximum credit for 1994 is $2,550 and is reduced by 15.94 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. The credit rate increases over time and equals 34.0 percent for 1995 and 39.0 percent for 1996 and thereafter. The phase-out rate is 18.06 percent for 1995 and 20.72 percent for 1996 and thereafter.

There is no credit available for workers without qualifying children.

Effective date.–The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill and the Senate amendment, with the following modifications.

For taxpayers with one qualifying child, the EITC is 26.3 percent of the first $7,750 of earned income in 1994. The maximum credit in 1994 is $2,038 and is reduced by 15.98 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. For 1995 and thereafter, the credit rate increases to 34.0 percent. The maximum amount of earned income on which the credit could be claimed is (an estimated) $6,170 (this is a $6,000 base in 1994, adjusted for projected inflation). The phaseout rate for 1995 and thereafter is 15.98 percent.

For taxpayers with two or more qualifying children, the EITC is 30.0 percent of the first $8,425 of earned income in 1994. The maximum credit for 1994 is $2,527 and is reduced by 17.68 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. The credit rate increases over time and equals 36.0 percent for 1995 and 40.0 percent for 1996 and thereafter. The phase-out rate is 20.22 percent for 1995 and 21.06 percent for 1996 and thereafter.

The EITC is extended to taxpayers with no qualifying children, as in the House bill, with a modification to the age requirement. Under the conference agreement, this credit for taxpayers with no qualifying children would only be available to taxpayers over age 25 and below age 65.

The Internal Revenue Service (IRS) is required to provide notice to taxpayers with qualifying children who receive a refund on account of the EITC that the credit may be available on an advance payment basis. To prevent taxpayers from incurring an unexpectedly large tax liability due to receipt of the EITC on an advance payment basis, the amount of advance payment allowable in a taxable year is limited to 60 percent of the maximum credit available to a taxpayer with one qualifying child. After providing these notices ****1226*537** to taxpayers for two taxable years, the Secretary of the Treasury is directed to study the effect of the notice program on utilization of the advance payment mechanism. Based on the results of this study, the Secretary may recommend modifications to the notice program to the Committee on Ways and Means and the Committee on Finance.

Finally, the conferees are concerned that working homeless individuals may not claim the full amount of EITC to which they are entitled. The conferees urge the IRS to explore the use of outreach programs that target homeless individuals and that aim to educate these individuals of the availability of the EITC.

D. REAL ESTATE INVESTMENT PROVISIONS

1. Extension of qualified mortgage bonds and mortgage credit certificates (sec. 14141 of the House bill, sec. 8141 and 8141A of the Senate amendment, sec. 13141 of the conference agreement, and secs. 25 and 143 of the Code)

Present Law

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied residences located within the jurisdiction of the issuer of the bonds (sec. 143). Persons receiving QMB loans must satisfy a home purchase price, borrower income, first-time homebuyer, and other requirements. Part or all of the interest subsidy provided by QMBs is recaptured if the borrower experiences substantial increases in income and disposes of the subsidized residence within nine years after purchase.

Mortgage credit certificates

Qualified governmental units may elect to exchange QMB authority for authority to issue mortgage credit certificates ("MCCs") (sec. 25). MCCs entitle homebuyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the loan remains outstanding and the residence being financed continues to be the certificate-recipient's principal residence. MCCs are subject to the same targeting requirements as QMBs.

Expiration

Authority to issue QMBs and to elect to trade in bond volume authority to issue MCCs expired after June 30, 1992.

House Bill

The House bill permanently extends the authority to issue QMBs and to elect to trade in QMB authority for authority to issue MCCs.

Effective date.–The extension of the QMB and MCC programs is effective after June 30, 1992.

****1227*538** Senate Amendment

The Senate amendment extends the authority to issue QMBs and to elect to trade in QMB authority for authority to issue MCCs for 24 months (through June 30, 1994).

Effective date.–Same as the House bill.

Conference Agreement

The conference agreement follows the House bill with three modifications.

Treatment of certain housing affordability programs

The conference agreement provides that, in high housing cost areas, the fact that an issuer of QMBs or MCCs also provides certain mortgage loans or grants other than first mortgage loans or grants to homebuyers in conjunction with QMB or MCC financing will not preclude availability of the QMB- or MCC-assistance on the purchase of a residence. Qualifying subordinate mortgage loans or grants may not be financed directly or indirectly with tax-exempt private activity bonds. Also qualifying subordinate mortgage loans or grants either must be accompanied by a "resale price control restriction", (or in the case of loans must be, "shared appreciation loans"). Finally, the local government must retain its interest in the home's appreciation for a period at least as long as the Federal QMB and MCC recapture period.

A resale price control restriction is defined as a deed restriction, right of repurchase, or similar mechanism which (1) requires the owner to sell the unit to a purchaser qualifying for QMB or MCC financing and (2) limits the resale price to an amount not exceding the initial purchase price plus an indexed amount that is less than the full appreciation on the residence. A shared appreciation loan is defined as a below-market rate or deferred interest loan which entitles the governmental lender to a share of any appreciation in value (attributable to the portion of the residence financed with the shared appreciation loan) realized upon disposition of the residence as repayment for the subsidy provided by the loan.

Any interest of a governmental unit in a QMB- or MCC-financed residence attributable to a qualifying subordinated mortgage loan will be disregarded for purposes of (1) the first-time homebuyer and owner-occupied residence requirements of the QMB and MCC programs; (2) the maximum purchase price limit for QMB-and MCC-financed residences; (3) the rules for determining who is the owner of a QMB- or MCC-financed residence; and (4) the rules for determining the effective rate of interest on QMB-financed loans. The terms of the subordinated mortgage loan or grant will be taken into account, however, for measuring the amount of the homeowner's gain, if any, under the QMB- and MCC-recapture restrictions. The conferees intend that the special rules for these housing affordability programs will not apply to any subordination loans or grant if the governmental unit's interest under the loan or grant is structured so as to realize an amount in excess of the pro rata portion of the appreciation on the residence financed with the subordinated mortgage loan or grant (e.g., by allocating to the governmental unit an amount of gain on disposition ****1228*539** greater than the proportionate amount of the total subsidy to the homebuyer that is provided by the subordinated mortgage loan).

Treatment of certain contracts for deeds

The conference agreement also provides that, in the case of certain homebuyers whose family incomes do not exceed fifty percent of applicable median family income, ownership of land subject to certain contracts for deed does not violate the requirement that QMB- and MCC-financed homebuyers be first-time homebuyers and that the financing provided be for new mortgages. Thus, QMB-financed loans may be made (and MCCs to be granted) to individuals who own and maintain their principal residence on land subject to these contracts for deed provided that the homebuyers satisfy (a) all otherwise applicable requirements of the QMB and MCC programs but for the contract for deed and (b) the special income limit. These loans may be used to repay the contract for deed and to finance a new residence on the land. Also, as under present law, these homebuyers will remain eligible for qualified home improvement loans to rehabilitate existing principal residences on the land held subject to the contracts for deed.

Treatment of certain two-family housing

The conference agreement expands a present-law exception to the requirement that all residences receiving qualified mortgage bond financing or MCCs be single family, owner-occupied housing to allow certain newly constructed two-family housing to qualify. Under the expanded exception, newly constructed two-family housing will be eligible for these subsidies if (a) the housing is located in a targeted area of economic distress (sec. 143(j)), (b) at least one of the two units is occupied as the principal residence of the mortgager, and (c) the family income of the mortgagor is 140 percent or less of the applicable area median family income.[4]

Effective date

The extension of the QMB and MCC programs is effective after June 30, 1992. The three modifications are effective for QMB and MCC-financing provided after the date of enactment.

2. Extension and modification of the tax credit for low-income rental housing (sec. 14142 of the House bill, sec. 8142 of the Senate amendment, sec. 13142 of the conference agreement, and sec. 42 of the Code)

Present Law

In general

A tax credit is allowed in annual installments over 10 years for qualifying newly constructed or substantially rehabilitated low-income residential rental housing. For most qualifying housing, the ****1229*540** credit has a present value of 70 percent of the qualified basis of the low-income housing units. For housing also receiving other Federal subsidies (e.g., tax-exempt bond financing) and for the acquisition cost (e.g., costs other than rehabilitation expenditures) of existing housing that is substantially rehabilitated, the credit has a present value of 30 percent of qualified costs.

HOME funds

Housing which receives assistance under the National Affordable Housing Act of 1990 generally is treated as Federally subsidized and therefore not eligible for the 70 percent present value credit.

Full-time students

A housing unit generally is not eligible for the low-income housing tax credit if the tenants are full-time students who are not married individuals filing joint returns. Exceptions to this rule allow the credit to be claimed on housing units occupied by persons who are enrolled in certain job training programs or by students who are receiving Aid to Families with Dependent Children (AFDC) payments.

Deep-rent skewing

Generally, the credit amount is based on the qualified basis of the housing units serving low-income tenants. A residential rental project will qualify for the credit only if (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals whose incomes do not exceed 50 percent of area median income, or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals whose incomes do not exceed 60 percent of area median income. A different income targeting rule applies to entities described in sec. 142(d)(6) of the Code. These income figures are adjusted for family size. The low income set-aside is elected when the project is placed in service.

To qualify under the deep rent skewing exception from the general targeting requirements, at least 15 percent of the low-income units must be occupied by tenants whose incomes do not exceed 40 percent of area median income, the rents on such units must be restricted to 30 percent of the qualifying income limitation, and rents on the market rate units must be at least 200 percent of rents charged on comparable rent restricted units. For projects receiving allocations prior to 1990, rents on market rate units must be at least 300 percent of rents charged on comparable rent restricted units.

Maximum rent

The maximum rent that may be charged a family in a low-income housing tax credit unit depends on the number of bedrooms in that unit. Prior to 1990, maximum allowable rent was determined on the basis of the actual family size of the occupants.

Tenant occupancy

Under the general low-income tenant occupancy requirement, a residential rental project qualifies for the low-income housing tax ****1230*541** credit only if at least: (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals whose incomes do not exceed 50 percent of area median income or, (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals whose incomes do not exceed 60 percent of area median income.

Income recertification

Generally, the owner of a low-income housing project must annually recertify tenant incomes to meet the low-income tenant occupancy requirements, regardless of whether the building is entirely occupied by low-income tenants.

Tenant protection

The low-income housing tax credit provisions in the Code do not include any specific provisions concerning the grounds for denial of admission to low-income housing projects, for termination of a tenancy, or for refusal to renew the lease of a tenant.

Developmental and operational costs

In general, housing credit agencies cannot allocate more low-income housing tax credits to a project than are necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the 10-year credit period. In making this determination, a housing credit agency must consider (1) the sources and uses of funds and the total financing of the project, (2) any proceeds expected to be generated by reason of tax benefits and (3) the percentage of the housing credit dollar amount to be used for project costs other than the costs of intermediaries.

Allocation between buyer and seller in month of disposition

The Code requires that the low-income housing tax credit be divided between a buyer and seller of a low-income housing tax credit project based upon the number of days during the year of disposition that the project was held by each. The Internal Revenue Service has issued guidance that requires a mid-month averaging convention.

Expiration

The low-income housing tax credit expired after June 30, 1992.

House Bill

Extension

The House bill permanently extends the low-income housing tax credit.

HOME funds

The House bill provides that a building shall not be treated as Federally subsidized solely by reason of assistance with respect to that building received under the National Affordable Housing Act of 1990 (as in effect on the date of enactment of this provision) if 40 percent or more of the aggregate residential rental units in the residential rental project receiving the assistance are occupied by ****1231*542** individuals with 50 percent or less of area median income. These projects are eligible for the 70 percent and 30 percent credits but not for the 91-percent or 39 percent credits otherwise available in qualified census tracts and difficult development areas.

Full-time students

No provision.

Deep-rent skewing

No provision.

Maximum rent

No provision.

Tenant occupancy

No provision.

Income recertification

No provision.

Tenant protection

No provision.

Developmental and operational costs

No provision.

Allocation between buyer and seller in month of disposition

No provision.

Effective date

The House bill generally is effective after June 30, 1992. The provision relating to Federal subsidies under the National Affordable Housing Act of 1990 is effective on the date of enactment.

Senate Amendment

Extension

The Senate amendment is the same as the House bill.

HOME funds

No provision.

Full-time students

The Senate amendment provides that a housing unit occupied entirely by full-time students may qualify for the credit if the full-time students are a single parent and his or her minor children and none of the tenants is a dependent of a third party. The Senate amendment also codifies the present-law exception regarding married students filing joint returns (which continues to apply to all buildings placed in service since original enactment of the low-income housing tax credit by the Tax Reform Act

of 1986).

****1232*543** Deep-rent skewing

The Senate amendment allows an irrevocable election by the owner of a low-income building receiving a credit allocation before 1990 to satisfy the 200-percent rent restriction rather than the 300-percent rent restriction. The election is available only to taxpayers who enter into a compliance monitoring agreement with a housing credit agency. Further, the election applies only with respect to tenants first occupying any unit in the building after the date of the election, and must be made within 180 days after the date of enactment.

Maximum rent

The Senate amendment allows an irrevocable election by the owner of a low-income building placed in-service before 1990 to use either apartment size or family size in determining maximum allowable rent. The election is available only to taxpayers who enter into a compliance monitoring agreement with a housing credit agency. Further, the election applies only with respect to tenants first occupying any unit in the building after the date of the election, and must be made within 180 days after the date of enactment.

Tenant occupancy

The Senate amendment authorizes the Treasury Department to provide a waiver of penalties for de minimis errors in the application of the low-income tenant occupancy requirement.

Income recertification

The Senate amendment authorizes the Treasury Department to grant a waiver from the annual recertification of tenant income for tenants in buildings that are occupied entirely by low-income tenants.

Tenant protection

The Senate amendment provides that an applicant may not be denied admission to a low-income housing tax credit project because the applicant holds a voucher or certificate of eligibility under Section 8 of the Housing Act of 1937.

Developmental and operational costs

The Senate amendment requires a housing credit agency to consider the reasonableness of the developmental and operational costs of a project as an additional factor in making its determination as to the proper amount of low-income housing tax credits to allocate to a project.

Allocation between buyer and seller in month of disposition

The bill provides that the buyer and seller may agree to use either the exact number of days or the mid-month convention to determine the division of the credit in the month of disposition.

Effective date

The extension of the low-income housing tax credit and the provisions relating to: (1) full-time students, and (2) developmental ****1233*544** and operational costs are effective after June 30, 1992. The provisions relating to: (1) tenant occupancy, (2) income certification, (3) tenant protection, and (4) allocations between the buyer and seller are effective on

the date of enactment. The elections relating to deep-rent skewing and maximum rent must be made within 180 days after the date of enactment.

Conference Agreement

Extension

The conference agreement follows the House bill and the Senate amendment.

HOME funds

The conference agreement follows the House bill with a modification to the House bill requirement that 40 percent or more of the aggregate residential rental units in the residential rental project receiving the assistance are occupied by individuals with 50 percent or less of area median income. Specifically 40 percent would be reduced to 25 percent for entities described in Code section 142(d)(6), consistent with the income targeting rules currently applicable to such entities. The House bill requirement limiting this provision to the 70 percent and 30 percent credits but not for the 91 percent or 39 percent credits otherwise available in qualified census tracts and difficult development areas is retained.

Full-time students

The conference agreement follows the Senate amendment.

Deep-rent skewing

The conference agreement follows the Senate amendment with a modification. The modification provides that the irrevocable election would apply to both current and future tenants but would not allow rent increases on existing low-income tenants.

Maximum rent

The conference agreement follows the Senate amendment.

Tenant occupancy

The conference agreement follows the Senate amendment.

Income recertification

The conference agreement follows the Senate amendment with a modification. The conference agreement provides that third-party verification of a tenant's or prospect tenant's income from his combined assets is not necessary if (1) the combined assets do not exceed $5,000 and (2) the tenant or prospective tenant provides a signed, sworn statement to this effect to the building owner. Further the conferees do not intend to modify the treatment of individuals receiving section 8 assistance.

Tenant protection

The conference agreement follows the Senate amendment.

**1234*545 Development and operational costs

The conference agreement follows the Senate amendment with a clarification that the provision is not intended to create a national standard of reasonableness. The conferees intend for allocating agencies to set standards of reasonableness reflecting the applicable facts and circumstances including the location of the projects and the uses for which the projects are built.

Allocation between buyer and seller in month of disposition

The conference agreement follows the Senate amendment.

Effective date

The extension of the low-income housing tax credit and the provision relating to: (1) full-time students, and (2) developmental and operational cost are effective after June 30, 1992. The provisions relating to: (1) tenant occupancy, (2) income recertification, (3) tenant protection, (4) allocations between the buyer and seller, and (5) HOME funds are effective on the date of enactment. The elections relating to maximum rent and deep-rent skewing must be made within 180 days after the date of enactment.

3. Modification of passive loss rules for certain real estate persons (sec. 14143 of the House bill, sec. 8143 of the Senate amendment, sec. 13143 of the conference agreement, and sec. 469 of the Code)

Present Law

The passive loss rules limit deductions and credits from passive trade or business activities. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not derived from a passive activity. A similar rule applies to credits. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of his entire interest in the passive activity to an unrelated person.

The passive loss rules apply to individuals, estates and trusts, closely held C corporations, and personal service corporations. A special rule permits closely held C corporations to apply passive activity losses and credits against active business income (or tax liability allocable thereto) but not against portfolio income.

Passive activities are defined to include trade or business activities in which the taxpayer does not materially participate. Rental activities (including rental real estate activities) are also treated as passive activities, regardless of the level of taxpayer's participation. A special rule permits the deduction of up to $25,000 of losses from rental real estate activities (even though they are considered passive), if the taxpayer actively participates in them. This $25,000 amount is allowed for taxpayers with adjusted gross incomes of $100,000 or less, and is phased out for taxpayers with adjusted gross incomes between $100,000 and $150,000.

**1235*546 House Bill

The House bill treats a taxpayer's rental real estate activities in which he materially participates as not subject to limitation under the passive loss rules if the taxpayer meets eligibility requirements relating to real property trades or businesses in which the taxpayer performs services.

Real property trade or business means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

An individual taxpayer meets the eligibility requirements if more than half of the personal services the taxpayer performs in

trades or businesses during the taxable year are in real property trades or businesses in which he materially participates. Personal services performed as an employee are not treated as performed in a real property trade or business unless the person performing services has more than a 5 percent ownership interest in the employer.

In the case of a joint return, each spouse's personal services are taken into account separately. In determining material participation, however, the provision does not change the present-law rule that the participation of the spouse of the taxpayer is taken into account. Thus, for example, a husband and wife filing a joint return meet the eligibility requirements of the provision if during the taxable year one spouse performs at least half of his or her business services in a real property trade or business in which either spouse materially participates.

A closely held C corporation meets the eligibility requirements if more than 50 percent of its gross receipts for the taxable year are derived from real property trades or businesses in which the corporation materially participates.

Effective date.–The provision is effective with respect to taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that an eligible taxpayer's net loss from rental real estate activities in which the taxpayer materially participates generally is allowed to offset income from real property trade or business activities. The loss allowed under the provision may not exceed the least of (1) the taxpayer's net loss for the taxable year from rental real estate activities in which the taxpayer materially participates, (2) the taxpayer's net loss for the taxable year from all rental real estate activities, (3) the taxpayer's net income for the taxable year from real property trade or business activities which are not passive activities, or (4) the taxpayer's taxable income for the taxable year (determined without regard to this provision). A similar rule applies with respect passive activity credits. The Senate amendment does not apply to closely held C corporations.

Effective date.–Same as the House bill.

****1236*547** Conference Agreement

The conference agreement follows the House bill, with a modification. Under the conference agreement, an individual taxpayer meets the eligibility requirements if (1) more than half of the personal services the taxpayer performs in trades or businesses during the taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and (2) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates. In the case of a joint return, the eligibility requirements are met only if either spouse separately satisfies the requirements. Thus, one of the spouses separately must satisfy the requirement with respect to half of such spouse's personal services and the requirement with respect to 750 hours of services, without regard to services performed by the other spouse. In determining material participation, however, the conference agreement does not change the present-law rule that the participation of the spouse of the taxpayer is taken into account.

4. Changes relating to real estate investments by pension funds and others (secs. 14144–14149 of the House bill, secs. 8144–8149 of the Senate amendment, and secs. 13144–13149 of the conference agreement)

a. Modification of the rules related to debt-financed income (sec. 14144 of the House bill and sec. 8144 of the Senate amendment, sec. 13144 of the conference agreement, and sec. 514 of the Code)

Present Law

In general, a qualified pension trust or an organization that is otherwise exempt from Federal income tax is taxed on income from a trade or business that is unrelated to the organization's exempt purposes (Unrelated Business Taxable Income or "UBTI") (sec. 511). Certain types of income, including rents, royalties, dividends, and interest are excluded from UBTI,

except when such income is derived from "debt-financed property." Income from debt-financed property generally is treated as UBTI in proportion to the amount of debt financing (sec. 514(a)).

An exception to the rule treating income from debt-financed property as UBTI is available to pension trusts, educational institutions, and certain other exempt organizations (collectively referred to as "qualified organizations") that make debt-financed investments in real property (sec. 514(c)(9)(A)). Under this exception, income from investments in real property is not treated as income from debt-financed property. Mortgages are not considered real property for purposes of the exception.

The real property exception to the debt-financed property rules is available for investments in debt-financed property, only if the following six restrictions are satisfied: (1) the purchase price of the real property is a fixed amount determined as of the date of the acquisition (the "fixed price restriction"); (2) the amount of the indebtedness or any amount payable with respect to the indebtedness, or the time for making any payment of any such amount, is ****1237*548** not dependent (in whole or in part) upon revenues, income, or profits derived from the property (the "participating loan restriction"); (3) the property is not leased by the qualified organization to the seller or to a person related to the seller (the "leaseback restriction"); (4) in the case of a pension trust, the seller or lessee of the property is not a disqualified person (the "disqualified person restriction"); (5) the seller or a person related to the seller (or a person related to the plan with respect to which a pension trust was formed) is not providing financing in connection with the acquisition of the property (the "seller-financing restriction"); and (6) if the investment in the property is held through a partnership, certain additional requirements are satisfied by the partnership (the "partnership restrictions") (sec. 514(c)(9)(B) (i) through (vi)).

House Bill

Relaxation of the leaseback and disqualified person restrictions

The House bill relaxes the leaseback and disqualified person restrictions to permit a limited leaseback of debt-financed real property to the seller (or a person related to the seller) or to a disqualified person.[5] The exception applies only where (1) no more than 25 percent of the leasable floor space in a building (or complex of buildings) is leased back to the seller (or related party) or to the disqualified person, and (2) the lease is on commercially reasonable terms, independent of the sale and other transactions.

Relaxation of the seller-financing restriction

The House bill relaxes the seller-financing restriction to permit seller financing on terms that are commercially reasonable independent of the sale and other transactions. The House bill grants authority to the Treasury Department to issue regulations for the purpose of determining commercially reasonable financing terms.

The House bill does not modify the present-law fixed price and participating loan restrictions. Thus, for example, income from real property acquired with seller-financing where the timing or amount of payment is based on revenue, income, or profits from the property generally will continue to be treated as income from debt-financed property, unless some other exception applies.

Relaxation of the fixed price and participating loan restriction for property acquired from financial institutions

The House bill relaxes the fixed price and participating loan restrictions for certain sales of real property foreclosed upon by financial institutions.[6] The relaxation of these rules is limited to cases where: (1) a qualified organization acquires the property from a financial institution that acquired the real property by foreclosure (or after an actual or imminent default), or was held by the selling financial institution at the time that it entered into conservatorship or receivership; (2) any gain recognized by the financial ****1238*549** institution with respect to the property is ordinary income; (3) the stated principal amount of the seller financing does not exceed the financial institution's outstanding indebtedness (including accrued but unpaid interest) with respect to the property at the time of foreclosure or default; and (4) the present value of the maximum amount payable pursuant to any participation feature cannot exceed 30 percent of the total purchase price of the property

(including contingent payments).

Effective date

The House bill is effective for acquisitions (and also for leases entered into) on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

b. Repeal of the automatic UBTI rule for publicly-traded partnerships (sec. 14145 of the House bill, sec. 8145 of the Senate amendment, sec. 13145 of the conference agreement, and sec. 512 of the Code)

Present Law

In general, the character of a partner's distributive share of partnership income is the same as if the income had been directly realized by the partner. Thus, whether a tax-exempt organization's share of income from a partnership (other than from a publicly-traded partnership) is treated as unrelated business income depends on the underlying character of the income (sec. 512(c)(1)).

By contrast, a tax-exempt organization's distributive share of gross income from a publicly-traded partnership (that is not otherwise treated as a corporation) automatically is treated as gross income derived from an unrelated trade or business (sec. 512(c)(2)(A)). The organization's share of the partnership deductions is allowed in computing the organization's UBTI (sec. 512(c)(2)(B)).

House Bill

The House bill repeals the rule that automatically treats income from publicly-traded partnerships as UBTI. Thus, under the House bill, investments in publicly-traded partnerships are treated the same as investments in other partnerships for purposes of the UBTI rules.

Effective date.–The provision is effective for partnership years beginning on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

****1239*550** Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

c. Permit title-holding companies to receive small amounts of UBTI (sec. 14146 of the House bill, sec. 8146 of the Senate amendment, sec. 13146 of the conference agreement, and secs. 501(c)(2) and (c)(25) of the Code)

Present Law

Section 501(c)(2) provides tax-exempt status to certain corporations organized for the exclusive purpose of holding title to property and remitting any income from the property to one or more related tax-exempt organizations. Section 501(c)(25) provides tax-exempt status to certain corporations and trusts that are organized for the exclusive purposes of acquiring and holding title to real property, collecting income from such property, and remitting the income to no more than 35 shareholders or beneficiaries that are: (1) qualified pension, profit-sharing, or stock bonus plans (sec. 401(a)); (2) governmental pension plans (sec. 414(d)); (3) the United States, a State or political subdivision, or governmental agencies or instrumentalities; or (4) tax-exempt charitable, educational, religious, or other organizations described in section 501(c)(3). However, the IRS has taken the position that a title-holding company described in section 501(c)(2) or 501(c)(25) will lose its tax-exempt status if it generates any amount of certain types of UBTI.[7]

House Bill

The House bill permits a title-holding company that is exempt from tax under sections 501(c)(2) or 501(c)(25) to receive UBTI (that would otherwise disqualify the company) up to 10 percent of its gross income for the taxable year, provided that the UBTI is incidentally derived from the holding of real property. For example, income generated from parking or operating vending machines located on real property owned by a title-holding company generally would qualify for the 10-percent de minimis rule, while income derived from an activity that is not incidental to the holding of real property (e.g., manufacturing) would not qualify. In cases where unrelated income is incidentally derived from the holding of real property, receipt by a title-holding company of such income (up to the 10-percent limit) will not jeopardize the title-holding company's tax-exempt status, but nonetheless, will be subject to tax as UBTI.

In addition, the House bill provides that a section 501(c)(2) or 501(c)(25) title-holding company will not lose its tax-exempt status if UBTI that is incidentally derived from the holding of real property exceeds the 10-percent limitation, provided that the title-holding company establishes to the satisfaction of the Secretary of the Treasury that the receipt of UBTI in excess of the 10-percent limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such excess UBTI.

****1240*551** Effective date.–The provision is effective for taxable years beginning on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Exclusion from UBTI of gains from the disposition of real property acquired from financial institutions in conservatorship or receivership (sec. 14147 of the House bill, sec. 8147 of the Senate amendment, sec. 13147 of the conference agreement, and sec. 512(b) of the Code)

Present Law

In general, gains or losses from the sale, exchange or other disposition of property are excluded from UBTI (sec. 512(b)(5)). However, gains or losses from the sale, exchange or other disposition of property held primarily for sale to customers in the ordinary course of a trade or business are not excluded from UBTI (the "dealer UBTI rule") (sec. 512(b)(5)(B)).

House Bill

The House bill provides an exception to the dealer UBTI rule by excluding gains and losses from the sale, exchange or other disposition of certain real property and mortgages acquired from financial institutions that are in conservatorship or receivership. Only real property and mortgages owned by a financial institution (or that was security for a loan held by the financial institution) at the time that the institution entered conservatorship or receivership are eligible for the exception.

The exclusion is limited to properties designated as disposal property within nine months of acquisition, and disposed of within two-and-a-half years of acquisition. The two-and-a-half year disposition period may be extended by the Secretary if an extension is necessary for the orderly liquidation of the property. No more than one-half by value of properties acquired in a single transaction may be designated as disposal property.

The exclusion is not available for properties that are improved or developed to the extent that the aggregate expenditures on development do not exceed 20 percent of the net selling price of the property.

Effective date.–The provision is effective for property acquired on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

****1241*552** Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Exclusion of certain option premiums and loan commitment fees from UBTI (sec. 14148 of the House bill, sec. 8148 of the Senate amendment, sec. 13148 of the conference agreement, and sec. 512(b) of the Code)

PRESENT LAW

Income from a trade or business that is unrelated to an exempt organization's purpose generally is UBTI. Passive income such as dividends, interest, royalties, and gains or losses from the sale, exchange or other disposition of property generally is excluded from UBTI (sec. 512(b)). In addition, gains on the lapse or termination of options on securities are explicitly exempted from UBTI (sec. 512(b)(5)).

Present law is unclear on whether premiums from unexercised options on real estate and loan commitment fees are UBTI.

House Bill

The House bill expands the current exception for gains on the lapse or termination of options on securities to gains or losses from such options (without regard to whether they are written by the organization), from options on real property, and from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale or lease of real property.

In addition, the House bill excludes loan commitment fees from UBTI. For purposes of this provision, loan commitment fees are non-refundable charges made by a lender to reserve a sum of money with fixed terms for a specified period of time. These charges are to compensate the lender for the risk inherent in committing to make the loan (e.g., for the lender's exposure to interest rate changes and for potential lost opportunities).

Effective date.–The provision is effective for premiums or loan commitment fees that are received on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

****1242*553** f. Relaxation of limitations on investments in real estate investment trusts by pension funds (sec. 14149 of the House bill, sec. 8149 of the Senate amendment, sec. 13149 of the conference agreement, and sec. 856(h) of the Code)

Present Law

A real estate investment trust ("REIT") is not taxed on income distributed to shareholders. A corporation does not qualify as a REIT if at any time during the last half of its taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by five or fewer individuals ("the five or fewer rule"). A domestic pension trust is treated as a single individual for purposes of this rule.

Dividends paid by a REIT are not UBTI,[8] unless the stock in the REIT is debt-financed. Depending on its character, income earned by a partnership may be UBTI (sec. 512(c)). Special rules treat debt-financed income earned by a partnership as UBTI (sec. 514(c)(9)(B)(vi)).

House Bill

Qualification as a REIT

The House bill provides that a pension trust generally is not treated as a single individual for purposes of the five-or-fewer rule. Rather, the bill treats beneficiaries of the pension trust as holding stock in the REIT in proportion to their actuarial interests in the trust. This rule does not apply if disqualified persons, within the meaning of section 4975(e)(2) (other than by reason of subparagraphs (B) and (I)), together own five percent or more of the value of the REIT stock and the REIT has earnings and profits attributable to a period during which it did not qualify as a REIT.[9]

In addition, the bill provides that a REIT cannot be a personal holding company and, therefore, is not subject to the personal holding company tax on its undistributed income.

Unrelated business taxable income

Under the bill, certain pension trusts owning more than 10 percent of a REIT must treat a percentage of dividends from the REIT as UBTI. This percentage is the gross income derived from an unrelated trade or business (determined as if the REIT were a pension trust) divided by the gross income of the REIT for the year in which the dividends are paid. Dividends are not treated as UBTI, however, unless this percentage is at least five percent.

The UBTI rule applies only if the REIT qualifies as a REIT by reason of the above modification of the five or fewer rule. Moreover, the UBTI rule applies only if (1) one pension trust owns more than 25 percent of the value of the REIT, or (2) a group of pension trusts individually holding more than 10 percent of the value of the REIT collectively own more than 50 percent of the value of the REIT.

****1243*554** Effective date

The provision applies to taxable years beginning on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. Treatment of certain real property business debt of individuals (sec. 14150 of the House bill, sec. 13150 of the conference agreement, and secs. 108 and 1017 of the Code)

Present Law

The discharge of indebtedness generally gives rise to gross income to the debtor taxpayer. Present law provides exceptions to this general rule. Among the exceptions are rules providing that income from the discharge of indebtedness of the taxpayer is excluded from income if the discharge occurs in a title 11 case, the discharge occurs when the taxpayer is insolvent, or in the case of certain farm indebtedness. The amount excluded from income under these exceptions is applied to reduce tax attributes of the taxpayer.

House Bill

The House bill provides an election to taxpayers other than C corporations to exclude from gross income certain income from discharge of qualified real property business indebtedness. The amount so excluded cannot exceed the basis of certain depreciable real property of the taxpayer and is treated as a reduction in the basis of that property.

Qualified real property business indebtedness is indebtedness that (1) is incurred or assumed in connection with real property used in a trade or business, (2) is secured by that real property, and (3) with respect to which the taxpayer has made an election under this provision. Indebtedness incurred or assumed on or after January 1, 1993 is not qualified real property business indebtedness unless it is either (1) debt incurred to refinance qualified real property business debt incurred or assumed before that date (but only to the extent the amount of such debt does not exceed the amount of debt being refinanced) or (2) qualified acquisition indebtedness. Qualified real property business indebtedness does not include qualified farm indebtedness.

Qualified acquisition indebtedness is debt incurred to acquire, construct or substantially improve real property that is secured by such debt, and debt resulting from the refinancing of qualified acquisition debt, to the extent the amount of such debt does not exceed the amount of debt being refinanced.

****1244*555** The amount excluded under the provision with respect to the discharge of any qualified real property business indebtedness may not exceed the excess of (1) the outstanding principal amount of such debt (immediately before the discharge), over (2) the fair market value (immediately before the discharge) of the business real property which is security for the debt. For this purpose, the fair market value of the property is reduced by the outstanding principal amount of any other qualified real property indebtedness secured by the property immediately before the discharge.

The amount excluded under the provision also may not exceed the aggregate adjusted bases (determined as of the first day of the next taxable year or, if earlier, the date of disposition) of depreciable real property held by the taxpayer immediately before the discharge, determined after any reductions under subsections (b) and (g) of section 108. The amount of debt discharge excluded under the provision is applied, using the rules of section 1017 (as modified by the provision), to reduce the basis of business real property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs.

The amount that is recaptured as ordinary income (under applicable recapture rules) is reduced over the time the taxpayer continues to hold the property, as the taxpayer forgoes depreciation deductions due to the basis reduction.

Effective date.–The provision is effective with respect to discharges after December 31, 1992 in taxable years ending after that date.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

6. Increase recovery period for depreciation of nonresidential real property (sec. 14151 of the House bill, sec. 8151 of the Senate amendment, sec. 13151 of the conference agreement, and sec. 168 of the Code)

Present Law

A taxpayer is allowed to recover, through annual depreciation allowances, the cost or other basis of nonresidential real property (other than land) that is used in a trade or business or that is held for the production of rental income. For regular tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year generally is determined by using the straight-line method and a recovery period of 31.5 years. For alternative minimum tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year is determined by using the straight-line method and a recovery period of 40 years.

****1245*556** House Bill

The House bill requires the depreciation deduction allowed with respect to nonresidential real property for regular tax purposes to be determined by using a recovery period of 39 years. The bill does not change the depreciation deduction allowed with respect to nonresidential real property for alternative minimum tax purposes.

Effective date.–The provision generally applies to property placed in service on or after February 25, 1993. The provision does not apply to property that a taxpayer places in service before January 1, 1994, if (1) the taxpayer or a qualified person entered into a binding written contract to purchase or construct the property before February 25, 1993, or (2) construction of the property was commenced by or for the taxpayer or a qualified person before February 25, 1993. A qualified person for this purpose is any person who transfers rights in such a contract or such property to the taxpayer, but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

Senate Amendment

The Senate amendment is the same as the House bill, except that the recovery period is 38 years.

Effective date.–Same as the House bill.

Conference Agreement

The conference agreement follows the House bill, with a modification to the effective date.

Effective date.–Under the conference agreement, the provision generally applies to property placed in service on or after May 13, 1993. The provision does not apply to property that a taxpayer places in service before January 1, 1994, if (1) the taxpayer or a qualified person entered into a binding written contract to purchase or construct the property before May 13, 1993, or (2) construction of the property was commenced by or for the taxpayer or a qualified person before May 13, 1993. A qualified person for this purpose is any person who transfers rights in such a contract or such property to the taxpayer, but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

The conferees wish to clarify that the provision does not change the recovery period of any property to which the ACRS amendments made by section 201 of the Tax Reform Act of 1986 do not apply.

****1246*557** E. Luxury Excise Tax; Diesel Fuel Tax for Motorboats

1. Repeal of luxury excise tax on boats, aircraft, jewelry, and furs; Index and modify luxury excise tax on automobiles (secs. 14161 and 14162 of the House bill, secs. 8161 and 8162 of the Senate amendment, secs. 13161 and 13162 of the conference agreement, and secs. 4001-4012 of the Code)

Present Law

Present law imposes a 10-percent excise tax on the portion of the retail price of the following items that exceeds the thresholds specified: automobiles above $30,000; boats above $100,000; aircraft above $250,000; jewelry above $10,000; and furs above $10,000. The tax also applies to subsequent purchases of component parts and accessories occurring within six months of the date the automobile, boat, or aircraft is placed in service.

The tax applies to sales before January 1, 2000.

House Bill

Repeal of luxury tax on boats, aircraft, jewelry, and furs

The House bill repeals the luxury excise tax imposed on boats, aircraft, jewelry, and furs.

Indexing of tax on automobiles

The House bill modifies the luxury excise tax on automobiles to provide that the $30,000 threshold is indexed annually for inflation occurring after 1990.

Exemption for certain equipment installed on passenger vehicles for use by disabled individuals

The House bill provides that the luxury excise tax does not apply to a part or accessory installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, in order to compensate for the effect of the disability.

Exemption for demonstrator vehicles

The House bill exempts passenger vehicle dealers from paying the luxury tax on vehicles used as demonstrators for potential customers. Under the provision, the tax, if any, is to be assessed and paid on the sales price of the vehicle when the vehicle is sold.

Effective date

The repeal of the luxury excise taxes on boats, aircraft, jewelry, and furs is effective for sales on or after January 1, 1993. The indexation of the threshold applicable to passenger vehicles is effective for sales on or after January 1, 1993. The provision relating to the purchase of accessories or modifications by disabled persons is effective for purchases after December 31, 1990. The provision relating to the use before sale of demonstrator vehicles is effective for vehicles used after December 31, 1992.

****1247*558** Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment except for the indexation of the threshold applicable to passenger vehicles. The conference agreement provides that indexation will occur in increments of $2,000. The threshold for any year will be computed by increasing $30,000 by the cumulative inflation since 1990 with the result rounded down to the nearest increment of $2,000. In addition, the conference agreement modifies the effective date to provide that indexation of the threshold applicable to passenger vehicles is effective for sales on or after the date of enactment. The applicable threshold for purchases in 1993, on or after the date of enactment, will be $30,000 increased by the 1991 and 1992 inflation rates (8.49 percent), or $32,547, which when rounded down to the nearest $2,000 is a threshold of $32,000.

2. Impose excise tax on diesel fuel used in noncommercial motorboats (sec. 14163 of the House bill, sec. 8163 of the Senate amendment, sec. 13163 of the conference agreement, and secs. 4092, 4041, 6421, 9503, and 9508 of the Code).

Present Law

Federal excise taxes generally are imposed on gasoline and special motor fuels used in highway transportation and by certain off-highway recreational trail vehicles and by motorboats (14 cents per gallon). A Federal excise tax also is imposed on diesel fuel (20 cents per gallon) used in highway transportation. Diesel fuel used in trains is taxed at 2.5 cents per gallon.

The revenues from these taxes, minus the 2.5-cents-per-gallon General Fund rate are deposited in various trust funds. Revenues from the remaining 2.5 cents per gallon are retained in the General Fund through September 30, 1995, after which time the 2.5-cents-per-gallon portion of the taxes (including the tax on diesel fuel used in trains) is scheduled to expire.[10]

An additional 0.1-cent-per-gallon tax applies to these fuels to finance the Leaking Underground Storage Trust Fund, generally through December 31, 1995.

Diesel fuel used in motorboats is not currently taxed.

House Bill

The House bill extends the current 20.1-cents-per-gallon diesel fuel excise taxes to diesel fuel used by noncommercial motorboats. Fuel used by boats for commercial fishing, transportation for compensation or hire, or for business use other than predominantly for entertainment, amusement, or recreation, remains exempt.

****1248*559** A separate provision of the House bill imposes a Btu tax beginning July 1, 1994. Diesel fuel used by noncommercial motorboats also is subject to the Btu tax beginning at that time.[11]

The tax is collected at the same point in the distribution chain as the highway diesel fuel tax. A separate provision modifies the point of collection for highway diesel fuel.[12]

The revenues from the 20.1-cents-per-gallon tax on diesel fuel used by motorboats are to be retained in the General Fund.

Effective date.–The provision is effective after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill with two modifications. First, revenues from 17.5 cents per gallon of the tax are to be transferred to the Aquatic Resources Trust Fund. Second, the Senate amendment provides that the provision is effective after December 31, 1993, and before January 1, 2000.

In addition, a separate provision of the Senate amendment imposes a 4.3-cents-per-gallon transportation fuels tax effective October 1, 1993. Diesel fuel used by noncommercial motorboats also is to be subject to the transportation fuels tax beginning at that time.[13]

Also, a separate provision of the Senate amendment modifies the point of collection for the highway diesel fuel tax.[14]

Conference Agreement

The conference agreement follows the Senate amendment with the modification that the revenues from the 20.1-cents-per-gallon tax will be retained in the General Fund. In addition, separate provisions of the conference agreement establish a transportation fuels tax and modify the point of collection for diesel fuel tax.[15] Diesel fuel used by noncommercial motorboats also is subject to the 4.3-cents-per gallon transportation fuels tax, also beginning on January 1, 1994. The tax on diesel fuel used by noncommercial motorboats will be collected at the same point as the tax on highway diesel fuels.

F. Other Provisions

1. Alternative minimum tax treatment for contributions of appreciated property (sec. 14171 of the House bill, sec. 8171 of the Senate amendment, sec. 13171 of the conference agreement, and secs. 56 and 57 of the Code)

Present Law

Donations of appreciated property

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair market value of property ****1249*560** contributed to a charitable organization.[16] However, in the case of a charitable contribution of inventory or other ordinary-income property, short-term capital gain property, or certain gifts to private foundations, the amount of the deduction is limited to the taxpayer's basis in the property.[17] In the case of a charitable contribution of tangible personal property, a taxpayer's deduction is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair market value of the property exceeds its adjusted basis (sec. 57(a)(6)). However, in the case of a contribution made in a taxable year beginning in 1991 or made before July 1, 1992, in a taxable year beginning in 1992, this rule does not apply to contributions of tangible personal property.

For taxable years beginning after 1989, the AMTI of a corporation is increased by 75 percent of the amount by which adjusted current earnings (ACE) exceeds AMTI (calculated before this adjustment). ACE generally is computed pursuant to the rules that a corporation uses to determine its earnings and profits (sec. 56(g)).

Valuation procedures

Present law and current IRS practice do not provide for a procedure by which a taxpayer may seek determination of the IRS' position with respect to the value of property before the taxpayer donates the property to a charitable organization. However, if a taxpayer claims a charitable contribution deduction for a noncash gift in excess of $5,000 per item or group of similar items (other than certain publicly traded securities), the taxpayer must attach to his or her income tax return a separate form (Form 8283), which provides specific information about the donated property and which is signed by a qualified appraiser.[18]

House Bill

Permanent AMT relief for donated appreciated property

The House bill eliminates the treatment of contributions of appreciated property (real, personal, and intangible) as a tax preference for AMT purposes. In addition, the House bill provides that no adjustment related to the earnings and profits effects of any charitable contribution shall be made in computing the ACE component of the corporate AMT.

****1250*561** Thus, the difference between the fair market value of donated appreciated property and the adjusted basis of such property is not treated as a tax preference item for alternative minimum tax (AMT) purposes. If a taxpayer makes a gift to charity of property (other than inventory or other ordinary income property, short-term capital gain property, or certain gifts to private foundations) that is real property, intangible property, or tangible personal property the use of which is related to the donee's tax-exempt purpose, the taxpayer is allowed to claim a deduction for both regular tax and AMT purposes in the amount of the property's fair market value (subject to present-law percentage limitations).[19]

Treasury report on advance valuation procedure

Under the House bill, not later than one year after the date of enactment of the bill, the Secretary of the Treasury is required to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance, reporting on the development of an advance valuation procedure under which a taxpayer could elect to enter into an agreement with the Secretary regarding the value of tangible personal property prior to the donation of such property to a qualifying charitable organization (provided that time limits for donation and any other conditions contained in the agreement are satisfied). The report should address the advisability of establishing threshold amounts for claimed value and imposing user fees as prerequisites for seeking an agreement under the procedure, possible limitations on applying the procedure only to items with significant artistic or cultural value, and recommendations for legislative action needed to implement the procedure.

Effective date

The House bill provision governing the AMT treatment of gifts of appreciated property is effective for contributions of tangible personal property made after June 30, 1992, and contributions of other property made after December 31, 1992.

The Treasury Department must report to Congress not later than one year after the date of enactment on the development of an advance valuation procedure.

Senate Amendment

Permanent AMT relief for donated appreciated property

The Senate amendment is the same as the House bill.

Treasury report on advance valuation procedure

No provision.

****1251*562** Conference Agreement

Permanent AMT relief for donated appreciated property

The conference agreement follows the House bill and the Senate amendment.[20]

Treasury report on advance valuation procedure

The conference agreement follows the Senate amendment, but the conferees intend that the Secretary of the Treasury will report to Congress on the development of an advance valuation procedure as contemplated under the House bill statutory provision.

2. Substantiation and disclosure requirements for charitable contributions (secs. 14271 and 14272 of the House bill, secs. 8172 and 8173 of the Senate amendment, secs. 13172 and 13173 of the conference agreement, and sec. 170 and new secs. 6115 and 6714 of the Code)

Present Law

An individual taxpayer who itemizes deductions must separately state (on Schedule A to the Form 1040) the aggregate amount of charitable contributions made by cash or check and the aggregate amount of donated property other than cash or check.

A taxpayer is not required to provide specific information on his or her return regarding a claimed charitable contribution made by cash or check; nor in such a case is a donee organization required to file an information return with the IRS, regardless of the amount of cash or check involved. However, taxpayers must provide certain information (on Form 8283) if the amount of the claimed deduction for all noncash contributions exceeds $500.[21]

A payment to a charity (regardless of whether it is termed a "contribution") in exchange for which the payor receives an economic benefit is not deductible under section 170, except to the extent that the taxpayer can demonstrate that the payment exceeds the fair market value of the benefit received from the charity.[22]

****1252*563** The Code does not require a tax-exempt organization that is eligible to receive tax-deductible contributions to state explicitly, in its solicitations for support from members or the general public, whether an amount paid to the organization is deductible as a charitable contribution or whether all or part of the payment constitutes consideration for goods or services furnished to the payor.[23] In contrast, tax-exempt organizations that are not eligible to receive tax-deductible contributions are required to state expressly in certain fund-raising solicitations that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes (sec. 6113).[24] A penalty is imposed on such organizations for failure to comply with the section 6113 disclosure requirement, unless reasonable cause is shown (sec. 6710).

Tax-exempt organizations generally are required to file an annual information return (Form 990) with the IRS. However, churches (and their affiliated organizations), as well as tax-exempt organizations (other than private foundations) that normally have gross receipts in each taxable year of not more than $25,000, are not required to file the Form 990.[25] If a charity is required to file a Form 990, then it must report, among other items, the names and addresses of all persons who contributed, bequeathed, or devised $5,000 or more (in cash or other property) during the taxable year.[26]

House Bill

The House bill contains the following two provisions that require substantiation and disclosure relating to charitable contributions:

Substantiation requirement

Section 170 is amended to provide that no deduction is allowed under that section for a separate contribution of $750 or more[27] unless the taxpayer has written substantiation from the donee organization of the contribution (including a good faith estimate of the value of any good or service that has been provided to the donor in exchange for making the gift to the donee).

This provision does not impose an information reporting requirement upon charities; rather, it places the responsibility upon taxpayers who claim an itemized deduction for a separate contribution of $750 or more to request (and maintain in their records) substantiation from the charity of their contribution (and any good or ****1253*564** service received in exchange). Taxpayers may not rely solely on a canceled check as substantiation for a donation of $750 or more.

Under the provision, a taxpayer must obtain substantiation prior to filing his or her return for the taxable year in which the contribution was made (or if earlier, the due date, including extensions, for filing such return). Substantiation is not required if the donee organization files a return with the IRS (in accordance with Treasury regulations) reporting information sufficient to substantiate the amount of the deductible contribution.[28]

Information disclosure for quid pro quo contributions

A charitable organization that receives a quid pro quo contribution (meaning "a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization") will be required, in connection with the solicitation or receipt of such a contribution, to (1) inform the donor that the amount of the contribution deductible for Federal income tax purposes is limited to the excess of the amount of any money (and the value of any property other than money) contributed by the donor over the value of the goods or services provided by the organization, and (2) provide the donor with a good faith estimate of the value of goods or services furnished to the donor by the organization.

The disclosure requirement applies to all quid pro quo contributions regardless of the dollar amount of the contribution involved (e.g., even in cases with payments of less than $750), and the disclosure must be made by the charity in connection with either the solicitation or receipt of the contribution. Thus, for example, if a charity receives a $75 contribution from a donor, in exchange for which the donor receives a dinner valued at $40, then the charity must inform the donor that only $35 is deductible as a charitable contribution. However, the provision will not apply if only de minimis, token goods or services are given to a donor (see Rev. Procs. 90–12 and 92–49, discussed above). Also, the provision will not apply to transactions that have no donative element (e.g., sales of goods by a museum gift shop that are not, in part, donations).

The provision also provides that penalties ($10 per contribution, but capped at $5,000 per particular fundraising event or mailing) may be imposed upon charities that fail to make the required disclosure, unless the failure was due to reasonable cause. The penalties will apply if an organization either fails to make any disclosure in connection with a quid pro quo contribution or makes a disclosure that is incomplete or inaccurate (e.g., an estimate not determined in good faith of the value of goods or services furnished to the donor).

Effective date

The provision is effective for contributions made after December 31, 1993.

****1254*565** Senate Amendment

The Senate amendment contains the following two provisions that require substantiation and disclosure relating to certain

charitable contributions:

Substantiation requirement

Section 170 is amended to provide that no deduction is allowed under that section for a separate contribution of $250 or more[29] unless the taxpayer has written substantiation from the donee organization of the contribution (including a good faith estimate of the value of any good or service that has been provided to the donor in exchange for making the gift to the donee).[30]

This provision does not impose an information reporting requirement upon charities; rather, it places the responsibility upon taxpayers who claim an itemized deduction for a contribution of $250 or more to request (and maintain in their records) substantiation from the charity of their contribution (and any good or service received in exchange).[31] Taxpayers may not rely solely on a canceled check as substantiation for a donation of $250 or more.

Under the provision, a taxpayer must obtain substantiation prior to filing his or her return for the taxable year in which the contribution was made (or if earlier, the due date, including extensions, for filing such return).[32] Substantiation is not required if the donee organization files a return with the IRS (in accordance with Treasury regulations) reporting information sufficient to substantiate the amount of the deductible contribution.[33]

The provision explicitly provides that, if in return for making a contribution of $250 or more to a religious organization, a donor receives in return solely an intangible religious benefit that generally is not sold in commercial transactions outside the donative ****1255*566** context (e.g., admission to a religious ceremony[34]), then such a religious benefit may be disregarded for purposes of the substantiation requirement.

Information disclosure for quid pro quo contributions

A charitable organization that receives a quid pro quo contribution in excess of $75 (meaning a payment exceeding $75 "made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization") is required, in connection with the solicitation or receipt of such a contribution, to provide a written statement to the donor that (1) informs the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the amount of any money (and the value of any property other than money) contributed by the donor over the value of the goods or services provided by the organization, and (2) provides the donor with a good faith estimate of the value of goods or services furnished to the donor by the organization.[35]

The disclosure requirement applies to all quid pro quo contributions where the donor makes a payment of more than $75.[36] Thus, for example, if a charity receives a $100 contribution from a donor, in exchange for which the donor receives a dinner valued at $40, then the charity must inform the donor in writing that only $60 is deductible as a charitable contribution. However, the provision does not apply if only de minimis, token goods or services are given to a donor (see Rev. Procs. 90–12 and 92–49, discussed above). In addition, as with the substantiation provision (described above), the provision does not apply to a contribution in return for which the contributor receives solely an intangible religious benefit that generally is not sold in a commercial transaction outside the donative context.[37] Furthermore, the provision does not apply to transactions that have no donative element (e.g., sales of goods by a museum gift shop that are not, in part, donations).

The provision also provides that penalties ($10 per contribution, but capped at $5,000 per particular fundraising event or mailing) may be imposed upon charities that fail to make the required disclosure, unless the failure was due to reasonable cause. The penalties will apply if an organization either fails to make any disclosure in connection with a quid pro quo contribution or makes a disclosure that is incomplete or inaccurate (e.g., an estimate not determined in good faith of the value of goods or services furnished to the donor).

****1256*567** Effective date

The provisions are effective for contributions made after December 31, 1993.[38]

Conference Agreement

The conference agreement follows the Senate amendment.

However, with respect to the substantiation provision, the conference agreement clarifies that in cases where, in consideration (in whole or in part) for a contribution of $250 or more, a religious organization furnishes to the contributor solely an intangible religious benefit generally not sold in a commercial transaction outside the donative context, the written substantiation must contain a statement to the effect that an intangible religious benefit was so furnished, but the substantiation need not further describe, nor provide a valuation for, such benefit.[39]

In addition, the conferees intend that the authority granted to the Secretary of the Treasury to issue regulations providing that some or all of the requirements of the substantiation provision do not apply in appropriate cases shall be exercised to clarify the treatment of contributions made through payroll deductions.

3. Extension of General Fund transfer to Railroad Retirement Tier 2 Fund (sec. 14172 of the House bill and sec. 8174 of the Senate amendment)

PRESENT LAW

A portion of the railroad retirement tier 2 benefits are included in gross income of recipients (similar to the treatment accorded recipients of private pensions) for Federal income tax purposes. The proceeds from the income taxation of railroad retirement tier 2 benefits received prior to October 1, 1992, have been transferred from the General Fund of the Treasury to the railroad retirement account. Proceeds from the income taxation of benefits received after September 30, 1992, remain in the General Fund.

HOUSE BILL

Under the House bill, the transfer of proceeds from the income taxation of railroad retirement tier 2 benefits from the General Fund of the Treasury to the railroad retirement account is made permanent.

Effective date.–The House bill is effective for income taxes on benefits received after September 30, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Effective date.–Same as the House bill.

****1257*568** Conference Agreement

The conference agreement does not include the provision in the House bill or the Senate amendment.

4. Extension of health insurance deduction for self-employed individuals (sec. 14173 of the House bill, sec. 8175 of the Senate amendment, sec. 13174 of the conference agreement, and sec. 162(1) of the Code)

PRESENT LAW

Under present law, an incorporated business can generally deduct, as an employee compensation expense, the full cost of any

health insurance coverage provided for its employees (including owners serving as employees) and its employees' spouses and dependents. Self-employed individuals can fully deduct the cost of health insurance for employees as employee compensation, but can only deduct the cost of health insurance coverage for the individual and his or her dependents to the extent that the cost of the coverage, together with other allowable medical expenses, exceeds 7.5 percent of adjusted gross income. Other individuals (e.g., employees who are not covered by an employer-sponsored plan) who purchase health insurance can deduct the cost of the insurance only to the extent that it, together with their other medical expenses, exceeds 7.5 percent of adjusted gross income.

For coverage prior to July 1, 1992, a self-employed individual was allowed to deduct as a business expense up to 25 percent of the amount paid for health insurance coverage for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents. Only amounts paid prior to July 1, 1992, for coverage before that date were eligible for the deduction. The deduction was not allowed if the self-employed individual or his or her spouse were eligible for employer-paid health benefits.

HOUSE BILL

Under the House bill, the 25-percent deduction is extended retroactively from July 1, 1992, through December 31, 1993. In addition, the bill provides that the determination of whether a self-employed individual or his or her spouse are eligible for employer-paid health benefits is made on a monthly basis.

Effective date.–The House bill is effective for taxable years ending after June 30, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

****1258*569** II. REVENUE-RAISING PROVISIONS

A. INDIVIDUAL INCOME AND ESTATE AND GIFT TAX PROVISIONS

1. Increased tax rates for higher-income individuals (secs. 14201–14205 of the House bill, secs. 8201–8205 of the Senate amendment, secs. 13201–13205 of the conference agreement, and secs. 1, 55, 68, and 151 of the Code)

PRESENT LAW

Regular tax rates

For 1993, the individual income tax rates are as follows–

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
Net capital gains income is subject to a maximum tax rate of 28 percent.

The individual income tax brackets are indexed each year for inflation.

Alternative minimum tax

An individual taxpayer is subject to an alternative minimum tax (AMT) to the extent that the taxpayer's tentative minimum tax exceeds the taxpayer's regular tax liability. A taxpayer's tentative minimum tax generally equals 24 percent of alternative minimum taxable income (AMTI) in excess of an exemption amount. The exemption ****1259*570** amount is $40,000 for married taxpayers filing joint returns, $30,000 for unmarried taxpayers filing as single or head of household, and $20,000 for married taxpayers filing separate returns, estates, and trusts. The exemption amount is phased out for taxpayers with AMTI above specified thresholds. These thresholds are: $150,000 for married taxpayers filing joint returns, $112,500 for unmarried taxpayers filing as single or head of household, and $75,000 for married taxpayers filing separate returns, estates, and trusts. The exemption is completely phased out for individuals with AMTI above $310,000 (married taxpayers filing joint returns) or $232,500 (unmarried taxpayers filing as single or head of household). The exemption amount and the thresholds are not indexed for inflation.

Surtax on higher-income taxpayers

Under present law, there is no surtax imposed on higher-income individuals.

Itemized deduction limitation

Under present law, individuals who do not elect the standard deduction may claim itemized deductions (subject to certain limitations) for certain expenses incurred during the taxable year. Among these deductible expenses are unreimbursed medical expenses, unreimbursed casualty and theft losses, charitable contributions, qualified residence interest, State and local income and property taxes, unreimbursed employee business expenses, and certain other miscellaneous expenses.

Certain itemized deductions are allowed only to the extent that the amount exceeds a specified percentage of the taxpayer's adjusted gross income (AGI). Unreimbursed medical expenses for care of the taxpayer and the taxpayer's spouse and dependents are deductible only to the extent that the total of these expenses exceeds 7.5 percent of the taxpayer's AGI. Nonbusiness, unreimbursed casualty or theft losses are deductible only to the extent that the amount of loss arising from each casualty or theft exceeds $100 and only to the extent that the net amount of casualty and theft losses exceeds 10 percent of the taxpayer's AGI. Unreimbursed employee business expenses and certain other miscellaneous expenses are deductible only to the extent that the total of these expenses exceeds 2 percent of the taxpayer's AGI.

The total amount of otherwise allowable itemized deductions (other than medical expenses, casualty and theft losses, and investment interest) is reduced by 3 percent of the amount of the taxpayer's AGI in excess of $108,450 in 1993 (indexed for inflation). Under this provision, otherwise allowable itemized deductions may not be reduced by more than 80 percent. In computing the reduction of total itemized deductions, all present-law limitations applicable to such deductions are first applied and then the otherwise allowable total amount of deductions is reduced in accordance with this provision.

The reduction of otherwise allowable itemized deductions does not apply to taxable years beginning after December 31, 1995.

****1260*571** Personal exemption phaseout

Present law permits a personal exemption deduction from gross income for an individual, the individual's spouse, and each dependent. For 1993, the amount of this deduction is $2,350 for each exemption claimed. This exemption amount is adjusted for inflation. The deduction for personal exemptions is phased out for taxpayers with AGI above a threshold amount (indexed for inflation) which is based on filing status. For 1993, the threshold amounts are $162,700 for married taxpayers filing joint returns, $81,350 for married taxpayers filing separate returns, $135,600 for unmarried taxpayers filing as head of household, and $108,450 for unmarried taxpayers filing as single.

The total amount of exemptions that may be claimed by a taxpayer is reduced by 2 percent for each $2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold. (The phaseout rate is 2 percent for each $1,250 for married taxpayers filing separate returns.) Thus, the personal exemptions claimed are phased out over a $122,500 range (which is not indexed for inflation), beginning at the applicable threshold.

This provision does not apply to taxable years beginning after December 31, 1996.

HOUSE BILL

New marginal tax rates

The House bill imposes a new 36-percent marginal tax rate on taxable income in excess of the following thresholds:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
For estates and trusts, the 15-percent rate applies to income up to $1,500, the 28-percent rate applies to income between $1,500 and $3,500, and the 31-percent rate applies to income between $3,500 and $5,500. Under this modified tax rate schedule for estates and trusts, the benefits of the rates below the 39.6-percent surtax-included rate (described below) for 1993 approximate the benefits of the 15- and 28-percent rates for 1993 under present law.

As under present law, the tax rate bracket thresholds are indexed for inflation. However, indexing of thresholds for the 36-percent rate applies to taxable years beginning after December 31, 1994.

Alternative minimum tax

The House bill provides a two-tiered graduated rate schedule for the AMT for taxpayers other than corporations. A 26-percent rate applies to the first $175,000 of a taxpayer's AMTI in excess of the exemption amount, and a 28-percent rate applies to AMTI more than $175,000 above the exemption amount. For married individuals filing separate returns, the 28-percent rate applies to AMTI more than $87,500 above the exemption amount. The bill increases the exemption amount to $45,000 for married individuals ****1261*572** filing joint returns, to $33,750 for unmarried individuals, and to $22,500 for married individuals filing separate returns, estates, and trusts.

Surtax on higher-income taxpayers

The House bill provides a 10-percent surtax on individuals with taxable income in excess of $250,000 and on estates and trusts with taxable income in excess of $7,500. For married taxpayers filing separate returns, the threshold amount for the surtax is $125,000. The surtax is computed by applying a 39.6-percent rate to taxable income in excess of the applicable threshold. Under this method of computation, unlike a simple 10-percent increase in tax liability, net capital gain income is not subject to tax at a rate in excess of the current 28-percent maximum rate. The thresholds for the surtax are indexed for inflation in the same manner as other individual income tax rate thresholds for taxable years beginning after December 31, 1994.

Itemized deduction limitation and phaseout of personal exemptions

The House bill makes permanent the provisions that limit itemized deductions and phase out personal exemptions.

Effective date

The provision is effective for taxable years beginning after December 31, 1992. Withholding tables for 1993 will not be revised to reflect the changes in tax rates. Penalties for the underpayment of estimated taxes will be waived for underpayments of 1993 taxes attributable to these changes in tax rates.

SENATE AMENDMENT

New marginal tax rates

The Senate amendment generally follows the House bill with respect to the new 36-percent marginal tax rate. However, for taxable years beginning in 1993, a blended rate (described below) is used.

Alternative minimum tax

The Senate amendment generally follows the House bill. However, for taxable years beginning in 1993, a blended rate (described below) is used.

Surtax on higher-income taxpayers; surtax on net capital gain

The Senate amendment generally follows the House bill and imposes a 10-percent surtax on individuals with taxable income in excess of $250,000 and on estates and trusts with taxable income in excess of $7,500. For married taxpayers filing separate returns, the threshold amount for the surtax is $125,000. The surtax is computed by applying a 39.6-percent rate to taxable income in excess of the applicable threshold. However, the Senate amendment also imposes the surtax on net capital gain income. An individual's net capital gain is subject to the surtax by applying a maximum ****1262*573** rate of 30.8 percent (instead of the present-law maximum rate of 28 percent) to capital gain income to the extent an individual's taxable income exceeds $250,000. For taxable years beginning in 1993, a blended rate (described below) is used.

Itemized deduction limitation and phaseout of personal exemptions

The Senate amendment is the same as the House bill.

Effective date

The Senate amendment generally follows the House bill. However, for taxable years beginning in 1993, blended tax rates are used: the 36-percent tax rate is reduced to 33.5 percent and the 39.6-percent rate is reduced to 35.3 percent. In addition, the 30.8-percent maximum rate on capital gains income is reduced to 29.4 percent for taxable years beginning in 1993. Similarly, for taxable years beginning in 1993, the 26- percent and 28-percent alternative minimum tax rates is reduced to 25 percent and 26 percent, respectively. The permanent rate levels are used for 1994 and later years.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

In addition, the conference agreement contains a provision permitting individual taxpayers to elect to pay their additional 1993 taxes that are attributable to the rate increases contained in the conference agreement in three annual installments. The first installment must be paid on or before the due date for the individual's taxable year that begins in calendar year 1993; the second installment must be paid on or before the date one year after that date; and the third installment must be paid on or before the date two years after that date. The election must be made on the tax return for the individual's taxable year that begins in 1993 (which, in general, is due on April 15, 1994).

The amount eligible for this installment payment election is the excess of the individual's net liability under chapter 1 of the Code as shown on the individual's tax return over the amount that would have been the individual's net liability but for the amendments made by the conference report that alter the individual tax rates (i.e., the 36 percent and 39.6 percent marginal tax rates). These amounts are computed after the application of any credit (except the credit for wage withholding and the credit for special fuel uses) and before crediting any payment of estimated tax. Amounts required to be shown on the return but not actually shown on the return are ineligible for this installment payment election.

The Secretary shall immediately terminate this installment payment election, and the whole amount of the unpaid tax shall be

paid immediately upon notice and demand from the Secretary, if either (1) the taxpayer does not pay any installment on or before the required date, or (2) the Secretary believes that the collection of any amount under this installment payment election is in jeopardy.

Because this installment payment election applies only to amounts actually shown on the individual's tax return, those amounts are considered to be assessed. Consequently, the 10-year ****1263*574** statute of limitations applicable to collection after assessment (sec. 6502) is applicable to these installment payments.

2. Provisions to prevent conversion of ordinary income to capital gain (sec. 14206 of the House bill, sec. 8206 of the Senate amendment, and sec. 13206 of the conference agreement)

a. Recharacterization of capital gain as ordinary income for certain financial transactions (sec. 13206(a) of the House bill, sec. 8206(a) of the Senate amendment, sec. 13206(a) of the conference agreement, and new sec. 1258 of the Code)

Present Law

Under present law, the maximum rate of individual income tax on ordinary income is 31 percent. Interest from a loan generally is treated as ordinary income.

Gain or loss from the sale or exchange of a capital asset generally is treated as capital gain or loss. Net capital gain (i.e., net long-term capital gain less net short-term capital loss) of an individual is subject to a maximum tax rate of 28 percent. Generally, capital losses are not deductible against ordinary income.

House Bill

***575** Under the provision, capital gain from the disposition of property that was part of a "conversion transaction" would be recharacterized as ordinary income, with certain limitations discussed below. No inference is intended as to when income from a conversion transaction is properly treated as capital gain under present law.

A conversion transaction is a transaction, generally consisting of two or more positions taken with regard to the same or similar property, where substantially all of the taxpayer's return is attributable to the time value of the taxpayer's net investment in the transaction. In a conversion transaction, the taxpayer is in the economic position of a lender–he has an expectation of a return from the transaction which in substance is in the nature of interest and he undertakes no significant risks other than those typical of a lender. However, a transaction is not a conversion transaction subject to the provision unless it also satisfies one of the following four criteria: (1) the transaction consists of the acquisition of property by the taxpayer and a substantially contemporaneous agreement to sell the same or substantially identical property in the future; (2) the transaction is a straddle, within the meaning of section 1092[40] ; (3) the transaction is one that was marketed or sold to the taxpayer on the basis that it would have the economic characteristics of a loan but the interest-like return would be taxed as capital gain; or (4) the transaction is described as a conversion transaction in regulations promulgated by the Secretary of the Treasury.

****1264** Under the provision, gain realized by a taxpayer from a conversion transaction that would otherwise be treated as capital gain will be treated as ordinary income (but not as interest) for all purposes of the Internal Revenue Code. The amount of gain so recharacterized will not exceed the amount of interest that would have accrued on the taxpayer's net investment for the relevant period at a yield equal to 120% of the "applicable rate". This limit is subject to appropriate reduction to reflect prior inclusion of ordinary income items from the conversion transaction or the capitalization of interest on acquisition indebtedness under section 263(g). The "applicable rate" is the applicable Federal rate under section 1274(d) at the time the taxpayer enters into the conversion transaction (if the conversion transaction has a definite term) or the Federal short term rate determined under section 6621(b) (if the conversion transaction has an indefinite term).

Effective date.–The provision is effective for conversion transactions entered into after April 30, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that the amendment clarifies that property or positions may be part of a conversion transaction, and that transactions of options dealers and commodities traders in the normal course of their trade or business of dealing in options or section 1256 contracts, respectively, generally will not be considered to be conversion transactions.

Conference Agreement

The conference agreement follows the Senate amendment, with a clarification of the determination of the "applicable rate," a clarification of the conferees' intent with respect to transactions entered into by options dealers and commodities traders, and a modification to the definition of commodities trader.

First, the conferees clarify that the Secretary has the authority (under sec. 1274(d)(1)(D)) to provide for the use of an applicable rate lower than the applicable Federal rate in appropriate cases. Second, the conferees clarify that transactions (including transactions involving positions other than options or section 1256 contracts) of options dealers and commodities traders in the normal course of their trade or business of dealing in options or trading section 1256 contracts, respectively, will not be considered conversion transactions, except as provided in the special rules noted below.

Third, under the agreement, the term "commodities trader" includes any person who is a member of a domestic board of trade (including a member having member trading privileges only with respect to a portion of the contracts available for trading on the board of trade) which is designated as a contract market by the Commodity Futures Trading Commission. "Commodities trader" also, except as otherwise provided by Treasury regulations, includes a person entitled to trade as a member, such as a lessee of a membership or an entity that is (or is affiliated with) a beneficial owner of a membership if such entity is eligible for any preferential ****1265*576** rates available to members with respect to transaction fees or margins imposed by the board of trade or for the clearing of trades on the board of trade. Other persons eligible for such member rates also will be treated as "commodities traders" for purposes of the exception; however, the Secretary may promulgate regulations that prevent unwarranted expansion of the exception, by excluding from the definition of "commodities trader" a person who acquires some attributes of board of trade membership for the principal purpose of qualifying for the "commodities trader" exception or whose margins or fees are substantially more than the margins or fees associated with owned or leased memberships.

Special rules limit the availability of the options dealer and commodities trader exception for limited partners or limited entrepreneurs in an entity that is an options dealer or a commodities trader.

b. Repeal of certain exceptions to the market discount rules (sec. 14206(b) of the House bill and sec. 8206(b) of the Senate amendment, sec. 13206(b) of the conference agreement, and secs. 1276, 1277, 1278 of the Code)

Present Law

Generally, a market discount bond is a bond that is acquired for a price that is less than the principal amount of the bond.[41] Market discount generally arises when the value of a debt obligation declines after issuance (typically, because of an increase in prevailing interest rates or a decline in the credit-worthiness of the borrower).

Gain on the disposition of a market discount bond generally must be recognized as ordinary income to the extent of the market discount that has accrued. This ordinary income rule, however, does not apply to tax-exempt obligations or to market discount bonds issued on or before July 18, 1984. Under current law, income attributable to accrued market discount on tax-exempt bonds is not tax-exempt but is taxable as capital gain if the bond is held as a capital asset.

House Bill

The bill extends the ordinary income rule to tax-exempt obligations and to market discount bonds issued on or before July 18, 1984. Thus, gain on the disposition of a tax-exempt obligation or any other market discount bond that is acquired for a price

that is less than the principal amount of the bond generally will be treated as ordinary income (instead of capital gain) to the extent of accrued market discount.

Effective date.–The provision is effective for bonds purchased after April 30, 1993. Thus, current owners of tax-exempt bonds and other market discount bonds issued on or before July 18, 1984, will not be required to treat accrued market discount as ordinary income, if they acquired their bonds before May 1, 1993.

****1266*577** Senate Amendment

The Senate amendment is the same as the House ill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with a technical amendment of the definition of revised issue price in Code section 1278(a)(4) to account for the accrual of tax-exempt original issue discount.

c. Accrual of income by holders of stripped preferred stock (sec. 14206(c) of the House bill, sec. 8206(c) of the Senate amendment, sec. 13206(c) of the conference agreement, and sec. 305 of the Code)

Present Law

In general, if a bond is issued at a price approximately equal to its redemption price at maturity, the expected return to the holder of the bond is in the form of periodic interest payments. In the case of original issue discount ("OID") bonds, however, the issue price is below the redemption price, and the holder receives part or all of his expected return in the form of price appreciation. The difference between the issue price and the redemption price is the OID, and a portion of the OID is required to be accrued and included in the income of the holder annually. Similarly, for certain preferred stock that is issued at a discount from its redemption price, a portion of the redemption premium must be included in income annually.

A stripped bond (i.e., a bond issued with interest coupons some of which are subsequently "stripped" so that the ownership of the bond is separated from the ownership of the interest coupons) generally is treated as a bond issued with OID equal to (1) the stated redemption price of the bond at maturity minus (2) the amount paid for the stripped bond.

If preferred stock is stripped of some of its dividend rights, however, the stripped stock is not subject to the rules that apply to stripped bonds or to the rules that apply to bonds and certain preferred stock issued at a discount.

House Bill

The bill treats the purchaser of stripped preferred stock (and a person who strips preferred stock and disposes of the stripped dividend rights) in generally the same way that the purchaser of a stripped bond would be treated under the OID rules. Thus, stripped stock is treated like a bond issued with OID equal to (1) the stated redemption price of the stock minus (2) the amount paid for the stock. The discount accrued under the provision is treated as ordinary income and not as interest or dividends.

Stripped preferred stock is defined as any preferred stock where the ownership of the stock has been separated from the right to receive any dividend that has not yet become payable. The provision applies to stock that is limited and preferred as to dividends, does not participate in corporate growth to any significant extent, and has a fixed redemption price.

****1267*578** No inference is intended as to as to the treatment of stripped preferred stock for tax purposes with respect to any issues not directly addressed by this legislation, including the availability of the dividends received deduction to a holder of dividends stripped from preferred stock, the allocation of basis by the creator of stripped preferred stock, or the proper characterization of a purported sale of stripped dividend rights.

Effective date.–The bill is effective for stripped stock that is purchased after April 30, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Treatment of net capital gains as investment income (sec. 14206(d) of the House bill and sec. 8206(d) of the Senate amendment, sec. 13206(d) of the conference agreement, and sec. 163(d) of the Code)

Present Law

In the case of a taxpayer other than a corporation, deductions for interest on indebtedness that is allocable to property held for investment ("investment interest") are limited to the taxpayer's net investment income for the taxable year. Disallowed investment interest is carried forward to the next taxable year. Investment income includes gross income (other than gain on disposition) from property held for investment and any net gain attributable to the disposition of property held for investment.

Investment interest that is allowable is deductible against income taxable at ordinary income rates. The net capital gain (i.e., net long-term capital gain less net short-term capital loss) of a noncorporate taxpayer is taxed at a maximum rate of 28 percent.

Prior to 1986, when a significant rate differential existed between long-term capital gains and ordinary income, long-term capital gains were not included in investment income for purposes of computing the investment interest limitation.

House Bill

The House bill generally excludes net capital gain attributable to the disposition of property held for investment from investment income for purposes of computing the investment interest limitation. A taxpayer, however, can elect to include so much of his net capital gain in investment income as the taxpayer chooses if he also reduces the amount of net capital gain eligible for the 28-percent maximum capital gains rate by the same amount.

Effective date.–The provision is effective for taxable years beginning after December 31, 1992.

****1268*579** Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Definition of "substantially appreciated" inventory (sec. 14206(e) of the House bill, sec. 8206(e) of the Senate amendment, sec. 13206(e) of the conference agreement, and sec. 751(d) of the Code)

Present Law

Under present law, amounts received by a partner in exchange for his interest in a partnership are treated as ordinary income to the extent they are attributable to substantially appreciated inventory of the partnership. In addition, distributions by a partnership in which a partner receives substantially appreciated inventory in exchange for his interest in certain other partnership property (or receives certain other property in exchange for substantially appreciated inventory) are treated as a taxable sale or exchange of property, rather than as a nontaxable distribution.

For these purposes, inventory is treated as substantially appreciated if the value of the partnership's inventory exceeds both 120 percent of its adjusted basis and 10 percent of the value of all partnership property (other than money).

House Bill

The House bill eliminates the requirement that the partnership's inventory exceed 10 percent of the value of all partnership property in order to be substantially appreciated. Thus, if the partnership's inventory is worth more than 120 percent of its adjusted basis, the inventory is treated as substantially appreciated. In addition, any inventory property acquired with a principal purpose to reduce the appreciation to less than 120 percent in order to avoid ordinary income treatment will be disregarded in applying the 120-percent test.

Effective date.–The provision applies to sales, exchanges, and distributions after April 30, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

****1269*580** 3. Repeal health insurance wage base cap (sec. 14207 of the House bill, sec. 8207 of the Senate amendment, sec. 13207 of the conference agreement, and sec. 3121(x) of the Code)

PRESENT LAW

As part of the Federal Insurance Contributions Act (FICA), a tax is imposed on employees and employers up to a maximum amount of employee wages. The tax is comprised of two parts: old-age, survivor, and disability insurance (OASDI) and Medicare hospital insurance (HI). For wages paid in 1993 to covered employees, the HI tax rate is 1.45 percent on both the employer and the employee on the first $135,000 of wages and the OASDI tax rate is 6.2 percent on both the employer and the employee on the first $57,600 of wages.

Under the Self-Employment Contributions Act of 1954 (SECA), a tax is imposed on an individual's self-employment income. The self-employment tax rate is the same as the total rate for employers and employees (i.e., 2.9 percent for HI and 12.40 percent for OASDI). For 1993, the HI tax is applied to the first $135,000 of self-employment income and the OASDI tax is applied to the first $57,600 self-employment income. In general, the tax is reduced to the extent that the individual had wages for which employment taxes were withheld during the year.

The cap on wages and self-employment income subject to FICA and SECA taxes is indexed to changes in the average wages in the economy.

HOUSE BILL

The bill repeals the dollar limit on wages and self-employment income subject to HI taxes.

Effective date.–The provision is effective for wages and income received after December 31, 1993.

SENATE AMENDMENT

The Senate amendment is the same as the House bill. The legislative history to the Senate amendment expresses the concern of the Senate that HI taxes paid by high-income workers under the provision would bear little relation to Medicare benefits such workers could expect to receive, and that this may make the HI program look more like welfare than social insurance. It is suggested that it may be appropriate to revisit the issue in the context of health care reform or Medicare financing improvements.

Effective date.–The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

****1270*581** 4. Reinstate top estate and gift tax rates (sec. 14208 of the House bill, sec. 8208 of the Senate amendment, sec. 13208 of the conference agreement, and sec. 2001 of the Code)

PRESENT LAW

A Federal gift tax is imposed on transfers by gift during life and a Federal estate tax is imposed on transfers at death. The Federal estate and gift taxes are unified, so that a single graduated rate schedule is applied to an individual's cumulative gifts and bequests. For decedents dying (or gifts made) after 1992, the estate and gift tax rates begin at 18 percent on the first $10,000 of taxable transfers and reach a maximum of 50 percent on taxable transfers over $2.5 million. Previously, for the nine-year period beginning after 1983 and ending before 1993, two additional brackets applied at the top of the rate schedule: a rate of 53 percent on taxable transfers exceeding $2.5 million and below $3 million, and a maximum marginal tax rate of 55 percent on taxable transfers exceeding $3 million. The generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate (sec. 2641).

In order to phase out the benefit of the graduated brackets and unified credit, the estate and gift tax is increased by five percent on cumulative taxable transfers between $10 million and $18,340,000, for decedents dying and gifts made after 1992.[42] (Prior to 1993, this phase out of the graduated rates and unified credit applied to cumulative taxable transfers between $10 million and $21,040,000.)

HOUSE BILL

The House bill provides that, for taxable transfers over $2.5 million but not over $3 million, the estate and gift tax rate is 53 percent. For taxable transfers over $3 million, the estate and gift tax rate is 55 percent. The phase out of the graduated rates and unified credit applies with respect to cumulative taxable transfers between $10 million and $21,040,000. Also, since the generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate, the rate of tax on generation-skipping transfers under the bill is 55 percent.

Effective date.–The House bill is effective for decedents dying, gifts made, and generation skipping transfers occurring after December 31, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

****1271*582** 5. Reduce deductible portion of business meals and entertainment expenses (sec. 14209 of the House bill, secs. 8209 and 8209A of the Senate amendment, sec. 13209 of the conference agreement, and sec. 274(n) of the Code)

Present Law

In general, a taxpayer is permitted a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business and, in the case of an individual, for the production of income. No deduction generally is allowed for personal, living, or family expenses.

Meal and entertainment expenses incurred for business or investment reasons are deductible if certain legal and substantiation requirements are met. The amount of the deduction generally is limited to 80 percent of the expense that meets these requirements. No deduction is allowed, however, for meal or beverage expenses that are lavish or extravagant under the circumstances.

No deduction is allowed with respect to business meal and entertainment expenses (as well as other specified items) unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (1) the amount of the expense, (2) the time and place of the expense, (3) the business purpose of the expense, and (4) the business relationship to the taxpayer of the persons entertained. Under Treasury regulations, such documentary evidence is required for expenditures of $25 or more (Treas. Reg. sec. 1.274–5T(c)(2)(iii)(B)).

House Bill

The House bill reduces the deductible portion of otherwise allowable business meals and entertainment expenses from 80 percent to 50 percent.

Effective date.–The provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

Section 8209 of the Senate amendment is the same as the House bill, except that, in addition, the substantiation threshold for business meals is reduced from $25 to $20.

Section 8209A of the Senate amendment includes a sense of the Senate resolution that the conferees should reduce or eliminate the proposed reduction in the deductible portion of otherwise allowable business meals and entertainment expenses.

Conference Agreement

The conference agreement follows the House bill.

****1272*583** 6. Deny deduction for club dues (sec. 14210 of the House bill, sec. 8210 of the Senate amendment, sec. 13210 of the conference agreement, and sec. 274(a) of the Code)

Present Law

No deduction is permitted for club dues unless the taxpayer establishes that his or her use of the club was primarily for the furtherance of the taxpayer's trade or business and the specific expense was directly related to the active conduct of that trade or business (Code sec. 274(a)). No deduction is permitted for an initiation or similar fee that is payable only upon joining a club if the useful life of the fee extends over more than one year. Such initial fees are nondeductible capital expenditures.[43]

House Bill

Under the House bill, no deduction is permitted for club dues. This rule applies to all types of clubs (other than those exempted below), including business, social, athletic, luncheon, and sporting clubs. Specific business expenses (e.g., meals) incurred at a club are deductible only to the extent they otherwise satisfy the standards for deductibility.

Dues for airline and hotel clubs are not subject to the deduction disallowance.

Effective date.–The provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that dues for airline and hotel clubs are subject to the deduction disallowance.

Conference Agreement

The conference agreement follows the Senate amendment.

7. Deny deduction for executive pay over $1 million (sec. 14211 of the House bill, sec. 8211 of the Senate amendment, sec. 13211 of the conference agreement, and sec. 162 of the Code)

Present Law

An employer is allowed a deduction for reasonable salaries and other compensation. Whether compensation is reasonable is determined on a case-by-case basis. However, the reasonableness standard has been used primarily to limit payments by closely-held companies where nondeductible dividends may be disguised as deductible compensation.

****1273*584** House Bill

In general

Under the House bill, for purposes of the regular income tax and the alternative minimum tax, the otherwise allowable deduction for compensation paid or accrued with respect to a covered employee of a publicly held corporation is limited to no more than $1 million per year.

Certain types of compensation are not subject to the deduction limit and are not taken into account in determining whether other compensation exceeds $1 million. The following types of compensation are not taken into account: (1) remuneration payable on a commission basis; (2) remuneration payable solely on account of the attainment of one or more performance goals if certain independent director and shareholder approval requirements are met; (3) payments to a tax-qualified retirement plan (including salary reduction contributions); (4) amounts that are excludable from the executive's gross income (such as employer-provided health benefits and miscellaneous fringe benefits (sec. 132)); and (5) any remuneration payable

under a written binding contract which was in effect on February 17, 1993, and all times thereafter before such remuneration was paid and which was not modified thereafter in any material respect before such remuneration was paid.

Effective date

The House bill applies to compensation that is otherwise deductible by the corporation in a taxable year beginning on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Senate amendment refers to "outside" directors rather than "independent" directors and there are some minor differences in the legislative history.

Effective date.–The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

In general

The conference agreement follows the Senate amendment, with certain modifications and clarifications.

Under the conference agreement, for purposes of the regular income tax and the alternative minimum tax, the otherwise allowable deduction for compensation paid or accrued with respect to a covered employee of a publicly held corporation is limited to no more than $1 million per year.[44]

Definition of publicly held corporation

For purposes of this provision, a corporation is treated as publicly held if the corporation has a class of common equity securities ****1274*585** that is required to be registered under section 12 of the Securities Exchange Act of 1934. In general, the Securities Exchange Act requires a corporation to register its common equity securities under section 12 if (1) the securities are listed on a national securities exchange or (2) the corporation has $5 million or more of assets and 500 or more holders of such securities. A corporation is not considered publicly held under the provision if registration of its equity securities is voluntary. Such a voluntary registration might occur, for example, if a corporation that otherwise is not required to register its equity securities does so in order to take advantage of other procedures with regard to public offerings of debt securities.

Covered employees

Covered employees are defined by reference to the Securities and Exchange Commission (SEC) rules governing disclosure of executive compensation. Thus, with respect to a taxable year, a person is a covered employee if (1) the employee is the chief executive officer of the corporation (or an individual acting in such capacity) as of the close of the taxable year or (2) the employee's total compensation is required to be reported for the taxable year under the Securities Exchange Act of 1934 because the employee is one of the four highest compensated officers for the taxable year (other than the chief executive officer). If disclosure is required with respect to fewer than four executives (other than the chief executive officer) under the SEC rules, then only those for whom disclosure is required are covered employees.

Compensation subject to the deduction limitation

In general

Unless specifically excluded, the deduction limitation applies to all remuneration for services, including cash and the cash value of all remuneration (including benefits) paid in a medium other than cash. If an individual is a covered employee for a taxable year, the deduction limitation applies to all compensation not explicitly excluded from the deduction limitation, regardless of whether the compensation is for services as a covered employee and regardless of when the compensation was earned. The $1 million cap is reduced by excess parachute payments (as defined in sec. 280G) that are not deductible by the corporation.

The deduction limitation applies when the deduction would otherwise be taken. Thus, for example, in the case of a nonqualified stock option, the deduction is normally taken in the year the option is exercised, even though the option was granted with respect to services performed in a prior year.[45]

Certain types of compensation are not subject to the deduction limit and are not taken into account in determining whether other compensation exceeds $1 million. The following types of compensation are not taken into account: (1) remuneration payable on a commission basis; (2) remuneration payable solely on account of the attainment of one or more performance goals if certain outside director and shareholder approval requirements are met; (3) payments ****1275*586** to a tax-qualified retirement plan (including salary reduction contributions); (4) amounts that are excludable from the executive's gross income (such as employer-provided health benefits and miscellaneous fringe benefits (sec. 132)); and (5) any remuneration payable under a written binding contract which was in effect on February 17, 1993, and all times thereafter before such remuneration was paid and which was not modified thereafter in any material respect before such remuneration was paid.

Commissions

In order to qualify for the exception for compensation paid in the form of commissions, the commission must be payable solely on account of income generated directly by the individual performance of the executive receiving such compensation. Thus, for example, compensation that equals a percentage of sales made by the executive qualifies for the exception. Remuneration does not fail to be attributable directly to the executive merely because the executive utilizes support services, such as secretarial or research services, in generating the income. However, if compensation is paid on account of broader performance standards, such as income produced by a business unit of the corporation, the compensation would not qualify for the exception because it is not paid with regard to income that is directly attributable to the individual executive.

Other performance-based compensation

In general.–Compensation qualifies for the exception for performance-based compensation only if (1) it is paid solely on account of the attainment of one or more performance goals, (2) the performance goals are established by a compensation committee consisting solely of two or more outside directors, (3) the material terms under which the compensation is to be paid, including the performance goals, are disclosed to and approved by the shareholders in a separate vote prior to payment, and (4) prior to payment, the compensation committee certifies that the performance goals and any other material terms were in fact satisfied.

Definition of performance-based compensation.–Compensation (other than stock options or other stock appreciation rights) is not treated as paid solely on account of the attainment of one or more performance goals unless the compensation is paid to the particular executive pursuant to a preestablished objective performance formula or standard that precludes discretion.[46] In general, this means that a third party with knowledge of the relevant performance results could calculate the amount to be paid to the executive. It is intended that what constitutes a performance goal be broadly defined, and include, for example, any objective performance standard that is applied to the individual executive, a business unit (e.g., a division or a line of business), or the corporation as a whole. Performance standards could include, for example, increases in stock price, market share, sales, or earnings per share.

Stock options or other stock appreciation rights generally are treated as meeting the exception for performance-based compensation, ****1276*587** provided that the requirements for outside director and shareholder approval are met (without the need for certification that the performance standards have been met), because the amount of compensation attributable to the

options or other rights received by the executive would be based solely on an increase in the corporation's stock price. In the case of stock options, it is intended that the directors may retain discretion as to the exact number of options that are granted to an executive, provided that the maximum number of options that the individual executive may receive during a specified period is predetermined.

Stock-based compensation is not treated as performance-based if it is dependent on factors other than corporate performance. For example, if a stock option is granted to an executive with an exercise price that is less than the current fair market value of the stock at the time of grant, then the executive would have the right to receive compensation on the exercise of the option even if the stock price decreases or stays the same. Thus, stock options that are granted with an exercise price that is less than the fair market value of the stock at the time of grant do not meet the requirements for performance-based compensation. Similarly, if the executive is otherwise protected from decreases in the value of the stock (such as through automatic repricing), the compensation is not performance-based.

In contrast to options or other stock appreciation rights, grants of restricted stock are not inherently performance-based because the executive may receive compensation even if the stock price decreases or stays the same. Thus, a grant of restricted stock is treated like cash compensation and does not satisfy the definition of performance-based compensation unless the grant or vesting of the restricted stock is based upon the attainment of a performance goal and otherwise satisfies the standards for performance-based compensation under the bill.

Compensation does not qualify for the performance-based exception if the executive has a right to receive the compensation notwithstanding the failure of (1) the compensation committee to certify attainment of the performance goal (or goals) or (2) the shareholders to approve the compensation.

Definition of outside directors.–For purposes of the exception for performance-based compensation, a director is considered an outside director if he or she is not a current employee of the corporation (or related entities), is not a former employee of the corporation (or related entities) who is receiving compensation for prior services (other than benefits under a tax-qualified pension plan), was not an officer of the corporation (or related entities) at any time, and is not currently receiving compensation for personal services in any capacity (e.g., for services as a consultant) other than as a director.

Shareholder approval and adequate disclosure.–In order to meet the shareholder approval requirement, the material terms under which the compensation is to be paid must be disclosed and, after disclosure of such terms, the compensation must be approved by a majority of shares voting in a separate vote.

In the case of performance-based compensation paid pursuant to a plan (other than a stock option plan), the shareholder approval ****1277*588** requirement generally is satisfied if the shareholders approve the specific terms of the plan, including the class of executives to which it applies. In the case of a stock option plan, the shareholders generally must approve the specific terms of the plan, the class of executives to which it applies, the option price (or formula under which the price is determined), and the maximum number of shares subject to option that can be awarded under the plan to any executive. Further shareholder approval of payments under a plan or grants of options is not required after the plan has been approved. Of course, if there are material changes to the plan, shareholder approval would have to be obtained again in order for the exception to apply to payments under the modified plan.

It is intended that not all the details of a plan (or agreement) need be disclosed in all cases. In developing standards as to whether disclosure of the terms of a plan or agreement is adequate, the Secretary should take into account the SEC rules regarding disclosure. To the extent consistent with those rules, however, disclosure should be as specific as possible. It is expected that shareholders will, at a minimum, be made aware of the general performance goals on which the executive's compensation is based and the maximum amount that could be paid to the executive if such performance goals were met. For example, it would not be adequate if the shareholders were merely informed that an executive would be awarded $x "if the executive meets certain performance goals established by the compensation committee."

Under present law, in the case of a privately held company that becomes publicly held, the prospectus is subject to the rules similar to those applicable to publicly held companies. Thus, if there has been disclosure that would satisfy the rules described above, persons who buy stock in the publicly held company will be aware of existing compensation arrangements. No further shareholder approval is required of compensation arrangements existing prior to the time the company became

public unless there is a material modification of such arrangements. It is intended that similar rules apply in the case of other business transactions.

Compensation payable under a written binding contract

Remuneration payable under a written binding contract which was in effect on February 17, 1993, and at all times thereafter before such remuneration was paid is not subject to the deduction limitation.

Compensation paid pursuant to a plan qualifies for this exception provided that the right to participate in the plan is part of a written binding contract with the covered employee in effect on February 17, 1993. For example, suppose a covered employee was hired by XYZ Corporation on January 17, 1993, and one of the terms of the written employment contract is that the executive is eligible to participate in the "XYZ Corporation Executive Deferred Compensation Plan" in accordance with the terms of the plan. Assume further that the terms of the plan provide for participation after 6 months of employment, amounts payable under the plan are not subject to discretion, and the corporation does not have the right to amend materially the plan or terminate the plan (except on a prospective basis before any services are performed with respect ****1278*589** to the applicable period for which such compensation is to be paid). Provided that the other conditions of the binding contract exception are met (e.g., the plan itself is in writing), payments under the plan are grandfathered, even though the employee was not actually a participant in the plan on February 17, 1993.[47]

The fact that a plan was in existence on February 17, 1993, is not by itself sufficient to qualify the plan for the exception for binding written contracts.

The exception for remuneration paid pursuant to a binding written contract ceases to apply to amounts paid after there has been a material modification to the terms of the contract. The exception does not apply to new contracts entered into or renewed after February 17, 1993. For purposes of this rule, any contract that is entered into on or before February 17, 1993, and that is renewed after such date is treated as a new contract entered into on the day the renewal takes effect. A contract that is terminable or cancelable unconditionally at will by either party to the contract without the consent of the other, or by both parties to the contract, is treated as a new contract entered into on the date any such termination or cancellation, if made, would be effective. However, a contract is not treated as so terminable or cancelable if it can be terminated or cancelled only by terminating the employment relationship of the covered employee.

Effective date

The conference agreement follows the Senate amendment.

8. Reduce compensation taken into account for qualified retirement plan purposes (sec. 14212 of the House bill, sec. 8212 of the Senate amendment, sec. 13212 of the conference agreement, and sec. 401(a)(17) of the Code)

PRESENT LAW

Under present law, the amount of a participant's compensation that can be taken into account under a tax-qualified pension plan is limited (sec. 401(a)(17)). The limit applies for determining the amount of the employer's deduction for contributions to the plan as well as for determining the amount of the participant's benefits. The limit on includible compensation is $235,840 for 1993, and is adjusted annually for inflation. The limit in effect at the beginning of a plan year applies for the entire plan year.

HOUSE BILL

Under the House bill, the limit on compensation taken into account under a qualified plan (sec. 401(a)(17)) is reduced to $150,000. As under present law, this limit is indexed for inflation on an annual basis. Corresponding changes also are made to other provisions (secs. 404(l), 408(k)(3)(C), (6)(D)(ii), and (8), and 505(b)(7)) that take into account the section 401(a)(17)

limit.

Effective date.–The provision in the House bill applies to benefits accruing in plan years beginning after December 31, 1993. Benefits ****1279*590** accrued prior to the effective date for compensation in excess of the reduced limit are grandfathered.

Senate Amendment

The Senate amendment is the same as the House bill, except that the limit on compensation is indexed for inflation in increments of $10,000.

Effective date.–Same as the House bill except that special transition rules apply to governmental plans and plans maintained pursuant to a collective bargaining agreement.

In the case of an eligible participant in a plan maintained by a State or local government, the limit on compensation taken into account is the greater of the limit under the Senate amendment and the compensation allowed to be taken into account under the plan as in effect on July 1, 1993. For purposes of this rule, an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the first plan year beginning after the earlier of: (1) the plan year in which the plan is amended to reflect the proposal, or (2) December 31, 1995. This special rule does not apply unless the plan is amended to incorporate the dollar limit in effect under section 401(a)(17) by reference, effective with respect to persons other than eligible participants for benefits accruing in plan years beginning after December 31, 1995 (or earlier if the plan amendment so provides).

In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified before the date of enactment, the provision does not apply to contributions or benefits accruing under such agreements in plan years beginning before the earlier of (1) the latest of (a) January 1, 1994, (b) the date on which the last of such collective bargaining agreements terminates (without regard to any extension or modification on or after the date of enactment), or (c) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act, the date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on the date of enactment, or (2) January 1, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

9. Modify deduction for moving expenses (sec. 14213 of the House bill, sec. 8213 of the Senate amendment, sec. 13213 of the conference agreement, and secs. 62, 132, and 217 of the Code)

PRESENT LAW

An employee or self-employed individual may claim a deduction from gross income for certain expenses incurred as a result of moving to a new residence in connection with beginning work at a new location (sec. 217). The deduction is not subject to the floor that generally limits a taxpayer's allowable miscellaneous itemized deductions to those amounts that exceed two percent of the taxpayer's adjusted gross income. Any amount received directly or indirectly ****1280*591** by such individual as a reimbursement of moving expenses must be included in the taxpayer's gross income as compensation (sec. 82). The taxpayer may offset this income by deducting the moving expenses that are deductible items under section 217.

Deductible moving expenses are the expenses of transporting the taxpayer and members of the taxpayer's household, as well as household goods and personal effects, from the old residence to the new residence; the cost of meals and lodging enroute; the expenses for pre-move househunting trips; temporary living expenses for up to 30 days in the general location of the new job; and certain expenses related to either the sale of (or settlement of an unexpired lease) on the old residence, or the purchase of (or acquisition of a lease on) a new residence in the general location of the new job.

The moving expense deduction is subject to a number of limitations. A maximum of $1,500 can be deducted for pre-move

househunting and temporary living expenses in the general location of the new job. A maximum of $3,000 (reduced by any deduction claimed for househunting or temporary living expenses) can be deducted for certain qualified expenses for the sale or purchase of a residence or settlement or acquisition of a lease. If both a husband and wife begin new jobs in the same general location, the move is treated as a single commencement of work. If a husband and wife file separate returns, the maximum deductible amounts available to each are one-half the amounts otherwise allowed.

Also, in order for a taxpayer to claim a moving expense deduction, the taxpayer's new principal place of work must be at least 35 miles farther from the taxpayer's former residence than was the taxpayer's former principal place of work (or at least 35 miles from the taxpayer's former residence, if the taxpayer has no former place of work).

House Bill

The House bill excludes from the definition of moving expenses: (1) the costs related to the sale of (or settlement of an unexpired lease on) the old residence, and the purchase of (or acquisition of a lease on) the new residence in the general location of the new job, and (2) the costs of meals consumed while traveling and while living in temporary quarters near the new job.

Effective date.– Generally, the provision is effective for expenses incurred after December 31, 1993.

SENATE AMENDMENT

The Senate bill is the same as the House bill with an additional restriction. Under this restriction, an overall $10,000 cap is imposed on allowable moving expenses (including expenses subject to the limit on househunting and temporary living expenses) for each qualified move (including foreign moves). The $10,000 amount is indexed for inflation occurring after December 31, 1993.

Effective date.–Same as the House bill.

****1281*592** CONFERENCE AGREEMENT

In general

The conference agreement follows the House bill with the following modifications: (1) the cost of pre-move househunting trips is excluded from the definition of moving expenses; (2) the cost of temporary living expenses for up to 30 days in the general location of the new job is excluded from the definition of moving expenses; (3) the mileage limit is increased from 35 miles to 50 miles; (4) moving expenses not paid or reimbursed by the taxpayer's employer are allowable as a deduction in calculating adjusted gross income; and (5) moving expenses paid or reimbursed by the taxpayer's employer are excludable from gross income.

Definition of moving expenses

Under the conference agreement, moving expenses are defined as the reasonable costs of (1) moving household goods and personal effects from the former residence to the new residence and (2) traveling (including lodging during the period of travel) from the former residence to the new place of residence. Moving expenses do not include any expenses for meals.

Employer-paid moving expenses

Moving expenses are excludable from gross income and wages for income and employment tax purposes to the extent paid for by the taxpayer's employer (whether directly or through reimbursement). Moving expenses are not excludable if the taxpayer actually deducted the expenses in a prior taxable year. The conferees intend that the employer treat moving expenses

as excludable unless it has actual knowledge that the employee deducted the expenses in a prior year. The employer has no obligation to determine whether the individual deducted the expenses.

The conferees intend that rules similar to the rules relating to accountable plans under section 62(c) will apply to reimbursed expenses.

Moving expenses not paid for by the employer

Moving expenses are deductible in computing adjusted gross income to the extent not paid for by the taxpayer's employer (whether directly or through reimbursement). Allowing such a deduction will treat taxpayers whose expenses are not paid for by their employer in a comparable manner to taxpayers whose moving expenses are paid for by their employer.

Effective date

The conference agreement follows the House bill and the Senate amendment.

****1282*593** 10. Modify estimated tax requirements for individuals (sec. 14214 of the House bill, sec. 8214 of the Senate amendment, sec. 13214 of the conference agreement, and sec. 6654 of the Code)

PRESENT LAW

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax shown on the return of the individual for the preceding year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax shown on the return for the current year. Income tax withholding from wages is considered to be a payment of estimated taxes. For estimated tax purposes, some trusts and estates are treated as individuals.

In addition, for taxable years beginning after 1991 and before 1997, a special rule provides that the 100 percent of last year's liability safe harbor generally is not available to a taxpayer that (1) has a modified adjusted gross income (AGI) in the current year that exceeds the taxpayer's AGI in the preceding year by more than $40,000 ($20,000 in the case of a separate return by a married individual) and (2) has a modified AGI in excess of $75,000 in the current year ($37,500 in the case of a separate return by a married individual).

HOUSE BILL

The special rule that denies the use of the 100 percent of last year's liability safe harbor is repealed for taxable years beginning after 1993. However, the 100 percent of last year's liability safe harbor is modified to be a 110 percent of last year's liability safe harbor for any individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year. For this purpose, the AGI of a trust or an estate is determined pursuant to rules similar to those in Code section 67(e).

For taxable years beginning after 1993, the House bill does not change the availability of (1) the 100 percent of last year's liability safe harbor for an individual with a preceding year AGI of $150,000 or less, or (2) the present-law rule that allows any individual to base estimated tax payments on 90 percent of the tax shown on the return for the current year.

Effective date.–The provision is effective for estimated tax payments applicable to taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

****1283*594** 11. Increase taxable portion of Social Security and Railroad Retirement Tier 1 benefits (sec. 14215 of the House bill, sec. 8215 of the Senate amendment, sec. 13215 of the conference agreement, and sec. 86 of the Code)

PRESENT LAW

Under present law, a portion of Social Security and Railroad Retirement Tier 1 benefits is includible in gross income for taxpayers whose provisional incomes exceed a threshold amount. For purposes of this computation, a taxpayer's provisional income includes modified adjusted gross income (adjusted gross income plus tax-exempt interest plus certain foreign source income) plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit. The threshold amount is $25,000 for unmarried taxpayers, $32,000 for married taxpayers filing joint returns, and $0 for married taxpayers filing separate returns. A taxpayer is required to include in gross income the lesser of: (1) 50 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit, or (2) 50 percent of the excess of the taxpayer's provisional income over the applicable threshold amount.

A taxpayer may receive a lump-sum payment of benefits which includes benefits for one or more earlier years. In general, such payments are includible in total benefits in the year received. However, a taxpayer receiving these lump-sum benefits may elect to calculate their tax liability as if the benefits had been received in the year to which they are attributable (using the other elements of provisional income related to that year) and then include the appropriate amount in gross income for the current taxable year (in addition to the amount of benefits attributable to the current taxable year that are includible in gross income).

Proceeds from the income taxation of these benefits are credited quarterly to the Old-Age and Survivors Insurance Trust Fund, the Disability Insurance Trust Fund, or the Social Security Equivalent Benefit Account (of the Railroad Retirement system), as appropriate.

HOUSE BILL

The House bill provides that, for taxpayers with provisional incomes above the applicable present-law thresholds, a taxpayer's gross income includes the lesser of: (1) 85 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit, or (2) 85 percent of the excess of the taxpayer's provisional income over the applicable present-law threshold amounts. A taxpayer's provisional income for purposes of this computation (modified adjusted gross income plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit) is calculated in the same manner as under present law.

Proceeds from the income taxation of Social Security and Railroad Retirement Tier 1 benefits attributable to the increased portion of benefits included in gross income will be retained in the General Fund.

Effective date.–The provision is effective for taxable years beginning after December 31, 1993.

****1284*595** Senate Amendment

The Senate amendment creates a second tier of Social Security benefit inclusion in gross income. Present-law inclusion rules apply to taxpayers with provisional income below $32,000 for unmarried taxpayers or $40,000 for married taxpayers filing joint returns.

For taxpayers with provisional incomes above these higher thresholds, gross income includes the lesser of:

(1) 85 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit or

(2) the sum of:

(a) the smaller of (i) the amount included under present law; or (ii) $3,500 (for unmarried taxpayers) or $4,000 (for married taxpayers filing joint returns),[48]

plus,

(b) 85 percent of the excess of the taxpayer's provisional income over the applicable second-tier threshold amounts.

For married taxpayers filing separate returns, gross income includes the lesser of 85 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit or 85 percent of the taxpayer's provisional income.

For purposes of this computation, a taxpayer's provisional income (modified adjusted gross income plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit) is calculated in the same manner as under present law.

Revenues from the income taxation of Social Security and Railroad Retirement Tier 1 benefits attributable to the increased portion of benefits included in gross income will be transferred to the Medicare Hospital Insurance (HI) Trust Fund.

Effective date.–The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that present law applies to taxpayers with provisional income below $34,000 for unmarried individuals and $44,000 for married individuals filing joint returns. The conference agreement does not change the present-law election permitting a taxpayer to treat a lump-sum payment of benefits as received in the year to which benefits are attributable. Taxpayers electing this treatment compute the amount of benefits includible in gross income using the inclusion formula that applies to the taxable year to which the benefits are attributable. For example, if in 1994, a taxpayer receives a lump-sum payment of benefits that includes benefits attributable to 1992 and 1993, the amount of benefits attributable to 1992 and 1993 that is includible in gross income is determined using the present-law inclusion formula. The amount of benefits attributable to 1994 that is includible in gross income is computed using the inclusion formula in the conference agreement.

Effective date.–The conference agreement follows the House bill and the Senate amendment.

****1285*596** B. Business Provisions

1. Increase corporate tax rate (sec. 14221 of the House bill, sec. 8221 of the Senate amendment, sec. 13221 of the conference agreement, and sec. 11 of the Code)

Present Law

The highest marginal tax rate imposed on the taxable income of corporations is 34 percent. The maximum rate of tax on corporate net capital gain is also 34 percent. This rate applies to income in excess of $75,000. A 15-percent rate applies to taxable income not exceeding $50,000 and a 25-percent rate applies to taxable income over $50,000 and not exceeding $75,000. A corporation with taxable income in excess of $100,000 is required to increase its tax liability by the lesser of 5 percent of the excess or $11,750. This increase in tax phases out the benefits of the 15- and 25-percent rates for corporations with taxable income between $100,000 and $335,000; a corporation with taxable income in excess of $335,000, in effect, pays tax at a flat 34-percent rate.

House Bill

The bill provides a new 35-percent marginal tax rate on corporate taxable income in excess of $10 million. The maximum rate of tax on corporate net capital gains is also 35 percent.

A corporation with taxable income in excess of $15 million is required to increase its tax liability by the lesser of 3 percent of the excess or $100,000. This increase in tax recaptures the benefits of the 34-percent rate in a manner analogous to the recapture of the benefits of the 15- and 25-percent rates.

Effective date.–The 35-percent marginal rate is effective for taxable years beginning on or after January 1, 1993. Under existing law provisions regarding changes in tax rates during a taxpayer's taxable year (section 15 of the Code), a fiscal year corporation is required to use a "blended rate" for its fiscal year that includes January 1, 1993. Accordingly, the corporation's tax liability will be a weighted average of the tax resulting from applying the existing corporate rate schedule and the tax resulting from applying the changes described above, weighted by the number of days before and after January 1, 1993. Penalties for the underpayment of estimated taxes, however, are waived for underpayments of 1993 taxes attributable to the changes in tax rates.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

Some taxpayers may be subject to the increased corporate tax rates with respect to a taxable year that has already ended. Those taxpayers may have filed an application for an extension of the time for filing their corporate income tax returns pursuant to section 6081. For such a filing to be valid, the taxpayer must remit ***597**1286** "the amount of the properly estimated unpaid tax liability" (Treas. Reg. sec. 1.6081–3). The conferees intend that the IRS apply this provision by computing that amount by reference to the law in effect on the date the application for the extension was filed.

2. Disallowance of deduction for lobbying expenses (sec. 14222 of the House bill, sec. 8222 of the Senate amendment, sec. 13222 of the conference agreement, and secs. 162, 170, and 6033 of the Code)

Present Law

Trade or business expenses

Taxpayers engaged in a trade or business generally are allowed a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on such trade or business (sec. 162). Present-law section 162(e)(1) specifically provides a deduction for certain so-called "direct lobbying" expenses (including travel expenses, costs of preparing testimony, and a portion of dues) paid in carrying on a trade or business if such expenses are (1) in direct connection with appearances before, submissions of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer, or (2) in direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to such organization.[49]

Section 162(e)(2) provides, however, that no deduction is allowed for any amount paid (whether by contribution, gift, or otherwise) for participation or intervention in any political campaign (i.e., "political campaign" expenses) or in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections or

referendums (i.e., "grass roots lobbying").

Treasury regulations further provide that if expenditures for lobbying purposes do not meet the requirements of section 162(e)(1), such expenditures are not deductible as ordinary and necessary business expenses (Treas. Reg. sec. 1.162–20(c)(1)). Thus, for example, lobbying of foreign government officials is not a deductible business expense under section 162. Under the regulations, however, expenditures for institutional or "good will" advertising which keeps the taxpayer's name before the public are generally deductible, provided such expenditures are related to patronage ****1287*598** the taxpayer might reasonably expect in the future (Treas. Reg. sec. 1.162–20(a)(2)).

Rules governing lobbying by tax-exempt organizations

Non-charitable tax-exempt organizations.–Although most tax-exempt organizations other than charitable organizations (e.g., social welfare organizations and trade associations) generally may engage in unlimited lobbying efforts, some restrictions do exist. If political campaign or grass roots lobbying activities constitute a substantial part of the activities of an organization such as a labor union or a trade association, the portion of dues or other payments to the organization attributable to such activities cannot be deducted by the payor under section 162.

Charitable organizations.–A charitable organization otherwise described in section 501(c)(3) is not entitled to tax-exempt status under that section if a substantial part of its activities consists of "carrying on propaganda, or otherwise attempting, to influence legislation."[50] There is no statutory definition under section 501(c)(3) of "propaganda, or otherwise attempting, to influence legislation," but Treasury regulations provide that an organization will be regarded as "attempting to influence legislation" if it (1) contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or (2) advocates the adoption or rejection of legislation (meaning action by Congress or another legislative body) (Treas. Reg. sec. 1.501(c)(3)–1(c)(3)). Conducting nonpartisan research (while not advocating legislative action) is not considered lobbying for purposes of the section 501(c)(3) restriction, nor is seeking to protect the organization's own existence or responding to a governmental request for testimony.[51]

An organization will not fail to meet the requirements of section 501(c)(3) merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation (Treas. Reg. sec. 1.501(c)(3)–1(c)(3)). Similarly, a public charity making the section 501(h) election can incur lobbying expenditures in an amount determined in accordance with a numeric formula set forth in section 501(h) without jeopardizing its exempt status. However, if a public charity's lobbying expenditures (for either all lobbying or grass roots lobbying in particular) made during a taxable year exceed the amount allowable under the formula, an excise tax equal to 25 percent of the excess lobbying expenditures is imposed on the organization (sec. 4911(a)). If the sum of the electing organization's lobbying expenditures during a four-year period exceeds 150 percent of the sum of the allowable amounts during that period, the organization loses its tax-exempt status under section 501(c)(3) (Treas. Reg. sec. 1.501(h)–3(b)).

Section 501(h) defines "lobbying expenditures" as "expenditures for the purpose of influencing legislation (as defined in section ****1288*599** 4911(d))." Section 4911(d) defines the term "influencing legislation" as–

> "(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and
>
> "(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation."

However, section 4911(d)(2) specifically excludes from the definition of "influencing legislation" the following activities:

> (A) making available the results of nonpartisan analysis, study, or research;[52]
>
> (B) providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be;[53]

(C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications which directly encourage members to contact a legislative body in an attempt to influence legislation, or which directly encourage members to urge persons other than members to attempt to affect the opinions of the general public or to contact a legislative body in an attempt to influence legislation; and

****1289*600** (E) any communication with a government official or employee, other than–

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.

For purposes of section 4911, the term "legislation" is defined in section 4911(e)(2) to include action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. Treasury regulations provide that "legislation" for purposes of section 4911(e)(2) includes action by legislative bodies but does not include action by "executive, judicial, or administrative bodies" (Treas. Reg. sec. 56.4911–2(d)(3)). Treasury regulations further provide that "administrative bodies" include school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive (Treas. Reg. sec. 56.4911 2(d)(4)).

Private foundations.–Private foundations (as distinguished from public charities) generally are subject to penalty excise taxes under section 4945 if they engage in any direct or grass roots lobbying. For purposes of section 4945, lobbying is defined in a manner similar to the definition under section 4911(d). Specifically, the section 4945 penalty excise taxes do not apply to nonpartisan analysis, the provision of technical advice to a governmental body in response to a written request or lobbying before a legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status or the deduction of contributions to such foundation (sec. 4945(e)).

House Bill

General rule

The House bill disallows a deduction for amounts paid or incurred in connection with any attempt to influence legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

The present-law disallowance of business deductions for expenses of grass roots lobbying and participation in political campaigns remains in effect under the House bill, as does the present-law rule disallowing a deduction for lobbying of foreign governments.

Scope of general rule

The general disallowance rule contained in the House bill applies to attempts to influence legislation (as defined in present-law section 4911(e)(2)) through communications with the legislative ****1290*601** branch, as well as the executive branch, of the Federal government, or any State or local government.[54]

Exception

Taxpayers are permitted to deduct expenditures for providing technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a specific written request by such governmental entity.

Association dues

The House bill provides a flow-through rule to disallow a deduction for a portion of membership dues (or similar payments) paid to a tax-exempt organization which engages in political or lobbying activities. Trade associations and similar organizations are required to report annually to their members (and the IRS) the portion of membership dues (or similar payments) that is attributable to lobbying activities of the organization (unless this reporting requirement is waived by Treasury regulation).

Charities

Contributions to charities are not affected by the House bill. However, present-law rules which prevent charities from engaging in a substantial amount of lobbying remain in effect.

Penalties

Organizations will be subject to penalties for failing to meet the reporting requirements of the provision. In addition to the normal reporting penalties (generally, $50 for each failure to report to the IRS or organization member), a special penalty applies if an organization materially underreports its lobbying expenses to its members (meaning the aggregate amount of nondeductible dues reported to members is less than 75 percent of the correct amount).

Effective date

The House bill is effective for amounts paid or incurred after December 31, 1993.

Senate Amendment

General rule

The Senate amendment disallows the costs of any "lobbying contact," meaning (1) in the case of a "lobbyist" (as defined below), any oral or written communication with a legislative branch official ****1291*602** or employee or certain high-ranking Federal executive branch officials,[55] and (2) in the case of any other person (i.e., a non-lobbyist), any oral or written communication with a legislative branch official or employee in an attempt to influence the formulation of legislation or with certain high-ranking Federal executive branch officials in an attempt to influence legislation or the formulation or administration of Federal rules, regulations, programs or policies (with certain exceptions described below).

Under the Senate amendment, the present-law rules disallowing business deductions for expenses of grass roots lobbying, participation in political campaigns, and lobbying of foreign governments remain in effect.

Scope of general rule

The general disallowance rule contained in the Senate amendment applies to attempts to influence legislation (as defined in present-law section 4911(e)(2)) through communications with the legislative branch, as well as the executive branch, of the Federal government, or any State or local government. In addition, the Senate amendment disallows expenses incurred in connection with lobbying with respect to certain Federal executive branch actions, and the costs of certain communications by "lobbyists" are disallowed under a per se rule.

Activities in support of lobbying

The Senate amendment disallows the costs of activities in support of a "lobbying contact" (as defined above), including (1) any preparation or planning activity relating to a lobbying contact (including, in the case of a lobbyist, the formulation, review, and management of the lobbying contacts on behalf of a client), (2) any research or other background work relating to a lobbying contact, and (3) any activity coordinating the lobbying activity of two or more persons.

Exceptions

Exception for legislative lobbying.–The Senate amendment does not apply to the costs of contacting a legislative branch official or employee if such contact is required by subpoena, civil investigative demand, or otherwise compelled by statute or other action of Congress or a State or local legislative body.

Exceptions for Federal executive branch lobbying.–Exceptions to the general disallowance rule for lobbying of certain high-ranking Federal executive branch officials are provided for contacts that are (1) compelled by statute, regulation, or other action of a Federal ****1292*603** agency, (2) communications with respect to the administration or execution of Federal programs or policies (including the award of a Federal contract, grant, or license) if such communications are made to executive branch officials in the agency responsible for taking such action who serve in the Senior Executive Service, or who are members of the uniformed services whose pay grade is lower than O–9 under 37 U.S.C. section 201, (3) written comments filed in a public docket or other communications that are made on the record in a public proceeding, (4) made in response to a notice in the Federal Register, Commerce Business Daily, or similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications, (5) made to agency officials with regard to judicial proceedings, criminal or civil law enforcement inquiries, investigations or proceedings, or filings required by statute or regulation, (6) made in compliance with written agency procedures regarding an adjudication conducted by the agency under 5 U.S.C. section 554 (or substantially similar provisions), or (7) made on behalf of an individual with regard to such individual's benefits, employment, other personal matters involving only that individual, or disclosures by that individual pursuant to applicable whistleblower statutes.

Definition of "lobbyist"

As described above, the Senate amendment provides a presumption that communications made by "lobbyists" to certain government officials are nondeductible lobbying. In contrast, communications made by other persons (i.e., non-lobbyists) to certain government officials are nondeductible lobbying only if such communications are made in an attempt to influence legislation or certain Federal executive branch actions. For purposes of the Senate amendment, the term "lobbyist" has a meaning similar to the definition under the Lobbying Disclosure Act of 1993 (S. 349), as passed by the Senate on May 6, 1993, and includes any person who is employed or retained by another for financial or other compensation to perform services that include any attempt to influence the formulation of legislation or the formulation or administration of Federal rules, regulations, programs, or policies (with the exceptions described above). However, the term "lobbyist" does not include a person whose lobbying activities are only incidental to, and are not a significant part of, the services provided by such person to the client. The determination of whether an individual is a "lobbyist" is made on a client-by-client basis.

Association dues

The Senate amendment provides a flow-through rule to disallow a deduction for a portion of membership dues (or other similar amounts) paid by a person to a tax-exempt organization (other than a charity eligible to receive tax-deductible contributions) if such dues are allocable to lobbying activities conducted by the organization. Trade associations and similar organizations are required to report annually to their members (and the IRS) the portion of membership dues (or similar payments) that is attributable to lobbying ****1293*604** activities of the organization (unless this reporting requirement is waived by Treasury regulation).

However, the Senate amendment also provides a de minimis exception, so that flow-through reporting to members or the IRS is not required if the lobbying expenditures of the organization for the calendar year are less than $2,000. For purposes of

applying the $2,000 de minimis exception, an organization is required to take into account direct expenses incurred for lobbying activities (i.e., labor and materials costs and fees paid to third parties for lobbying), but need not take into account indirect expenses (i.e., a portion of general overhead) otherwise allocable to lobbying.

Charities

The Senate amendment provides for a flow-through of the lobbying disallowance rule in the case of contributions, dues, or similar amounts paid to a charity (other than a church) eligible to receive tax-deductible contributions under section 170 to the extent that the contribution (or other amount) is attributable to amounts incurred for lobbying activities by the charity, provided that (1) the lobbying activities of the charity are of direct interest to the payor's (or a related person's) trade or business and (2) the payor makes total payments to the charity during the year exceeding $2,000. In such cases, a portion of a contribution that otherwise may be deductible under section 170 is disallowed.

Penalties

Under the Senate amendment, penalties may be imposed under present-law section 6721 on organizations for failing to make the required flow-through information reporting.

Meals, entertainment or travel

The Senate amendment provides a per se rule disallowing any amount paid or incurred by a taxpayer in connection with providing meals, entertainment, or travel to legislative officials or employees or certain high-ranking Federal executive branch officials (or to an individual accompanying such official or employee).

Effective date

The Senate amendment is effective for amounts paid or incurred after December 31, 1993.

Conference Agreement

The conference agreement includes a lobbying expense disallowance rule that contains elements from both the House bill and the Senate amendment.

General rule

Under the conference agreement, no deduction is allowed under section 162 for any amount paid or incurred in connection with (1) influencing Federal or State legislation or (2) any communication with certain covered Federal executive branch officials in an attempt to influence the official actions or positions of such officials.

****1294*605** The present-law rules disallowing business deductions for expenses of grass roots lobbying and participation in political campaigns will remain in effect. Similarly, the conferees intend that the present-law rule disallowing a deduction for lobbying of foreign governments will remain in effect.

Scope of general rule

The conference agreement applies to attempts to influence Federal or State legislation (as defined in present-law section 4911(e)(2)) through communication with a member or employee of Congress or a State legislative body, or with any other government official or employee who may participate in the formulation of legislation.[56] In addition, the conference agreement disallows a deduction for costs incurred in connection with any direct communication with a "covered executive

branch official" in an attempt to influence the official actions or positions of such official.[57] For this purpose, the term "covered executive branch official" means the following Federal officials: (1) the President; (2) the Vice President; (3) an individual serving in a position in level I of the Executive Schedule (e.g., a Cabinet member)[58] or any other individual designated by the President as having Cabinet-level status; (4) any immediate deputy of an individual listed in (3) above; (5) the two most senior-level officers of each agency within the Executive Office of the President;[59] and (6) any other officer or employee of the White House Office of the Executive Office of the President.

The conference agreement does not apply to attempts to influence legislative actions of a "local council or similar governing body."[60] The conferees intend that any legislative body of a political subdivision of a State (e.g., a county or city council) be considered to be a "local council or similar governing body." Thus, attempts to influence the actions of such local bodies are not affected by the conference agreement and remain subject to present-law rules.[61]

****1295*606** De minimis rule

The conference agreement provides a de minimis rule that exempts certain in-house lobbying expenditures from the general disallowance rule if a taxpayer's total amount of such expenditures for a taxable year does not exceed $2,000 (computed without taking into account general overhead costs otherwise allocable to lobbying). For purposes of this rule, "in-house expenditures" means expenditures for lobbying (e.g., labor and materials costs) other than (1) payments to a person engaged in the trade or business of lobbying to conduct lobbying for the taxpayer (e.g., a payment to hire a professional lobbyist), and (2) dues or other similar payments that are allocable to lobbying (e.g., association dues).

Thus, so long as a taxpayer's in-house lobbying expenditures do not exceed $2,000, such expenditures (including allocable overhead) may be disregarded and are not subject to the disallowance rule. However, payments made by a taxpayer to third-party lobbyists and dues payments allocable to lobbying are subject to the disallowance rules of the conference agreement, regardless of whether or not the taxpayer's in-house expenses are exempted under the de minimis rule.[62] In addition, the de minimis rule contained in the conference agreement does not apply to expenses incurred for political activity, grass-roots lobbying, or foreign lobbying, which continue to be disallowed in their entirety under present-law rules.

Activities in support of lobbying

The conference agreement provides that any amount paid or incurred for research for, or preparation, planning, or coordination of, any lobbying activity subject to the general disallowance rule described above will be treated as paid or incurred in connection with such lobbying activity.

The conferees intend that the Secretary of the Treasury will provide guidance for distinguishing costs incurred in connection with (1) attempts to influence legislation from (2) mere monitoring of legislative activities where there is no attempt to influence the formulation or enactment of legislation. In cases where a taxpayer (or tax-exempt organization) monitors legislation and subsequently attempts to influence the formulation or enactment of the same (or similar) legislation, the conferees intend the costs of the monitoring activities generally will be treated as incurred "in connection with" nondeductible lobbying activity.[63]

In determining the expenses incurred in connection with any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official, only the costs attributable to the direct communication itself are nondeductible under the conference agreement. Thus, for example, if a taxpayer works for an extended period to influence the actions of non-covered executive branch officials and, at the end of the ****1296*607** project, a covered executive branch official approves the final decision through a separate communication with the taxpayer (e.g., a briefing or review of the matter), only the direct costs of the communication with the covered official would be disallowed (and not the costs of the work product from the earlier period). In contrast, if a taxpayer conducts research and analysis with a view toward directly communicating with a covered executive branch official, the costs of such research and analysis would be disallowed as attributable to the direct communication with the covered official.

Exceptions

The conference agreement does not include any of the statutory exceptions to the general disallowance rule that are contained in the House bill or Senate amendment. However, the conferees wish to clarify that (consistent with pre-1962 interpretations) any communication compelled by subpoena, or otherwise compelled by Federal or State law, does not constitute an "attempt to influence" legislation or an official's actions and, therefore, is not subject to the general disallowance rule.

Association dues

The conference agreement provides a flow-through rule to disallow a deduction for a portion of the membership dues (or similar payments[64]) paid to a tax-exempt organization (other than a charitable organization) which engages in political or lobbying activities. Trade associations and similar organizations generally are required under the conference agreement to provide annual information disclosure (but not Form 1099 information reporting) to members estimating the portion of their dues allocable to lobbying. However, such disclosure is not required for an organization that (1) incurs only de minimis amounts of in-house lobbying expenditures; (2) elects to pay a proxy tax on its lobbying expenditures incurred during the taxable year; or (3) establishes pursuant to Treasury regulation (or other procedure) that substantially all of its dues monies are paid by members not entitled to deduct such dues in computing their taxable income.

De minimis rule

Under the conference agreement, in-house lobbying expenses of $2,000 or less incurred by a tax-exempt organization during a taxable year are exempt from the general disallowance rule. This de minimis rule for tax-exempt organizations operates in the same manner as the de minimis rule for taxable businesses (described above). That is, in determining whether the $2,000 de minimis exception applies, an organization is required to take into account any direct in-house expenses incurred for lobbying activities (i.e., labor and materials costs), but may disregard indirect expenses (i.e., a portion of general overhead) otherwise allocable to lobbying. Amounts paid to outside lobbyists (or as dues to another organization that lobbies) do not qualify for the de minimis exception.

****1297*608** Information disclosure

Tax-exempt organizations that engage in more than a de minimis amount of in-house lobbying (or make payments to third-party lobbyists or other associations that lobby) generally are required to meet certain disclosure requirements. First, the organization must disclose on its annual tax return both the total amount of its lobbying and political expenditures (as defined by the provisions of the conference agreement), and the total amount of dues (or similar payments) allocable to such expenditures. For this purpose, an organization's lobbying expenditures for the taxable year are allocated to the dues received during the taxable year. Any excess amount of lobbying expenditures is carried forward and allocated to dues received in the following taxable year.

An organization also is required to provide notice to each person paying dues (or similar payments) at the time of assessment or payment of such dues (or similar payments) of the portion of dues that the organization reasonably estimates will be allocable to the organization's lobbying expenditures during the year and that is, therefore, not deductible by the member. This estimate must be provided at the time of assessment or payment of such dues and be reasonably calculated to provide organization members with adequate notice of the nondeductible amount.[65] If an organization's actual lobbying and political expenditures for a taxable year exceed the estimated allocable amount of such expenditures (either because of higher-than-anticipated lobbying expenses or lower-than-projected dues receipts), then the organization is required to pay a proxy tax on the excess amount or may seek permission to adjust the following year's notice of estimated expenditures, as described below.

Proxy tax

As an alternative to the disclosure requirements described above, an organization may elect to pay a proxy tax on the total amount of its lobbying expenditures (up to the amount of dues and other similar payments received by the organization) during the taxable year. If, for the current taxable year, an organization does not provide its members with reasonable notice of anticipated lobbying expenditures allocable to dues, then the organization is subject to the proxy tax on its aggregate

lobbying expenditures for such year. Similarly, as stated above, an organization is required to pay a proxy tax on the amount by which its actual lobbying and political expenditures for a taxable year exceed the estimated allocable amount of such expenditures.[66]

If the amount of lobbying expenditures exceeds the amount of dues and other similar payments for the taxable year, the proxy tax is imposed on an amount equal to the dues and similar payments; any excess lobbying expenditures are carried forward to the ****1298*609** next taxable year.[67] The proxy tax rate is equal to the highest corporate rate in effect for the taxable year. If an organization elects to pay the proxy tax rather than to provide any information disclosure to members, no portion of any dues or other payments made by members of the organization will be deemed non-deductible as the result of the organization's lobbying activities.

Waiver

If an organization establishes to the satisfaction of the Secretary of the Treasury (pursuant to regulation or other procedure) that substantially all of the dues monies it receives are paid by members who (even if lobbying were not involved) are not entitled to deduct their dues payments, then the organization is not subject to the disclosure requirements or the proxy tax. The conferees intend that the waiver be available to any organization that receives 90 percent or more of its total dues (and similar payments) from persons not entitled to deduct such payments.[68] The conference agreement contemplates that waivers will be provided pursuant to Treasury Department regulation or other Treasury Department procedure.

Penalties

Any organization that underreports the total amount of its lobbying expenses in any taxable year is required to pay the proxy tax (at the highest corporate tax rate) on any undisclosed or underreported amount. This tax may be imposed regardless of whether the organization has elected disclosure of lobbying expenses to its members or payment of the proxy tax for the taxable year. In such cases, the conferees intend that the proxy tax be imposed in addition to interest charges and any other penalties which may apply.[69]

Charities

Under the conference agreement, charitable organizations described in section 501(c)(3) are not subject to the disclosure requirements (or proxy tax option) imposed on other tax-exempt organizations. However, the conference agreement does contain an anti-avoidance rule designed to prevent donors from using charities as a conduit to conduct lobbying activities, the costs of which would be nondeductible if conducted directly by the donor.

Therefore, the conference agreement provides that no deduction will be allowed under sections 170 or 162 for amounts contributed ****1299*610** to a charity that conducts lobbying activities, if (1) the charity's lobbying activities regard matters of direct financial interest to the donor's trade or business and (2) a principal purpose of the contribution is to avoid the general disallowance rule that would apply if the contributor directly had conducted such lobbying activities.[70]

The conferees intend that the determination regarding a principal purpose of the contribution for purposes of this rule be based on the facts and circumstances surrounding the contribution, including the existence of any formal or informal instructions relating to the charity's use of the contribution for lobbying efforts (including nonpartisan analysis), the temporal nexus between the making of the contribution and conduct of the lobbying activities, and any historical pattern of contributions by the donor to the charity.

Anti-cascading rule

The conference agreement contains a special provision to prevent a "cascading" of the lobbying disallowance rule. The purpose of the provision is to ensure that, when multiple parties are involved, the general lobbying disallowance rule results in the denial of a deduction at only one level. Thus, the conference agreement provides that, in the case of a taxpayer engaged in the trade or business of lobbying activities or a taxpayer who is an employee and receives employer reimbursements for

lobbying expenses, the disallowance rule does not apply to expenditures of the taxpayer in conducting such activities directly on behalf of a client or employer. Instead, the lobbying payments made by the client (or employer) to the lobbyist (or employee) are nondeductible under the general disallowance rule.

The anti-cascading rule applies where there is a direct, one-on-one relationship between the taxpayer and the entity conducting the lobbying activity, such as a client or employee relationship. Thus, the conferees intend that the anti-cascading rule will not apply to dues or other payments to taxable membership organizations which act to further the interests of all their members rather than the interests of any one particular member. Such organizations are themselves subject to the general disallowance rule based on the amount of their lobbying expenditures, and dues payments to such organizations are not affected by the conference agreement.

Effective date

The conference agreement is effective for amounts paid or incurred after December 31, 1993.

****1300*611** 3. Mark-to-market accounting method for dealers in securities (sec. 14223 of the House bill, sec. 8223 of the Senate amendment, sec. 13223 of the conference agreement, and new sec. 475 of the Code)

PRESENT LAW

A taxpayer that is a dealer in securities is required for Federal income tax purposes to maintain an inventory of securities held for sale to customers. A dealer in securities is allowed for Federal income tax purposes to determine (or value) the inventory of securities held for sale based on: (1) the cost of the securities; (2) the lower of the cost or market (LCM) value of the securities; or (3) the market value of the securities.

If the inventory of securities is determined based on cost, unrealized gains and losses with respect to the securities are not taken into account for Federal income tax purposes. If the inventory of securities is determined based on the LCM value, unrealized losses (but not unrealized gains) with respect to the securities are taken into account for Federal income tax purposes. If the inventory of securities is determined based on market value, both unrealized gains and losses with respect to the securities are taken into account for Federal income tax purposes.

HOUSE BILL

In general

The House bill provides two general rules (the "mark-to-market rules") that apply to certain securities that are held by a dealer in securities. First, any such security that is inventory in the hands of the dealer is required to be included in inventory at its fair market value. Second, any such security that is not inventory in the hands of the dealer and that is held as of the close of any taxable year is treated as sold by the dealer for its fair market value on the last business day of the taxable year and any gain or loss is required to be taken into account by the dealer in determining gross income for that taxable year.

If gain or loss is taken into account with respect to a security by reason of the second mark-to-market rule, then the amount of gain or loss subsequently realized as a result of a sale, exchange, or other disposition of the security, or as a result of the application of the mark-to-market rules, is to be appropriately adjusted to reflect such gain or loss.

Character of gain or loss

Any gain or loss taken into account under the provision (or any gain or loss recognized with respect to a security that would be subject to the provision if held at the end of the year) generally is treated as ordinary gain or loss. This character rule does not apply to any gain or loss allocable to any period during which the security (1) is a hedge of a position, right to income, or

a liability that is not subject to a mark-to-market rule under the provision, or (2) is held by the taxpayer other than in its capacity as a dealer in securities. In addition, the character rule does not apply to any security that is improperly identified by the taxpayer.

****1301*612** No inference is intended as to the character of any gain or loss recognized in taxable years prior to the enactment of this provision or any gain or loss recognized with respect to any property to which this character rule does not apply.

Definitions

A dealer in securities is defined as any taxpayer that either (1) regularly purchases securities from, or sells securities to, customers in the ordinary course of a trade or business, or (2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

A security is defined as: (1) any share of stock in a corporation; (2) any partnership or beneficial ownership interest in a widely-held or publicly-traded partnership or trust; (3) any note, bond, debenture, or other evidence of indebtedness; (4) any interest rate, currency, or equity notional principal contract (but not any other notional principal contract such as a notional principal contract that is based on the price of oil, wheat, or other commodity); and (5) any evidence of an interest in, or any derivative financial instrument in, any currency or in a security described in (1) through (4) above, including any option, forward contract, short position, or any similar financial instrument in such a security or currency.

In addition, a security is defined to include any position if: (1) the position is not a security described in the preceding paragraph; (2) the position is a hedge with respect to a security described in the preceding paragraph; and (3) before the close of the day on which the position was acquired or entered into (or such other time as the Treasury Department may specify in regulations), the position is clearly identified in the dealer's records as a hedge with respect to a security described in the preceding paragraph.

Exceptions to the mark-to-market rules

Under the House bill, the mark-to-market rules generally do not apply to: (1) any security that is held for investment; (2) any evidence of indebtedness that is acquired (including originated) by a dealer in the ordinary course of its trade or business, but only if the evidence of indebtedness is not held for sale; (3) any security which is a hedge with respect to a security that is not subject to the mark-to-market rules (i.e., any security that is a hedge with respect to (a) a security held for investment, or (b) an evidence of indebtedness described in (2); and (4) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer.

In addition, the exceptions to the mark-to-market rules do not apply unless, before the close of the day on which the security (including any evidence of indebtedness) is acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations), the security is clearly identified in the dealer's records as being described in one of the exceptions listed above.

Improper identification

The House bill provides that if (1) a dealer identifies a security as qualifying for an exception to the mark-to-market rules but the ****1302*613** security does not qualify for that exception, or (2) a dealer fails to identify a position that is not a security as a hedge of a security but the position is a hedge of a security, then the mark-to-market rules are to apply to any such security or position, except that loss is to be recognized under the mark-to-market rules prior to the disposition of the security or position only to the extent of gain previously recognized under the mark-to-market rules (and not previously taken into account under this provision) with respect to the security or position.

Other rules

The House bill provides that the uniform cost capitalization rules of section 263A of the Code and the rules of section 263(g)

of the Code that require the capitalization of certain interest and carrying charges in the case of straddles do not apply to any security to which the mark-to-market rules apply because the fair market value of a security should include the costs that the dealer would otherwise capitalize.

In addition, a security subject to the provision is not to be treated as sold and reacquired for purposes of section 1091 of the Code. Section 1092 of the Code will apply to any loss recognized under the mark-to-market rules (but will have no effect if all the offsetting positions that make up the straddle are subject to the mark-to-market rules).

Furthermore, the House bill provides that (1) the mark-to-market rules do not apply to any section 988 transaction (generally, a foreign currency transaction) that is part of a section 988 hedging transaction, and (2) the determination of whether a transaction is a section 988 transaction is to be made without regard to whether the transaction would otherwise be marked-to-market under the bill.

For purposes of the House bill, fair market value generally is determined by valuing each security on an individual security basis. Thus, if a taxpayer holds a large block of securities of the same type, the securities should be valued without taking any blockage discount into account. It is expected that the Treasury Department will authorize the use of appropriate valuation methods that will alleviate unnecessary compliance burdens of taxpayers under the bill.

Finally, the House bill authorizes the Treasury Department to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the bill, including rules to prevent the use of year-end transfers, related persons, or other arrangements to avoid the provisions of the House bill.

Effective date

In general

The provision applies to taxable years ending on or after December 31, 1993. A taxpayer that is required to change its method of accounting to comply with the requirements of the provision is treated as having initiated the change in method of accounting and as having received the consent of the Treasury Department to make such change. The net amount of the section 481(a) adjustment ****1303*614** is to be taken into account ratably over a 5-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

Special rule for certain floor specialists and market makers

To the extent that a portion of the section 481(a) adjustment of a floor specialist or a market maker is attributable to the use of the LIFO inventory method of accounting for any qualified security, such portion of the adjustment generally is taken into account ratably over the shorter of (1) a 20-taxable year period or (2) the number of years the taxpayer (or any predecessor) had utilized the LIFO inventory method for that security, beginning with the first taxable year ending on or after December 31, 1993. In no event may the period be less than 5 years.

SENATE AMENDMENT

In general

Except as provided below, the Senate amendment generally is the same as the House bill.

Exceptions to the mark-to-market rules

Under the Senate amendment, the mark-to-market rules generally do not apply to: (1) any security that is held for investment; (2) any security that is a hedge with respect to a security that is not subject to the mark-to-market rules (i.e., any security that

is a hedge with respect to a security held for investment); or (3) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer. Under the Senate amendment, securities held for investment include debt instruments acquired (including originated) by the taxpayer in the ordinary course of a trade or business of the taxpayer and not held for sale.

Effective date

The effective date of the Senate amendment generally is the same as that of the House bill.

However, under the Senate amendment, to the extent that a portion of the section 481(a) adjustment of a floor specialist or a market maker is attributable to the use of the LIFO inventory method of accounting for any qualified security, such portion of the adjustment generally is taken into account ratably over a 15-taxable year period if the taxpayer (or any predecessor) had utilized the LIFO inventory method for that security for at least 5 years.

Conference Agreement

The conference agreement generally follows the House bill, with the following modifications:

Exceptions to the mark-to-market rules

The exceptions to the mark-to-market rules do not apply unless, before the close of the day on which the security (including any evidence of indebtedness) is acquired, originated, or entered into (or such other time as the Treasury Department may specify ****1304*615** in regulations), the security is clearly identified in the dealer's records as being described in one of the exceptions listed above. The conferees anticipate that the Treasury regulations will permit a financial institution that is treated as a dealer under the provision and that originates evidences of indebtedness in the ordinary course of a trade or business to identify such evidences of indebtedness as held for investment based on the accounting practices of the institution, but in no event later than the date that is 30 days after the date that any such evidence of indebtedness is originated. Where appropriate, Treasury regulations may provide similar identification rules for similar debt that is acquired, rather than originated, by a financial institution. Further, it is anticipated that the Treasury regulations will permit a dealer that enters into commitments to acquire mortgages to identify such commitments as being held for investment if the dealer acquires the mortgages and holds the mortgages as investments. It is anticipated that this identification of commitments to acquire mortgages will occur within an appropriate period after the acquisition of the mortgages, but in no event later than the date that is 30 days after the date that the mortgages are acquired.

Further, the conferees anticipate that the identification rules with respect to hedges will be applied in such a manner as to minimize the imposition of additional accounting burdens on dealers in securities. For example, it is understood that certain taxpayers engage in risk management strategies known as "global hedging." Under global hedging, the positions of one business unit of the taxpayer may be counter-balanced by positions of another separate business unit; any remaining net risk of the enterprise may then be hedged by entering into positions with unrelated third parties. The conferees understand that taxpayers engaging in global hedging often use accounting systems that clearly identify and treat the transactions entered into between the separate business units as if such transactions were entered into with unrelated third parties. The conferees anticipate that, subject to Treasury regulations, such an accounting system generally will provide adequate evidence for purposes of determining whether, and to what extent, a hedge with a third party is (1) a hedge of a security that is subject to the mark-to-market rules or (2) a hedge of a position, right to income, or a liability that is not subject to a mark-to-market rule, for purposes of applying the mark-to-market rules and the special character rule to a hedge with a third party.

Regulatory authority

The provision grants authority to the Treasury Department to promulgate regulations as may be necessary or appropriate to carry out the provisions of the bill. Such authority includes the authority to promulgate such regulations to prevent the use of year-end transfers, related persons, or other arrangements to take unintended advantage of the provisions of the bill. For instance, assume that an individual who is not subject to the mark-to-market rules contributes a security that has a built-in

loss in the hands of the individual to a partnership that is subject to the mark-to-market rules. Consistent with rules that govern the treatment of a security that ceases to qualify for one of the exceptions to the mark-to-market ****1305*616** rules in the hands of a single taxpayer, the Treasury regulations may provide that any loss that arose prior to the contribution to the partnership may not be taken into account by the partnership under the mark-to-market rules and that the suspended loss may be taken into account when the security is sold. Conversely, assume that prior to year end, a partnership that is subject to the mark-to-market rules distributes a security with a built-in gain to a partner that is not subject to such rules. Consistent with the authority to apply the mark-to-market rules at times other than at the end of a taxable year, the Treasury regulations may provide that the mark-to-market rules are to apply to the partnership with respect to such security as of the date of distribution.

Valuation of securities

The conference agreement does not provide any explicit rules mandating valuation methods that are required to be used for purposes of applying the mark-to-market rules. However, the conferees expect that the Treasury Department will authorize the use of valuation methods that will alleviate unnecessary compliance burdens for taxpayers and clearly reflect income for Federal income tax purposes.

Other hedging transactions

The conference agreement generally provides that any gain or loss with respect to hedges that are subject to the mark-to-market rules of the bill will be treated as ordinary gain or loss. The conferees understand that hedging transactions are also important to the management of risks by businesses that are not subject to these mark-to-market rules. Hedging transactions are part of a sound business strategy in fields as diverse as farming, banking, manufacturing and energy production. However, the conferees understand that there may be a level of uncertainty regarding the tax treatment of such hedging transactions following a decision by the United States Supreme Court in 1988, Arkansas Best Corp. v. Commissioner, 485 U.S. 212 (1988). Despite subsequent litigation, (e.g., Federal National Mortgage Association v. Commissioner, 100 T.C. No. 36 (June 17, 1993)), the scope of the United States Supreme Court decision, and its effect on hedging transactions, may be unclear in some instances. The conferees believe that this is a significant issue. To the extent a solution to this issue may require coordination between the executive and legislative branches, the conferees urge the Administration, in the strongest terms, to advise the House Ways and Means and the Senate Finance Committees, within 90 days of the enactment of this Act, how best to proceed.

Effective date

The conference agreement adopts the effective date contained in the Senate amendment.

****1306*617** 4. Tax treatment of certain FSLIC financial assistance (sec. 14224 of the House bill, sec. 8224 of the Senate amendment, sec. 13224 of the conference agreement, and secs. 165, 166, 585, and 593 of the Code)

Present Law and Background

A taxpayer may claim a deduction for a loss on the sale or other disposition of property only to the extent that the taxpayer's adjusted basis for the property exceeds the amount realized on the disposition and the loss is not compensated for by insurance or otherwise (sec. 165 of the Code). In the case of a taxpayer on the specific charge-off method of accounting for bad debts, a deduction is allowable for the debt only to the extent that the debt becomes worthless and the taxpayer does not have a reasonable prospect of being reimbursed for the loss. If the taxpayer accounts for bad debts on the reserve method, the worthless portion of a debt is charged against the taxpayer's reserve for bad debts, potentially increasing the taxpayer's deduction for an addition to this reserve.

A special statutory tax rule, enacted in 1981, excluded from a thrift institution's income financial assistance received from the Federal Savings and Loan Insurance Corporation (FSLIC), and prohibited a reduction in the tax basis of the thrift institution's

assets on account of the receipt of the assistance. Under the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), taxpayers generally were required to reduce certain tax attributes by one-half the amount of financial assistance received from the FSLIC pursuant to certain acquisitions of financially troubled thrift institutions occurring after December 31, 1988. These special rules were repealed by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), but still apply to transactions that occurred before May 10, 1989.

In September 1990, the Resolution Trust Corporation (RTC), in accordance with the requirements of FIRREA, issued a report to Congress and the Oversight Board of the RTC on certain FSLIC-assisted transactions (the "1988/89 FSLIC transactions"). The report recommended further study of the covered loss and other tax issues relating to these transactions. A March 4, 1991 Treasury Department report on tax issues relating to the 1988/89 FSLIC transactions concluded that deductions should not be allowed for losses that are reimbursed with exempt FSLIC assistance.

House Bill

Any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of an asset shall be taken into account as compensation for such loss for purposes of section 165 of the Code. Any FSLIC assistance with respect to any debt shall be taken into account for purposes of determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts. For this purpose, FSLIC assistance means any assistance or right to assistance with respect to a domestic building and loan association (as defined in section 7701(a)(19) of the Code without regard to subparagraph (C) thereof) under section 406(f) of ****1307*618** the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).

The House bill does not apply to any financial assistance to which the amendments made by section 1401(a)(3) of FIRREA apply.

No inference is intended as to prior law or as to the treatment of any item to which the bill does not apply.

Effective date.–The House bill applies to financial assistance credited on or after March 4, 1991, with respect to (1) assets disposed of and charge-offs made in taxable years ending on or after March 4, 1991; and (2) assets disposed of and charge-offs made in taxable years ending before March 4, 1991, but only for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991.

In accordance with the general estimated tax penalty provisions of the bill, no addition to tax is to be made under section 6654 or 6655 of the Code for any period before March 16, 1994 in the case of a corporation (April 16, 1994 in the case of an individual). However, in providing this relief, no inference is intended as to prior law, the effect of the bill on prior law, or the treatment of any item to which the bill does not apply.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement is the same as the House bill and the Senate amendment.

As stated in both the House and Senate committee reports, it is expected that for purposes of the adjusted current earnings adjustment of the corporate alternative minimum tax, there will not be any net positive adjustment to the extent that FSLIC assistance is taken into account as compensation for a loss or in determining worthlessness and there is, therefore, no deductible loss or bad debt charge off. The conferees wish to clarify that this result is expected to apply to all taxpayers, including those who received IRS determinations regarding the treatment of FSLIC assistance for earnings and profits purposes in the form of a ruling or closing agreement. The conferees also wish to clarify that, for all taxpayers, Treasury is expected to treat such FSLIC assistance for other earnings and profits purposes in a manner that is consistent with the

purposes of this provision.

5. Modify corporate estimated tax rules (sec. 14225 of the House bill, sec. 8225 of the Senate amendment, sec. 13225 of the conference agreement, and sec. 6655 of the Code)

Present Law

A corporation is subject to an addition to tax for any underpayment of estimated tax. For taxable years beginning after June 30, 1992, and before 1997, a corporation does not have an underpayment of estimated tax if it makes four equal timely estimated ****1308*619** tax payments that total at least 97 percent of the tax liability shown on its return for the current taxable year. A corporation may estimate its current year tax liability prior to year-end by annualizing its income through the period ending with either the month or the quarter ending prior to the estimated tax payment due date. For taxable years beginning after 1996, the 97-percent requirement becomes a 91-percent requirement.

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of the tax liability shown on its return for the preceding taxable year. A large corporation may also use this rule with respect to its estimated tax payment for the first quarter of its current taxable year. A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years.

House Bill

A corporation is required to base its estimated tax payments on 100 percent (rather than 97 percent or 91 percent) of the tax shown on its return for the current year, whether such tax is determined on an actual or annualized basis. The House bill does not change the present-law availability of the 100 percent of last year's liability safe harbor for large or small corporations.

In addition, the bill modifies the rules relating to income annualization for corporate estimated tax purposes. In general, the bill (1) adds a new, third set of periods over which corporations may elect to annualize income and (2) requires corporations to annually elect which of the three periods they will use to annualize income for the year.

Effective date.–The provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

6. Repeal stock-for-debt exception to cancellation of indebtedness income (sec. 8226(a) of the Senate amendment, sec. 13226(a) of the conference agreement, and sec. 108 of the Code)

Present Law

Gross income generally includes cancellation of indebtedness (COD) income. Taxpayers in title 11 cases and insolvent taxpayers, however, generally exclude COD income from gross income but reduce tax attributes by the amount of COD income. The amount of COD income that an insolvent taxpayer excludes cannot exceed the amount by which the taxpayer is insolvent.

The amount of COD income generally is the difference between the adjusted issue price of the debt being canceled and the amount ****1309*620** of cash and the value of any property used to satisfy the debt. thus, for purposes of determining the amount of COD income of a debtor corporation that transfers stock to a creditor in satisfaction of its indebtedness, the corporation generally is treated as realizing COD income equal to the excess of the adjusted issue price of the debt over the fair market value of the stock. However, if the debtor corporation is in a title 11 case or is insolvent, the excess of the debt discharged over the fair market value of the transferred stock generally does not constitute COD income (the "stock-for-debt exception"). Thus, a corporate debtor that qualifies for the stock-for-debt exception is not required to reduce its tax attributes as a result of the debt discharge. The stock-for-debt exception does not apply to the issuance of certain preferred stock, nominal or token shares of stock, or stock issued to unsecured creditors on a relatively disproportionate basis. In the case of an insolvent debtor not in a title 11 case, the exception applies only to the extent the debtor is insolvent.

House Bill

No provision.

Senate Amendment

The Senate amendment repeals the stock-for-debt exception. Thus, regardless of whether a debtor corporation is insolvent or in bankruptcy, the transfer of its stock in satisfaction of its indebtedness is treated as if the corporation satisfied the indebtedness with an amount of money equal to the fair market value of the stock that had been transferred. Under the Senate amendment, an insolvent corporation or a corporation in a title 11 case may exclude from income all or a portion of the COD income created by the transfer of its stock in satisfaction of indebtedness by reducing tax attributes.

Effective date.–The provision is effective for stock transferred in satisfaction of any indebtedness after June 17, 1993, unless (1) the transfer is in a title 11 or similar case filed on or before June 17, 1993; (2) the transfer occurs on or before December 31, 1993, and the transfer is pursuant to a binding contract in effect on June 17, 1993; or (3) the transfer occurs on or before December 31, 1993, and the taxpayer had filed with the SEC on or before June 17, 1993, a registration statement which proposed a stock-for-debt exchange with respect to such indebtedness, and which discussed the possible application of the stock-for-debt exception to such exchange.

Conference Agreement

The conference agreement follows the Senate amendment with the following modifications.

The conference agreement provides authority to the Treasury Department to promulgate such regulations as are necessary to coordinate the present-law rules regarding the acquisition by a corporation of its debt from a shareholder as a contribution to capital (sec. 108(e)(6)) with the repeal of the stock-for-debt exception.

****1310*621** In addition, the conferees clarify that no inference is intended with the enactment of this provision as to the treatment of any cancellation of the indebtedness of any entity that is not a corporation in exchange for an ownership or equity interest in such entity.

Effective date.–The provision is effective for stock transferred after December 31, 1994, in satisfaction of any indebtedness, unless the transfer is in a title 11 or similar case that was filed on or before December 31, 1993.

7. Treatment of passive activity losses and credits and alternative minimum tax credits in certain discharges of indebtedness (sec. 8226(b) of the Senate amendment, sec. 13226(b) of the conference agreement, and sec. 108(b) of the Code)

PRESENT LAW

The discharge of indebtedness generally gives rise to gross income to the debtor taxpayer. Present law provides exceptions to

this general rule. Among the exceptions are rules providing that income from the discharge of indebtedness of the taxpayer is excluded from income if the discharge occurs in a title 11 case, the discharge occurs when the taxpayer is insolvent, or in the case of certain farm indebtedness (sec. 108(a)(1)). The amount excluded from income under these exceptions is applied to reduce tax attributes of the taxpayer. The tax attributes reduced (in order) are (1) net operating losses and carryovers, (2) general business credit carryovers, (3) net capital losses and capital loss carryovers, (4) the basis of certain property of the taxpayer, and (5) foreign tax credit carryovers (sec. 108(b)). The amount of the reduction is generally one dollar for each dollar excluded, except that the reduction in the case of credits is 33⅓ cents for each dollar excluded.

Under present law, the passive loss rules limit deductions and credits from passive trade or business activities (sec. 469). Deductions and credits suspended under these rules are carried forward to the next taxable year, and suspended losses are allowed in full when the taxpayer disposes of his entire interest in the passive activity to an unrelated person. Passive losses and credits are not tax attributes that are reduced under the rule relating to exclusion of discharge of indebtedness income.

Present law generally allows a minimum tax credit against a taxpayer's regular tax for the taxable year, for taxpayers who paid alternative minimum tax in a prior year (sec. 53). The minimum tax credit generally is the excess of (1) the sum of the minimum tax imposed for all prior taxable years following 1986, over (2) the amount allowed as a minimum tax credit for those prior taxable years. Minimum tax credits are not tax attributes that are reduced under the rule relating to exclusion of discharge of indebtedness income.

HOUSE BILL

No provision.

****1311*622** SENATE AMENDMENT

The Senate amendment adds additional tax attributes to the list of those that are reduced in the case of a discharge of indebtedness of the taxpayer that is excludable from income under section 108(a)(1). The attributes added are (1) minimum tax credits as of the beginning of the taxable year immediately after the taxable year of the discharge, and (2) passive activity loss and credit carryovers from the taxable year of the discharge. The amount of the reduction is generally one dollar for each dollar excluded, except that the reduction in the case of credits is 33⅓ cents for each dollar excluded.

Effective date.–The provision is effective for discharges of indebtedness in taxable years beginning after December 31, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

8. Limitation on section 936 credit (sec. 14226 of the House bill, sec. 8227 of the Senate amendment, sec. 13227 of the conference agreement, and secs. 56, 936 and 7652 of the Code)

PRESENT LAW

Section 936 credit

Certain domestic corporations with business operations in the U.S. possessions[71] may elect the use of the section 936 credit which generally eliminates the U.S. tax on certain income related to their operations in the possessions.[72] Income exempt from U.S. tax under this provision falls into two broad categories: business income, which in order to be exempt must be income treated as foreign source income derived from the active conduct of a trade or business within a U.S. possession or from the sale or exchange of substantially all of the assets that were used in such a trade or business; and investment income, which in order to be exempt must be derived from certain investments in the possessions or in certain Caribbean Basin

countries. The investment income exempted under the provision is known as "qualified possession source investment income" (QPSII). For these and other purposes, income derived within a possession is encompassed within the term "foreign source income."

In order to qualify for the section 936 credit, a domestic corporation must satisfy two requirements. Under one requirement, the corporation must be treated as deriving at least 75 percent of its gross income from the active conduct of a trade or business within a possession over a three-year period. Under the other requirement, the corporation must be treated as deriving at least 80 percent of its gross income from sources within a possession during that same three-year period.

****1312*623** Three alternative rules are provided that relate to allocating income from intangible property between a domestic corporation that elects the section 936 credit (a "possession corporation") and its U.S. shareholders. The general rule is to prohibit the possession corporation from earning any return on intangible property. A possession corporation can instead elect to subject itself to one of two alternative rules, if it satisfies certain conditions.

One such rule is referred to as the "cost sharing method." Use of this method requires the possession corporation to pay to the appropriate members of its affiliated group of corporations (including foreign affiliates) an amount which represents its current share of the costs of the research and development expenses of the group. The Code determines that share to be the greater of (1) the total amount of the group's research and development expenses concerning the possession corporation's product area, multiplied by 110 percent of the proportion of its sales as compared to total product area sales of the group; or (2) the amount of the royalty payment or inclusion that would be required under sections 367(d) and 482 with respect to intangible assets which the possession corporation is treated as owning under the cost sharing method, were the possession corporation a foreign corporation (whether or not the intangible assets actually are transferred to the possession corporation). By making this cost sharing payment, the possession corporation becomes entitled to treat its income as including a return from certain intangibles, primarily manufacturing intangibles, associated with the products it manufactures in the possessions.

The alternative elective rule for allocating income from intangible property between a possession corporation and its U.S. affiliates is a "profit split" approach. This method generally permits allocation to the possession corporation of 50 percent of the affiliated group of U.S. corporations' combined taxable income derived from sales of products which are manufactured in a possession.[73]

Dividends paid by a possession corporation to a U.S. shareholder may qualify for the deduction for dividends received from a domestic corporation (sec. 243). In cases where at least 80 percent of the stock of the possession corporation is owned by a single domestic corporation, the possession corporation's possession source income generally may be distributed without the parent corporation incurring any regular U.S. income tax.

Taxes paid or accrued by possession corporations to foreign countries or possessions on income which is taken into account in determining the section 936 credit are neither deductible nor allowable for purposes of determining the foreign tax credit.

A possession corporation's income, the tax on which may be offset by the section 936 credit, is not included in the alternative minimum taxable income (AMTI) of the possession corporation. Thus, possession corporations generally are exempt not only from the regular income tax but also from the alternative minimum tax (AMT). Moreover, dividends received by a U.S. corporation from a possession corporation generally do not constitute AMTI of the recipient ****1313*624** corporation since, as described above, they may be offset by the dividends received deduction.

For purposes of determining a U.S. corporation's adjustment to AMTI based on adjusted current earnings (ACE), a deduction is allowed for certain dividends received. Specifically, a deduction is available (to the extent allowed under section 243 or 245) for any dividend that qualifies for the 100-percent dividends received deduction for regular tax purposes, or that is received from a 20-percent owned corporation (as defined in section 243(c)(2)), but only to the extent that the dividend is attributable to income of the paying corporation which is subject to U.S. income tax determined after the application of section 936. A dividend received by a U.S. corporation from its wholly owned possession corporation subsidiary generally does not qualify for the dividends received deduction, and thus increases the ACE of the recipient, because the income of the possession corporation typically is not taxed by the United States due to the section 936 credit.

For purposes of computing the foreign tax credit, the Code provides that dividends paid by a possession corporation to an affiliated U.S. corporation are characterized as foreign source income. Unless an exception applies, dividends are subject to the separate foreign tax credit limitation for passive income. In computing the AMT foreign tax credit, 75 percent of any withholding or income tax paid to a possession with respect to dividends received from a possession corporation generally is treated as a creditable tax.[74] Moreover for such computation, taxes paid to a possession by a possession corporation are deemed to be such a withholding tax for this purpose to the extent they would be treated as taxes paid by the recipient of the dividend under rules similar to the rules of the indirect foreign tax credit (secs. 78 and 902) if the possession corporation were a foreign corporation.

Cover over of excise taxes

U.S. excise taxes generally do not apply within the possessions, including Puerto Rico and the U.S. Virgin Islands. Articles that are manufactured in the possessions and brought into the United States for use or consumption are taxed on entry into the United States in the same manner as if the articles were imported from a foreign country. Thus, under general excise tax principles, these articles are taxed at the same rate that applies to domestically produced like articles.

In the case of excise taxes on certain articles brought into the United States from Puerto Rico and the Virgin Islands, and in the case of the distilled spirits excise tax on rum, a portion of the revenues is transferred ("covered over") to the treasuries of Puerto Rico and the Virgin Islands. This revenue cover over is significantly limited, both as to the taxes included and as to activities (e.g., manufacturing value added) that must occur in the possession from which the article comes as a condition of payment.

For example, revenues equal to $10.50 (less an administrative fee) per proof gallon of the $13.50 per proof gallon excise tax on ****1314*625** rum imported from any foreign country is covered over to Puerto Rico and the Virgin Islands. On the other hand, cover over of tobacco excise tax revenues to Puerto Rico is limited to products where significant manufacturing value is added in the possession from which the product enters the United States, and no cover over is allowed for taxes on distilled spirits other than rum. Further, no cover over is permitted for many other excise taxes, e.g., the fuels excise taxes currently included in the Internal Revenue Code.

House Bill

Section 936 credit

In general, the House bill provides that the section 936 credit is determined as under present law, but is subject to two limitations. Under the first limitation, the credit allowed to a possession corporation for a taxable year against U.S. tax on its business income (i.e., income derived from the active conduct of a possession-based business, or from the sale of assets used in such a business) is limited to 60 percent of the qualified possession wages the possession corporation pays to its employees.

For purposes of this limitation, qualified possession wages generally are wages paid or incurred by the possession corporation during the taxable year to any employee for services performed in a U.S. possession, but only if the services are performed while the principal place of employment of the employee is within the possession. In computing the wage-based credit limitation, only certain wages paid to employees in the possessions are taken into account. For this purpose, wages are defined by reference to the Federal Unemployment Tax Act (FUTA) definition of wages, and the amount of wages taken into account for each employee is limited to the maximum earnings subject to tax under the OASDI portion of Social Security (currently $57,600).

The House bill provides that qualified possession wages do not include amounts paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer (and any related possession corporations) is to make employees available for temporary periods to other persons in return for compensation.

The second limitation placed on the section 936 credit under the House bill deals with QPSII. Under this provision, the credit

allowed against U.S. tax on QPSII is limited in cases where the possession corporation's assets that generate QPSII exceed 80 percent of its qualified tangible business investment in the possessions. In such a case, no section 936 credit is allowed against U.S. tax on the portion (determined on a pro-rata basis) of its QPSII attributable to QPSII assets which exceed that 80-percent threshold.

For purposes of the QPSII limitation, the amount of a possession corporation's QPSII assets for a taxable year is determined by computing the average of the aggregate adjusted bases (for purposes of computing earnings and profits) of its assets which generate QPSII as of the close of each quarter of that year. Similarly, a possession corporation's qualified tangible business investment for a taxable year is determined by computing the average of the aggregate adjusted bases (for purposes of computing earnings and ****1315*626** profits) of tangible property used in a possession by the corporation in the conduct of an active trade or business.

The House bill allows an affiliated group of corporations (generally as defined in sec. 1504, but treating possession corporations as includible corporations) to elect to consolidate related possession corporations for purposes of determining the application of the bill's two limitations on the section 936 credit. For a group so electing, the available consolidated credit amount is to be allocated among the possession corporations under rules prescribed by the Treasury Secretary.

If the section 936 credit of a possession corporation is reduced by either of the limitations for a taxable year, the House bill permits the corporation to claim a deduction for a portion of its income taxes paid or accrued to a possession for that year. The portion of the taxes so deductible would be the portion that is allocable on a pro-rata basis to the corporation's taxable income (computed before taking into account any possession tax), the U.S. tax on which is not offset by the section 936 credit as a result of the bill's limitations.

The House bill requires possession corporations to certify that the establishment of new operations in a possession after May 13, 1993 (or the addition, after that date, to an existing possession-based business) will not result in a decrease in employment at an existing business operation of the corporation or a related person in the United States. If the corporation fails to provide the certification with respect to such an establishment or addition, or if there is reason to believe that the establishment or addition was done with the intention of closing down a related U.S.-based operation, then for purposes of computing the House bill's limitations on the section 936 credit, the wages paid and the tangible business property used by the possession corporation with respect to the new operation will be disregarded.

Foreign tax credit limitation for dividends from possession corporations

The House bill also creates a new separate foreign tax credit limitation category for purposes of computing the AMT foreign tax credit. The new category would include the portion of dividends received from a possession corporation for which the dividends received deduction is disallowed, and thus is included in alternative minimum taxable income.

Effective date

The provision is effective for taxable years beginning after December 31, 1993. For taxable years beginning in 1994 and taxable years beginning in 1995, possession corporations may elect to claim an alternative credit not subject to the House bill's two limitations described above. The section 936 credit would be 80 percent of the current law-credit if this alternative is elected for taxable years beginning in 1994, and 60 percent of the current-law credit if elected for taxable years beginning in 1995. Taxes imposed by the possessions on income the U.S. tax on which is not offset by the section 936 credit as a result of the percentage limitations are deductible by the possession corporation.

****1316*627** Senate Amendment

Section 936 credit

In general

The Senate amendment generally cuts back the income-based section 936 credit by 2.5 percent.

In general, the Senate amendment provides that the section 936 credit allowed to a possession corporation for a taxable year against U.S. tax on its active business income (i.e., income derived from the active conduct of a possession-based business, or from the sale of assets used in such a business) is determined as under present law (as modified by the 2.5 percent reduction), but is subject to either of two alternative limitations. One alternative limitation is based on factors that reflect the corporation's economic activity in the possessions (the "economic-activity limitation"), and the other limitation is based on a statutorily defined percentage of the section 936 credit that would be allowable under present-law rules (the "percentage limitation").

The option of which alternative limitation to apply is left to the taxpayer. In order to utilize the percentage limitation, however, a corporation must elect use of that limitation for its first taxable year beginning after 1993 for which it claims a section 936 credit. Once a possession corporation elects to use the percentage limitation, it must continue to compute its section 936 credit under that limitation for all subsequent taxable years unless the election is revoked.

The Senate amendment includes a consistency rule that requires all affiliated possession corporations to utilize the same alternative limitation. If, for example, a possession corporation that uses the percentage limitation becomes a member of an affiliated group that contains a second possession corporation that uses the economic-activity limitation, then the first corporation will be deemed to have revoked its election to use the percentage limitation. The determination whether a possession corporation is part of an affiliated group generally is made by reference to the consolidated return rules, except that stock owned by attribution under the rules of section 1563 is treated as owned directly, and the exclusions from the definition of "includible corporation" listed in section 1504(b) are disregarded. The Senate amendment also grants authority to the Treasury Secretary to develop rules that would treat 2 or more possession corporations as members of the same affiliated group to prevent avoidance of the consistency rule through deconsolidation or other means.

Other than the 2.5 percent reduction described above, the Senate amendment does not reduce the present-law section 936 credit against U.S. tax on QPSII.

Economic-activity limitation

In general

Under the economic activity limitation, the credit allowed to a possession corporation for a taxable year against U.S. tax on its business income may not exceed the sum of the following three components: (1) 95 percent of qualified compensation; (2) an applicable ****1317*628** percentage of depreciation deductions claimed for regular tax purposes by the corporation for the taxable year with respect to qualified tangible property–i.e., tangible property located in a possession and used there by the corporation in the active conduct of its trade or business; and (3) if the corporation does not elect the profit-split method for computing its income, a portion of the possession income taxes it incurs during the taxable year. In order to compute the U.S. tax liability (if any) on the active business income of a possession corporation under the economic-activity limitation, the sum of the three components listed above is subtracted from an amount of pre-credit U.S. tax that would be owed if taxable income of the possession corporation were grossed up by qualified possession compensation and depreciation on qualified tangible property.

Compensation

For purposes of the economic-activity limitation, qualified compensation generally is the sum of (1) the aggregate amount of the possession corporation's qualified possession wages for the taxable year, and (2) its allocable employee fringe benefit expenses for the taxable year. The Senate amendment defines "qualified possession wages" as wages paid or incurred by the possession corporation during the taxable year to any employee for services performed in a possession, but only if the services are performed while the principal place of employment of the employee is within that possession.

For this purpose, the term wages refers to the Federal Unemployment Tax Act (FUTA) definition of wages, and the

cumulative amount of wages for each employee that are taken into account for a taxable year in computing the credit limitation may not exceed 85 percent of the maximum earnings subject to tax under the OASDI portion of Social Security (currently $57,600). The Senate amendment specifies that the Treasury Secretary will provide rules for making appropriate adjustments to this limit in the cases of part-time employees and of employees whose principal place of employment is not within a possession for the entire year. In addition, the Senate amendment does not include in qualified possession wages amounts paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer (and any related possession corporations) is to make employees available for temporary periods to other persons in return for compensation.

Allocable employee fringe benefit expenses are equal to the aggregate amount allowable to the possession corporation as a deduction for the taxable year of the fringe benefits listed below, multiplied by a fraction the numerator of which is the aggregate amount of the corporation's qualified possession wages (as defined above) for the year and the denominator of which is the aggregate amount of the wages it pays or incurs during that year. In no event, however, may the corporation's allocable employee fringe benefit expenses for a taxable year exceed 15 percent of the aggregate amount of its qualified possession wages for that year.

Fringe benefit expenses that are taken into account for purposes of determining the credit limitation are (1) employer contributions under a stock bonus, pension, profit-sharing, or annuity ****1318*629** plan, (2) employer-provided coverage under any accident or health plan for employees, and (3) the cost of life or disability insurance provided to employees. Fringe benefit expenses do not include any amount that is treated as wages.

Depreciation

Depreciation deductions taken into account in determining the economic-activity limitation are as follows. With respect to short-life qualified tangible property (i.e., qualified tangible property to which section 168 applies and which is 3-year or 5-year property as classified under section 168(e)), 50 percent of the depreciation deductions allowable to the possession corporation for the taxable year are taken into account. With respect to medium-life qualified tangible property (i.e., qualified tangible property to which section 168 applies and which is classified as 7-year or 10-year property under section 168(e)), 75 percent of such deductions are taken into account. With respect to long-life qualified tangible property (i.e., all other qualified tangible property to which section 168 applies), 100 percent of such deductions are taken into account.

Possession income tax

As a general rule, for possession corporations that do not elect the profit-split method, taxes paid or accrued to a possession with respect to taxable income which is taken into account in computing the section 936 credit are factored into the credit-limitation base. However, possession income taxes paid in excess of a 9-percent effective rate of tax are not included for purposes of determining the limitation. Moreover, only the portion of taxes satisfying the effective-rate requirement that are allocable (on a pro-rata basis taking all possession income taxes into account) to nonsheltered income are so included. The fraction of possession income taxes allocated to nonsheltered income is determined by computing the ratio of two hypothetical U.S. tax amounts that are computed under the assumption that no credit or deduction is allowed for possession income taxes.

The numerator of the ratio described above is the U.S. tax liability of the possession corporation that would arise under the bill by virtue of the economic-activity limitation determined without regard to any credit or deduction for possession income taxes. The denominator of the ratio is the pre-section 936 credit U.S. tax liability of the possession corporation that would be imposed on the income of the corporation (such income being computed under the rules that apply under current section 936) without regard to any credit or deduction for possession income taxes.

A possession corporation that utilizes the profit-split method for allocating any income from intangible property for the taxable year is not permitted to include any taxes in its credit-limitation base. Such a corporation, however, is allowed a deduction for a portion of its possession income taxes paid or accrued during that taxable year. The deductible portion of possession income taxes is the portion that is allocable (on a pro-rata basis) to the corporation's taxable income (computed before taking into account any deduction for such taxes), the U.S. tax on which is not offset by the section 936 credit as a

result of the Senate amendment's limitation.

****1319*630** Denial of double benefit

For purposes of computing the pre-section 936 credit U.S. income tax liability of a possession corporation that utilizes the economic-activity limitation, the Senate amendment requires the corporation to compute taxable income by reducing its otherwise deductible amounts of compensation and depreciation by the amounts that are included in its credit-limitation base.

Election to treat affiliated corporations as one corporation

For purposes of computing the economic-activity limitation, the Senate amendment allows an affiliated group of corporations (generally as defined in sec. 1504, but treating possession corporations and foreign corporations as includible corporations) to elect to treat all affiliated possession corporations as one corporation. For a group so electing, the available consolidated credit amount is to be allocated among the possession corporations of the group under rules prescribed by the Treasury Secretary. Any election to consolidate applies to the taxable year for which made and to all succeeding taxable years unless revoked with the consent of the Treasury Secretary.

Percentage limitation

Under the percentage limitation, the section 936 credit allowed to a possession corporation against U.S. tax on business income for a taxable year is limited to an applicable percentage (40 percent once fully phased in) of the credit that would be allowable under present-law rules (as modified by the 2.5 percent reduction). Under a transition rule that provides a 5-year phase in, the applicable percentage is as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

A taxpayer that utilizes the percentage limitation is permitted a deduction for a portion of its possession income taxes paid or accrued during the taxable year. The portion of the taxes so deductible is the portion that is allocable (on a pro-rata basis) to the corporation's taxable income (computed before taking into account any deduction for possession tax), the U.S. tax on which is not offset by the section 936 credit as a result of the limitation.

Foreign tax credit limitation for dividends from possession corporations

The Senate amendment also creates a new separate foreign tax credit limitation category for purposes of computing the AMT foreign tax credit. The new category includes the portion of dividends received from a possession corporation for which the dividends received deduction is disallowed, and thus is included in alternative minimum taxable income.

****1320*631** Excise tax cover over

The Senate amendment also temporarily increases the cover over of rum excise taxes to Puerto Rico and the Virgin Islands from $10.50 per proof gallon to $11.30 per proof gallon. This increased cover over rate applies in the case of distilled spirits brought into the United States during the five year period beginning on July 1, 1995.

Effective date

The provision generally is effective for taxable years beginning after December 31, 1993.

Conference Agreement

The conference agreement follows the Senate amendment with modifications and clarifications described below.

First, the conference agreement does not include the provision requiring a reduction of 2.5 percent of a taxpayer's otherwise allowable section 936 credit.

Second, the conference agreement provides that the economic-activity limitation base includes 60 percent of qualified compensation, 15 percent of depreciation deductions for short-life qualified tangible property, 40 percent of depreciation deductions for medium-life qualified tangible property, and 65 percent of depreciation deductions for long-life qualified tangible property. The conference agreement further provides that there is no disallowance of deductions for compensation or depreciation amounts which are included in the credit-limitation base.

Third, the conference agreement provides that the temporary increase in the cover over of rum excise taxes to Puerto Rico and the Virgin Islands applies in the case of distilled spirits brought into the United States during the five-year period beginning on October 1, 1993.

In addition, the conferees intend that the Secretary take into account the significant nature of the modifications made by the conference agreement to the operation of the section 936 credit in cases where a possession corporation either seeks to change its method of allocating income from intangible property or to revoke its election to use the section 936 credit.

9. Enhance earnings stripping rules (sec. 14227 of the House bill, sec. 8228 of the Senate amendment, sec. 13228 of the conference agreement, and sec. 163(j) of the Code)

PRESENT LAW

Interest expenses of a U.S. corporate taxpayer are generally deductible, whether or not the interest is paid to a related party and whether or not the interest income is subject to U.S. taxation in the hands of the recipient. In certain cases where interest is paid by a corporation to a related person, and no U.S. tax is imposed on the recipient's interest income, the so-called "earnings stripping rules" in the Code provide for denial of interest deductions by the corporate payor to the extent that the corporation's net interest expenses exceed 50 percent of its adjusted taxable income. ****1321*632** The disallowance is limited by, among other things, the amount of tax-exempt interest paid to related persons. The disallowance does not apply to interest on debt with a fixed term which was issued on or before July 10, 1989, or which was issued after that date pursuant to certain written binding contracts in effect on that date.

The Treasury is authorized to provide such regulations as may be appropriate to prevent the avoidance of the purposes of this provision, including regulations that would disallow deductions for interest paid to unrelated creditors in certain cases: for example, certain cases that involve guarantees of the debt by parties related to the debtor. The legislative history accompanying the bill enacting the provision, however, indicates an intent that such regulations not generally subject third-party interest to disallowance whenever a guarantee is given in the ordinary course. The legislative history further indicates an expectation that any such regulations would not apply to debt outstanding prior to notice of the rule if and to the extent that the regulations depart from positions the Service and Treasury might properly take under analogous principles of law that would recharacterize guaranteed debt as equity.

To date, Treasury has promulgated no proposed or final regulations that interpret the application of the earnings stripping rules to third-party debt that is guaranteed by a person related to the debtor.

HOUSE BILL

Under the House bill, interest is subject to disallowance under the earnings stripping rules without regard to whether it is interest on a fixed-term obligation isued before, on, or after July 10, 1989. Under the House bill, interest paid on a loan from an unrelated party generally is treated under the earnings stripping rules as interest paid to a related person with respect to which no U.S. tax is imposed if no gross-basis U.S. income tax is imposed on the interest (whether or not the interest recipient is subject to net-basis U.S. income tax with respect to that interest), a related person guaranteed the loan, and the related person is either exempt from U.S. Federal income tax or is a foreign person. Exceptions apply where the taxpayer

controls the guarantor, and in cases, identified by regulation, where the interest on the indebtedness would have been subject to net basis tax if the interest had been paid to the guarantor. Except as provided in regulations, a guarantee is defined to include any arrangement under which a person directly or indirectly assures, on a conditional or unconditional basis, the payment of another's obligation.

Effective date.–The House bill provision applies to any interest paid or accrued in taxable years beginning after December 31, 1993.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

****1322*633** C. Foreign Provisions

1. Current taxation of certain earnings of controlled foreign corporations (secs. 14231-14233 of the House bill, secs. 8231-8233 of the Senate amendment, secs. 13231-13233 of the conference agreement, and secs. 951(a), 954(c), 956, 959, 960(b), 1296, 1297, and new sec. 956A of the Code)

PRESENT LAW

U.S. citizens and residents and U.S. corporations (collectively, "U.S. persons") generally are taxed currently by the United States on their worldwide income. Income earned by a foreign corporation, the stock of which is owned in whole or in part by U.S. persons, generally is not taxed by the United States until the foreign corporation repatriates those earnings by payment to its U.S. stockholders.

Under the controlled foreign corporation rules of subpart F, a controlled foreign corporation is defined generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock, taking into account only so-called "U.S. shareholders": namely, those U.S. persons that own (directly, indirectly or by attribution) at least 10 percent of its voting stock. A "U.S. shareholder" may be taxed by the United States on certain earnings of the controlled foreign corporation that have not been distributed by the foreign corporation to the U.S. shareholder. Such "inclusions" of undistributed controlled foreign corporation earnings are triggered by two different provisions of the controlled foreign corporation rules.

Under one such provision, a U.S. shareholder is taxed currently on its proportionate share of the controlled foreign corporation's "subpart F income" earned during the taxable year. Subpart F income typically is foreign income that is relatively movable from one taxing jurisdiction to another and that is subject to low rates of foreign tax relative to the U.S. rate. Excluded from the definition of subpart F income, among other things, are certain dividends and interest received from a related corporation organized and operated in the same foreign country as the recipient.

The other provision taxing U.S. shareholders on undistributed controlled foreign corporation earnings applies to the controlled foreign corporation's total current or accumulated earnings (other than subpart F income), to the extent of an increase in the amount of those earnings invested by the controlled foreign corporation in certain U.S. property (as defined in Code section 956).

Earnings and profits of a controlled foreign corporation that have been included in the income of U.S. shareholders before actual repatriation are not taxed again when such earnings are in fact distributed to the U.S. shareholders.

If any foreign corporation (including a controlled foreign corporation) is a "passive foreign investment company" (PFIC), U.S. persons (including 10-percent "U.S. shareholders") that own any stock in the PFIC may be subject to one of two other sets of operating rules that eliminate or reduce the benefits of deferral. A PFIC generally is defined as any foreign corporation if (1) 75 percent or more of its gross income for the taxable year consists of passive income, ****1323*634** or (2) 50 percent or more of its assets consist of passive assets, defined as assets that produce, or are held for the production of, passive income.

A U.S. person owning PFIC stock may elect to include currently in gross income its share of the PFIC's total earnings. A nonelecting U.S. person owning PFIC stock pays no current tax on the PFIC's undistributed income. However, when realizing income earned through ownership of PFIC stock (such as certain dividends distributed by the PFIC or capital gains from selling PFIC stock), the nonelecting U.S. person may pay an additional interest charge.

House Bill

In general

The House bill limits the availability of deferral of U.S. tax on certain earnings of controlled foreign corporations. As explained further below, the bill generally requires current inclusions in the income of U.S. shareholders of a controlled foreign corporation to the extent of the corporation's accumulated earnings invested in excess passive assets. The bill also conforms the treatment of earnings of controlled foreign corporations invested in U.S. property to the new rules for earnings invested in excess passive assets, and makes related modifications to other rules applicable to controlled foreign corporations and PFICs.

Inclusions based on excess passive assets

Amount included

The House bill adds new section 956A to the Code, which measures the amount of retained earnings of a controlled foreign corporation that potentially is subject to inclusion in the income of a U.S. shareholder of the foreign corporation as a result of the foreign corporation's investment in "excess passive assets." The amount determined under section 956A with respect to a U.S. shareholder of a controlled foreign corporation is the lesser of two amounts.

The first amount is the excess (if any) of the U.S. shareholder's pro rata share of the controlled foreign corporation's "excess passive assets," over that portion of the retained earnings of the foreign corporation that is treated as having been previously included in the income of the U.S. shareholder on account of excess passive assets. The second amount, defined as the "applicable earnings" of the controlled foreign corporation, is the U.S. shareholder's pro rata share of the controlled foreign corporation's current and accumulated earnings and profits (but not reduced by a deficit in accumulated earnings and profits), reduced by the portion of the retained earnings of the foreign corporation that was previously included in the income of the U.S. shareholder on account of either investments in U.S. property or investments in excess passive assets.

The income inclusion for a U.S. shareholder of the controlled foreign corporation is the amount determined as above under new section 956A, less retained earnings of the controlled foreign corporation that are treated as having been previously taxed to the U.S. shareholder as subpart F income of the controlled foreign corporation under section 951(a)(1)(A).

****1324*635** Excess passive assets

"Excess passive assets" are defined as the excess (if any) for the taxable year of the average amount of passive assets held by the controlled foreign corporation as of the close of each quarter of its taxable year, over 25 percent of the average amount of total assets held by the controlled foreign corporation as of the close of each quarter of its taxable year. For this purpose, an asset is measured by its adjusted basis as determined for purposes of computing earnings and profits.[75]

Modification of section 956

The House bill treats earnings invested by a controlled foreign corporation in U.S. property under revised rules that parallel those that govern the treatment of excess passive assets, as described above. Under the revised rules, the amount determined under section 956 with respect to a U.S. shareholder of a controlled foreign corporation is the lesser of two amounts.

The first amount is the excess (if any) of the U.S. shareholder's pro rata share of the U.S. property of the controlled foreign corporation, over that portion of the retained earnings of the foreign corporation that is treated as having been previously included in the income of the U.S. shareholder on account of earnings invested in U.S. property. The second amount is the U.S. shareholder's pro rata share of the controlled foreign corporation's current and accumulated earnings and profits (but not reduced by a deficit in accumulated earnings and profits), reduced by the portion of the retained earnings of the foreign corporation that was previously included in the income of the U.S. shareholder on account of either investments in U.S. property or investments in excess passive assets.

The income inclusion for a U.S. shareholder of the controlled foreign corporation is the amount determined as above under section 956, less retained earnings of the controlled foreign corporation that are treated as having been previously taxed to the U.S. shareholder as subpart F income of the controlled foreign corporation under section 951(a)(1)(A).

Study on investments in U.S. property

The House bill requires that the Treasury Department study the tax treatment of investments by controlled foreign corporations in obligations of U.S. persons other than corporations, and provide the Committee on Ways and Means with a report of such study by December 31, 1993. The study is to include the Treasury's views as to whether those rules should be amended insofar as they relate to the treatment of investments by controlled foreign corporations in the obligations of U.S. persons other than corporations, along with a discussion of the merits and consequences of any such amendment.

****1325*636** Other modifications to the subpart F rules

The House bill limits the application of the same-country exception to the determination of subpart F income in the case of certain dividends received by controlled foreign corporations. Under the bill, amounts distributed with respect to stock owned by the controlled foreign corporation do not qualify for the same-country exception to the extent that the distributed earnings and profits were accumulated by the distributing corporation during periods when the controlled foreign corporation did not hold the stock. In addition, the House bill modifies the effect on the foreign tax credit limitation of distributions of previously taxed income. Under the bill, receipt of a distribution of previously taxed income by a U.S. shareholder of one or more controlled foreign corporations increases the U.S. shareholder's foreign tax credit limitation to the extent of the aggregate amount in a single "excess limitation account" maintained by that U.S. shareholder for each of its separate foreign tax credit limitation categories.

Modification of certain PFIC rules

The House bill makes several modifications to the PFIC rules:

The House bill modifies the present-law rules for applying the PFIC asset test in the case of U.S. shareholders of controlled foreign corporations. In testing a controlled foreign corporation for PFIC status with respect to its "U.S. shareholders," under the bill, assets are measured by adjusted basis as determined for purposes of calculating earnings and profits, with no option to use fair market value.

The House bill excludes from the definition of passive income under the PFIC rules income derived in the active conduct of a securities business by certain corporations registered in the United States as brokers or dealers in securities, and, to the extent provided in Treasury regulations, income so derived by any other corporation engaged in the active conduct of a trade or business as a broker or dealer in securities. As with the asset-valuation rule above, this exclusion applies only to a controlled foreign corporation, and only for purposes of the treatment of its U.S. shareholders. The bill provides that similar rules apply

in determining whether the income of a related person is passive (whether or not the related person is a corporation), solely for purposes of classifying amounts paid by that related person to a controlled foreign corporation pursuant to the PFIC related-person rule (sec. 1296(b)(2)(C)).

Under the House bill, inclusions of income on account of investments of earnings of a controlled foreign corporation in U.S. property, or ownership of excess passive assets, are treated as distributions for purposes of computing the interest charge on excess distributions to the U.S. shareholders of PFICs that are controlled foreign corporations.

The House bill treats certain leased property as assets held by the foreign corporation for purposes of the PFIC asset test. This rule applies to tangible personal property with respect to which the foreign corporation is the lessee under a lease with a term of at least 12 months. Under the bill, the measure of leased property for ****1326*637** purposes of applying the asset test is the unamortized portion of the present value of the payments under the lease.

Effective date

The House bill generally is effective for taxable years of foreign corporations beginning after September 30, 1993, and for taxable years of domestic shareholders in which or with which such taxable years end.

Under the House bill, the excess passive assets provision is phased in during taxable years beginning after September 30, 1993, and before October 1, 1997. The amount of income included under the provision is 20 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1993, and before October 1, 1994; 25 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1994, and before October 1, 1995; 35 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1995, and before October 1, 1996; and 50 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1996, and before October 1, 1997. The provision is fully effective for taxable years beginning after September 30, 1997.

Senate Amendment

The Senate amendment is the same as the House bill, except as described below.

Inclusions based on excess passive assets

The Senate amendment applies only to earnings and profits of the controlled foreign corporation that are attributable to taxable years beginning after September 30, 1993, and includes certain aggregation and anti-abuse rules.

Under the Senate amendment, the "applicable earnings" of the controlled foreign corporation include only that portion of the controlled foreign corporation's total current earnings and profits (but not reduced by a deficit in accumulated earnings and profits) and earnings and profits to the extent accumulated in taxable years beginning after September 30, 1993. In computing the potential amount of earnings invested in excess passive assets that might be includable in the income of the U.S shareholders of the controlled foreign corporation, applicable earnings under the Senate amendment are reduced by the portion of such post-1993 retained earnings of the foreign corporation that was previously included in the income of the U.S. shareholder on account of either investments in U.S. property or investments in excess passive assets.

The Senate amendment provides an aggregation rule applicable to any chain of controlled foreign corporations that are connected through stock ownership, where more than 50 percent, by vote or value, of the stock of each member of the chain (other than the top-tier controlled foreign corporation) is owned, directly or indirectly, by one or more other controlled foreign corporations that are members of the chain ("CFC chain"). Under this rule, the amount of excess passive assets of the CFC chain would be determined on the basis of the sum of the assets of each controlled foreign ****1327** corporation in the CFC chain and the sum of the passive assets of each controlled foreign corporation in the CFC chain. The total applicable earnings of the CFC chain would be determined as the sum of the applicable earnings of each controlled foreign ***638** corporation in the CFC chain. Each controlled foreign corporation in the CFC chain would be treated as holding its pro rata share of the excess passive assets of the CFC chain, on the basis of that controlled foreign corporation's percentage share of

the total applicable earnings of the CFC chain.

Modification of certain PFIC rules

The Senate amendment includes special rules to increase the basis of assets (for purposes of this provision) to reflect certain research and experimental expenditures and certain payments with respect to licensed intangible property.

Under the Senate amendment, as under the House bill, in testing a controlled foreign corporation for PFIC status with respect to its "U.S. shareholders," assets generally are measured by adjusted basis as determined for purposes of calculating earnings and profits, with no option to use fair market value.

Under the Senate amendment, however, adjusted basis for this purpose is modified to take into account certain research and experimental expenditures and certain payments for the use of intangible property that is licensed to the controlled foreign corporation. First, the aggregate adjusted basis of the total assets of the controlled foreign corporation is increased by the total amount of research and experimental expenditures made by the controlled foreign corporation for qualified research or experimental expenditures (as defined for purposes of Code section 174 and the Treasury regulations thereunder), taking into account payments and expenditures (including cost-sharing payments) made in the current taxable year and the two most recent preceding taxable years. In addition, the aggregate adjusted basis of the total assets of the controlled foreign corporation is increased by the amount of three times the total payments made during the taxable year to unrelated persons and related U.S. persons for the use of intangible property with respect to which the controlled foreign corporation is a licensee, and which the controlled foreign corporation uses in the active conduct of its trade or business. Payments made to related foreign persons are not taken into account.

Study on investments in U.S. property

The Senate amendment does not include the House bill provision requiring a Treasury department study on the tax treatment of certain investments in U.S. property.

Effective date

Like the House bill, the Senate amendment generally is effective for taxable years of foreign corporations beginning after September 30, 1993, and for taxable years of domestic shareholders in which or with which such taxable years end. However, under the Senate amendment, the excess passive assets provision is effective immediately rather than phased in during taxable years beginning after September 30, 1993, and before October 1, 1997.

****1328*639** Conference Agreement

The conference agreement follows the Senate amendment, with certain modifications.

Inclusions based on excess passive assets

Aggregation rule

The conference agreement clarifies the Senate amendment's aggregation rule for the determination of excess passive assets of related controlled foreign corporations. The aggregation rule in the conference agreement applies to a "CFC group" of controlled foreign corporations, clarifying that the group can include one or more chains of related controlled foreign corporations, linked by common ownership by a top-tier controlled foreign corporation. As is true for a "CFC chain" under the Senate amendment, the CFC group under the conference agreement determines the amount of excess passive assets for the group by treating all group members as a single corporation, and then apportions such aggregate excess passive assets among the members of the group on a pro rata basis in accordance with each member's percentage share of the total

applicable earnings of the CFC group.

The conferees wish to clarify that under the conference agreement, as is typically the case where a group of corporations is treated as a single corporation for tax purposes, intercompany stock and obligations generally are disregarded in the determination of excess passive assets. For example, stock owned by one member of the group in another member of the group is disregarded, as are intercompany loans, other intercompany receivables, and intercompany licenses. As another example, assume that one member of the group provides goods or services to an unrelated customer, thereby acquiring a trade or service receivable. Assume further that the group member then factors the receivable to another member of the group, and the second member later receives the payment from the customer, which gives rise to income for the second member which is treated as passive interest income. During the period when the receivable is held by the second group member, the basis of the receivable in the hands of group, for purposes of applying the conference agreement to the group, would reflect the cost incurred by the second member to acquire the receivable in the factoring transaction with the first member. The conferees intend that the characterization of the receivable as a passive or nonpassive asset for purposes of determining excess passive assets depend on the activities by which the group as a whole derived the receivable. If the receivable properly would be viewed as a nonpassive asset based on those activities (without regard to which member of the group carried out the activities), the conferees anticipate that interest incidentally received by the second group member generally would not cause the receivable to be characterized as a passive asset (see, e.g., Notice 88–22, 1988–1 C.B. 489).

Inasmuch as stock owned by one member of the group in another member of the group would be disregarded, the look-through rule of section 1296(c) does not apply within a CFC group. However, the look-through rule of section 1296(c) does apply in the case of stock owned by one or more members of the CFC group in a foreign ****1329** corporation that is not a member of the CFC group. For example, if one member of the CFC group owns 20 percent of the stock of another controlled foreign ***640** corporation that is not a member of the CFC group, and a second member of the CFC group owns 10 percent of the stock of such non-member controlled foreign corporation, the CFC group would be treated as owning 30 percent of the assets of the non-member controlled foreign corporation under the look-through rule of section 1296(c).

For purposes of the conference agreement's aggregation rule and look-through rule, all amounts of assets and earnings must be converted into units of a single currency, ordinarily the U.S. dollar. The conferees anticipate that Treasury will provide guidance as to the translation method appropriate to such conversion. The conferees anticipate that Treasury will authorize the use of the spot rate on the date of measurement for such purpose. In addition, the conferees anticipate that Treasury may authorize an alternative method, under which the U.S. shareholders of a controlled foreign corporation would be permitted to determine the adjusted basis of the assets of the controlled foreign corporation using the historical cost in U.S. dollars of the foreign-currency-denominated assets, in cases where the Secretary is satisfied that such historical costs can be established in a reasonably administrable fashion consistent with the purposes of the provision. Until guidance is issued by the Secretary, the conferees intend that taxpayers be permitted to convert asset costs to a single currency using any reasonable method (which may be, for example, a spot-rate conversion method or a historical dollar-cost method), so long as the method is consistently applied to all controlled foreign corporations (whether or not members of a CFC group) in all taxable years.

Treatment of certain previously taxed PFIC inclusions

The House bill and the Senate amendment provide rules for avoiding the double taxation of income in the case of subpart F inclusions under section 951(a)(1)(A) from controlled foreign corporations with excess passive assets. The conference agreement adds a similar coordination rule for controlled foreign corporations that are also PFICs, and that are subject to current inclusion of income under section 1293. Under the conference agreement, any inclusion of income under section 1293 to a U.S. shareholder of a controlled foreign corporation that is also a PFIC is treated as an inclusion of income under section 951(a)(1)(A) for purposes of the rules of subpart F pertaining to previously taxed income.

Modification of certain PFIC rules

Treatment of certain banking and securities income

Present law provides regulatory authority to the Treasury to except from the definition of passive income certain income

derived in the active conduct of a banking business. The House bill and the Senate amendment provide similar authority, in the case of U.S. shareholders of a PFIC that is also a controlled foreign corporation, with respect to certain income derived in the active conduct of a securities business. The conferees are informed that there is a significant commonality between the business activities that may be ****1330*641** conducted by a controlled foreign corporation in the course of a banking business and the business activities that may be conducted by a controlled foreign corporation in the course of a securities business. The conferees intend to clarify that these grants of regulatory authority are sufficiently broad to encompass, in appropriate circumstances, the income derived by a single controlled foreign corporation in the active conduct of a business that consists in part of banking activities and in part of securities activities.

Study on treatment of certain financing and credit services businesses

The conference agreement provides that certain income derived in the conduct of a banking or insurance business, or, in the case of U.S. shareholders of a controlled foreign corporation, a securities business, may be excluded from the definition of passive income for purposes of the PFIC rules and the excess passive assets rules. These rules, however, do not apply to income derived in the conduct of financing and credit services businesses. The conferees intend that the Treasury Department study the tax treatment of income derived in the conduct of financing and credit services businesses, and provide the House Committee on Ways and Means and the Senate Committee on Finance with a report of such study by March 1, 1994. The study should include the Treasury's views and recommendations as to whether the PFIC rules and the excess passive assets rules should be amended insofar as they relate to the treatment of such income, along with a discussion of the merits and consequences of any such amendment. In addition, the study should address any special considerations that might pertain in this regard with respect to a foreign corporation that is not a controlled foreign corporation, and discuss the extent to which appropriate anti-abuse rules would be sufficient to address special concerns that might arise in this context.

Special rule for certain intangible property

The Senate amendment provides a special rule for determining the basis of assets in the case of certain research and experimental expenditures and certain payments for the use of intangible property that is licensed to the controlled foreign corporation. Payments made to related foreign persons are not taken into account. The conference agreement clarifies that all research and experimental expenditures that are taken into account for purposes of this special rule are net of any reimbursements (such as cost-sharing payments, to the extent they represent such expenditures) received by the controlled foreign corporation with respect to such expenditures. In addition, the conference agreement clarifies that payments made by a controlled foreign corporation for the use of intangible property are disregarded if one principal purpose of licensing the intagible property was to avoid the PFIC rules or the excess passive assets provisions. For example, assume a domestic corporation licensed intangible property through a controlled foreign corporation to an unrelated person, rather than directly to the unrelated person, and one principal purpose for licensing the property indirectly was to increase the measurement of the controlled foreign corporation's active assets. In such a case, the payment made ****1331*642** by the controlled foreign corporation to its domestic parent with respect to the intangible property would not be taken into account. As another example, assume a controlled foreign corporation licensed intangible property to its domestic parent and the U.S. parent relicensed all or a portion of the intangible property rights to a second controlled foreign corporation, and one principal purpose for licensing the property indirectly was to increase the measurement of the second controlled foreign corporation's active assets. In such a case, the payment made by the second controlled foreign corporation to its domestic parent with respect to the intangible property would not be taken into account.

Study on treatment of certain marketing expenditures

The conference agreement increases the adjusted basis of the assets of a controlled foreign corporation by reference to expenditures deductible under section 174. When a controlled foreign corporation incurs research and experimental expenditures, the practical effect may be to enhance the corporation's ability to generate active business income over an extended period; yet inasmuch as such expenditures are commonly deductible under section 174, these types of expenditures may affect the corporation's adjusted basis in its assets differently than expenditures to generate active business income over an extended period that take the form of a purchase of tangible or intangible assets. The conference agreement provides for adjustments to the adjusted basis of the assets of the controlled foreign corporation to take account of this difference.

Taxpayers have argued that the practical effect of marketing expenditures that are properly deductible under section 162 as ordinary and necessary business expenses may also be to enhance the corporation's ability to generate active business income over an extended period. The conferees intend that the Treasury Department study the question whether similar basis adjustments should be made for such expenses, and provide the House Committee on Ways and Means and the Senate Committee on Finance with a report of such study by March 1, 1994. The study should include the Treasury's views and recommendations as to whether the excess passive assets rules should be amended insofar as they relate to the treatment of such expenses, along with a discussion of the merits and consequences of any such amendment.

Modifications to section 956

Special rule for U.S. property acquired before foreign corporation is U.S. controlled

The conference agreement includes a provision that clarifies the application of section 956 of the Code, as modified by the bill, in the case of U.S. property acquired by a foreign corporation before the foreign corporation becomes a controlled foreign corporation. Under the conference agreement, the measure of U.S. property held by a controlled foreign corporation for any taxable year generally does not include any specific items of U.S. property that were acquired by the foreign corporation before the first day on which the foreign corporation was treated as a controlled foreign corporation. The aggregate amount of U.S. property so excluded ****1332*643** with respect to a controlled foreign corporation for any taxable year, however, cannot exceed the applicable earnings of the controlled foreign corporation to the extent that they were accumulated in periods prior to the first day on which the foreign corporation was treated as a controlled foreign corporation.[76] The conferees note that applicable earnings are reduced, under the conference agreement, both by actual distributions and by income inclusions of excess passive assets or U.S. property.

The conference agreement also provides regulatory authority under which the Treasury is instructed to prescribe such regulations as may be necessary to carry out the purposes of section 956, and to prevent their avoidance. Within this authority, the conferees anticipate that the Treasury may prescribe regulations that, for example, would prevent taxpayers from taking advantage of the differences between the excess passive assets rules and the rules of section 956.

Study on investments in U.S. property

The conferees understand that a controlled foreign corporation is not treated as holding U.S. property under section 956 if it invests in an obligation of an unrelated U.S. corporation. A similar rule, however, is not applicable to an investment in an obligation of an unrelated U.S. person other than a corporation. The conferees intend that the Treasury Department study the tax treatment of investments by controlled foreign corporations in obligations of U.S. persons other than corporations, and provide the House Committee on Ways and Means and the Senate Committee on Finance with a report of such study by December 31, 1993. The study should include the Treasury's views and recommendations as to whether the rules of section 956 should be amended insofar as they relate to the treatment of investments by controlled foreign corporations in the obligations of unrelated U.S. persons other than corporations, along with a discussion of the merits and consequences of any such amendment.

Other modifications to the subpart F rules

The House bill and the Senate amendment limit the availability of the same-country exception applicable to the determination of subpart F income in the case of certain dividends received by controlled foreign corporations. Under the conference agreement, amounts distributed with respect to stock owned by the controlled foreign corporation do not qualify for the same-country exception to the extent that the distributed earnings and profits were accumulated by the distributing corporation during periods when the controlled foreign corporation did not hold the stock either directly or indirectly through a chain of one or more subsidiaries, each of which qualifies as a same-country corporation. For example, the same-country exception is available under the conference agreement ****1333*644** in the case of a chain of three wholly owned same-country subsidiaries, where the middle-tier subsidiary is liquidated prior to the payment of a dividend from the lowest tier subsidiary to the highest tier subsidiary, and the dividend comprises earnings of the lowest tier subsidiary that were accumulated solely during periods when it was (indirectly) owned by the highest tier subsidiary.

2. Allocation of research expenditures (sec. 14234 of the House bill, sec. 8234 of the Senate amendment, sec. 13234 of the conference agreement, and sec. 864(f) of the Code)

PRESENT LAW

In order that the foreign tax credit will offset only the U.S. tax on the taxpayer's foreign source taxable income, a limitation formula is prescribed in the Code. To compute the limitations, it is necessary to divide the taxable income of a U.S. person into U.S. source taxable income, foreign source taxable income in each applicable separate limitation category, and foreign source taxable income in the general foreign tax credit limitation category.

Foreign source taxable income in any limitation category equals foreign source gross income in that category less the expenses, losses and other deductions properly apportioned or allocated to that income. A Treasury regulation issued in 1977 describes methods for allocating expenses between U.S. and foreign source income, including rules for the allocation of research expenses. Since 1981, however, the research expense allocation regulation has been subject to a series of statutory temporary suspensions and modifications. The most recent temporary statutory provision (set forth in Code section 864(f)) was applicable generally for the first six months of the first taxable year beginning after August 1, 1991. For this purpose, total research expenses for the year were deemed to be incurred evenly throughout the year.

For expenses deemed paid or incurred during the first six months of the year referred to above (other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source), 64 percent of U.S.-incurred research expenses were allocated to U.S. source income, and 64 percent of foreign-incurred research expenses were allocated to foreign source income. The remainder of research expenses were allocated and apportioned either on the basis of sales or gross income, but subject to the condition that if income-based apportionment was used, the amount apportioned to foreign source income could have been no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used.

The Treasury has announced that during what would ordinarily be an 18-month period following the six-month period referred to above–that is, the last six months of the taxpayer's first taxable year beginning after August 1, 1991 and the immediately succeeding taxable year–taxpayers may continue to allocate research expenses in accordance with the method set forth in Code section 864(f). In granting the transitional period, Treasury stated that the transitional method was not intended to suggest any particular views about the proper allocation and apportionment of research ****1334*645** expenses. Rather, Treasury stated, the transition method was intended solely to provide taxpayers with transitional relief and to minimize audit controversy and facilitate business planning during the conduct of the regulatory review.

House bill

The House bill makes permanent the research allocation rules of Code section 864(f), except that the portion of research expense automatically allocated and apportioned to income sourced in the place of performance of the research is 50 percent, rather than 64 percent. Thus, for research expense other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source, 50 percent of U.S.-incurred research expense is allocated and apportioned to U.S. source income, and 50 percent of foreign-incurred research expense is allocated and apportioned to foreign source income. The remaining research expense is allocated and apportioned either on the basis of sales or gross income, but subject to the condition that if income-based apportionment is used, the amount apportioned to foreign source income can be no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used.

The House bill provides regulatory authority for the implementation of certain adjustments regarding section 936 companies. In addition, the bill authorizes the Treasury to prescribe such regulations as may be appropriate to carry out the purposes of this provision, including regulations relating to the determination of whether research activities are conducted inside or outside the United States and making such adjustments as may be appropriate in the case of cost sharing arrangements and contract research.

Effective date.–The House bill provision applies to taxable years ending after date of enactment, except that it does not apply to any taxable year to which Rev. Proc. 92-56 applies, or would have applied had the taxpayer elected the benefits of that Revenue Procedure.

Senate Amendment

The Senate amendment temporarily adopts for one year the provisions (including those providing regulatory authority) adopted permanently in the House bill. The Senate amendment applies to the first taxable year (beginning on or before August 1, 1994) following the taxpayer's last taxable year to which Rev. Proc. 92-56 applies, or would have applied had the taxpayer elected the benefits of that Revenue Procedure.

Conference Agreement

The conference agreement follows the Senate amendment.

****1335*646** 3. Eliminate working capital exception for foreign oil and gas and shipping income (sec. 14235 of the House bill, sec. 8235 of the Senate amendment, sec. 13235 of the conference agreement, and secs. 904(d), 907, and 954 of the Code)

PRESENT LAW

Foreign tax credit separate limitations

Foreign tax credit limitations are computed separately for certain categories of foreign source income, including passive income, high withholding tax interest, financial services income, shipping income, dividends from each noncontrolled section 902 corporation, certain distributions from DISCs and FSCs, certain types of income earned by an FSC, and all other (i.e., "overall basket" or "general basket") income. Passive income generally includes income which is of a kind which would be foreign personal holding company income as defined under Code section 954(c) (e.g., interest and dividends) and typically is not subject to high levels of foreign tax. The separate limitation for passive income generally prevents the cross-crediting of high foreign taxes on income which falls in the general basket against the residual U.S. tax on passive income.

The separate foreign tax credit limitation for passive income was enacted in 1986 and replaced the prior law separate foreign tax credit limitation for passive interest income.[77] Prior law excluded from the passive interest separate limitation category interest derived from any transaction which is directly related to the active conduct by the taxpayer of a trade or business in a foreign country. Regulations under prior law expressly treated certain types of interest on working capital as interest derived from a transaction which is directly related to the active conduct of a trade or business.[78] No such general working capital exception exists under the passive income definition as established in 1986. As a result of the interaction of the Code and Treasury regulations originally developed prior to 1987, however, the working capital exception has been retained for the oil and gas and shipping industries.

Special limitation on credits for foreign extraction taxes and taxes on foreign oil related income

In addition to the foreign tax credit limitations that apply to all creditable foreign taxes, a special limitation is placed on foreign income taxes on foreign oil and gas extraction income (FOGEI). Under this special limitation, amounts claimed as taxes paid on FOGEI of a U.S. corporation qualify as creditable taxes (if they otherwise so qualify) only to the extent they do not exceed the product of the highest marginal U.S. tax rate on corporations (presently 34 percent) multiplied by such extraction income. Foreign taxes paid in excess of that amount on such income are, in general, neither creditable nor deductible (unless a credit carryover provision applies).

A similar special limitation may apply to foreign taxes paid on foreign oil related income (FORI) in certain cases where that type ****1336*647** of income is subjected to a materially greater level of tax by a foreign jurisdiction than non oil and gas

income generally would be. Under this limitation, a portion of the foreign taxes on FORI may be deductible, but not creditable.

As previously described, regulations issued prior to 1986 and still effective define FOGEI and FORI to include interest on working capital related to extraction or oil related activities, as the case may be. Thus, under current regulations, FOGEI and FORI include what generally would be considered as passive income for foreign tax credit limitation purposes.

House Bill

In general

The House bill prevents the cross-crediting of foreign taxes on FOGEI, FORI, and shipping income by placing certain passive income related to oil and gas and shipping operations in the passive category for foreign tax credit limitation purposes. In addition, the House bill excludes certain passive income related to foreign oil and gas extraction or other foreign oil related activities from the computation of the FOGEI and FORI foreign tax credit limitations.

Foreign tax credit separate limitations

With respect to the separate foreign tax credit limitation for passive income, the House bill eliminates the present-law exclusion of FOGEI from the definition of passive income. Thus, if a taxpayer has gross income that falls within the definition of passive income under section 904, and also satisfies the definition of FOGEI under section 907, the income would be treated as passive income in determining the taxpayer's foreign tax credit.

In addition, the House bill amends the present-law rule applicable to income which by definition qualifies both as foreign personal holding company income under section 954(c) and as foreign base company oil related income under section 954(g). The House bill provides that such income is to be treated as foreign personal holding company income. As such, the income generally would be passive income for foreign tax credit purposes.

Likewise, the House bill specifies that dividend or interest income that by definition qualifies as both foreign personal holding company income and foreign base company shipping income is to be treated as foreign personal holding company income. Thus, for foreign tax credit purposes, the income would fall in the passive basket rather than in the separate basket for shipping income.

Special FOGEI and FORI limitations

The House bill provides that the term "foreign oil and gas extraction income" does not include any dividend or interest income which is passive income as defined for foreign tax credit limitation purposes. Since, as discussed above, the House bill treats gross interest income on working capital related to foreign oil and gas extraction activities, for example, as passive income, such income is not considered FOGEI for purposes of computing the special limitation for foreign taxes paid on FOGEI.

****1337*648** In addition, the House bill specifies that the term "foreign oil related income" does not include any dividend or interest income which is passive income as defined under the foreign tax credit provisions. As a result, for example, gross interest income on working capital related to activities which generate foreign oil related income would not be treated as FORI for purposes of computing the special limitation for foreign taxes paid on FORI.

Effective date

The provision applies to income earned in taxable years beginning after December 31, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement is the same as the House bill and Senate amendment with clarifications.

The conference agreement clarifies that for purposes of applying section 954(f), dividends and interest received from a foreign corporation in respect of which taxes are deemed paid under section 902 are classified as foreign base company shipping income (as under present law) to the extent attributable to foreign base company shipping income. Similarly, the conferees intend that dividends and interest received from a foreign corporation in respect of which taxes are deemed paid under section 902 are classified as FOGEI or FORI, respectively, to the extent attributable to FOGEI or FORI.

The conferees also wish to clarify the treatment (under sec. 954(b)(6)(B)) of a post-effective date corporate distribution of income earned by the payor in a pre-effective date year. The determination whether such pre-effective date income was shipping income for this purpose will be made under the laws defining shipping income in effect for the year in which the income was earned.

4. Transfer pricing initiative (sec. 14236 of the House bill, sec. 8236 of the Senate amendment, sec. 13236 of the conference agreement, and sec. 6662 of the Code)

PRESENT LAW

A "substantial" valuation misstatement may result in a penalty of 20 percent of the understatement of tax attributable to the substantial valuation misstatement (sec. 6662 (a) and (b)(2)). The penalty for a "gross" valuation misstatement is 40 percent of the tax understatement (sec. 6662(h)). No valuation misstatement penalty is imposed if it is shown that there was reasonable cause for the underpayment and that the taxpayer acted in good faith (see sec. 6664(c)).

There is a substantial valuation misstatement if, among other things, the net section 482 transfer price adjustment for the taxable year exceeds $10 million. The analogous "gross valuation misstatement" involves a net section 482 transfer price adjustment of $20 million. The net section 482 transfer price adjustment is the ****1338*649** net increase in taxable income for a taxable year resulting from adjustments under section 482 in the price for any property or services (or use of property). However, a net increase in taxable income attributable to a price redetermination is disregarded, for this purpose, if it is shown that there was a reasonable cause for the taxpayer's determination of the price, and that the taxpayer acted in good faith with respect to the price.

HOUSE BILL

Under the House bill, the threshold amount of net section 482 transfer price adjustment that generally would trigger a substantial valuation misstatement penalty is lowered to $5,000,000. In addition, the term substantial valuation misstatement is expanded to include a case where the net section 482 transfer price adjustment for the taxable year exceeds 10 percent of the taxpayer's gross receipts. The term gross valuation misstatement includes a case where the net section 482 transfer price adjustment exceeds 20 percent of gross receipts.

In measuring the amount of a taxpayer's net section 482 transfer price adjustment, a net increase in taxable income attributable to a price redetermination is disregarded under the House bill only if the taxpayer satisfies certain statutory requirements.

The taxpayer would meet the requirements if it established that each of three criteria were met. First, the taxpayer would have to establish that the price it used was determined under a pricing method specified in the section 482 regulations. Second, the taxpayer would have to establish that it applied the method reasonably. (In order for the application of the method to have

been reasonable, it is intended that any procedural or other requirements imposed under the regulations must have been observed. For example, if certain adjustments required under a particular method were not made, the application of that method would not be reasonable.) Third, the taxpayer would have to establish that it had documentation, in existence as of the time of filing its original return, setting forth the reasonable determination of the price as described above, which documentation the taxpayer provides to the IRS within 30 days of a request for it.

Alternatively, the taxpayer would meet the requirements if it established that none of the methods specified in the section 482 regulations was likely to result in a price that would clearly reflect income, that it used another method which was likely to result in such a price, and that it had documentation, in existence as of the time of filing its original return, setting forth the determination of the price and establishing the foregoing requirements, which documentation the taxpayer provides to the IRS within 30 days of a request for it.

Under the House bill, it is intended that the application of any method would not be considered reasonable if the taxpayer became aware prior to filing its tax return that such application more likely than not did not lead to an arm's length result.

In the case of a valuation misstatement due to a net section 482 transfer price adjustment, no penalty would be excused for reasonable cause and good faith unless the above requirements were met.

****1339*650** Effective date.–The House bill provision is effective for taxable years beginning after December 31, 1993.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The conferees note that under the agreement, a taxpayer that does not apply a pricing method specified in the section 482 regulations may nevertheless have its net increase in taxable income attributable to a section 482 adjustment disregarded in determining the amount of its net section 482 transfer price adjustment, but in order to do so the taxpayer must establish (among other things) that none of the methods specified in the section 482 regulations was likely to result in a price that would clearly reflect income. With respect to those various types of transactions that generally are not the subject of any pricing methods specified in the section 482 regulations, the conferees wish to clarify that to meet the above requirement, it will be necessary simply to establish that the transaction is of a type for which no methods are specified in the section 482 regulations.

5. Deny portfolio interest exemption for contingent interest (sec. 14237 of the House bill, sec. 8237 of the Senate amendment, sec. 13237 of the conference agreement, and secs. 871(h), 881(c), and 2105(b) of the Code)

PRESENT LAW

Deductibility of interest

As a general rule, a deduction is allowed for all interest paid or accrued on indebtedness. Whether a financial instrument is treated as debt for Federal income tax purposes depends on the facts of the particular case. Under existing law, an instrument may qualify as debt even if it provides the holder with significant equity participation rights. For example, the IRS has ruled that in certain cases, contingent interest paid on a shared appreciation mortgage loan used to finance the purchase of a personal residence may be deductible by a cash basis payor.[79] As another example, contingent interest based on a share of the borrower's profits has been determined to be deductible in certain cases.[80]

Interest received by foreign persons

The Internal Revenue Code provides that U.S. source interest income earned by a nonresident alien individual or a foreign corporation that is not effectively connected with the conduct of a U.S. trade or business generally is subject to a gross-basis 30-percent withholding tax. A significant statutory exemption from that tax applies to so-called "portfolio interest" received by foreign persons.

****1340*651** Portfolio interest generally is defined as any U.S. source interest (including original issue discount) that is not effectively connected with the conduct of a trade or business and (1) is paid on an obligation that satisfies certain registration requirements or specified exceptions thereto, and (2) is not received by a 10-percent owner of the issuer of the obligation, taking into account shares owned by attribution.[81]

Foreign investment in U.S. real property–shared appreciation debt

A foreign person's gain on the disposition of a U.S. real property interest (USRPI) is treated as income that is effectively connected with the conduct of a U.S. trade or business, and thus is subject to net-basis tax at ordinary U.S. income tax rates pursuant to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). USRPIs include interests (other than solely as a creditor) in (1) real property, and (2) domestic corporations that are U.S. real property holding corporations (USRPHCs).

Whether a financial instrument is considered debt under any provisions of the Code is not determinative of whether it constitutes an "interest solely as a creditor" for purposes of FIRPTA. Regulations provide that an interest in real property other than an interest solely as a creditor includes any right to share in the appreciation in the value of, or in the gross or net proceeds or profits generated by, the real property. Similarly, an interest in an entity (such as a USRPHC) other than an interest solely as a creditor includes any right to share in the appreciation in the value of an interest in, or the assets of, the entity, or a right to share in the gross or net proceeds or profits derived by, the entity.

Regulations further provide that amounts otherwise treated for tax purposes as principal and interest payments on debt obligations of all kinds (including obligations that are interests other than solely as a creditor) do not give rise to gain or loss that is subject to U.S. tax under FIRPTA.[82] Thus, a foreign owner of a note that pays interest contingent on appreciation in U.S. real property incurs U.S. income tax if he disposes of the note, but may not incur U.S. income tax if he holds the note and receives interest payments under its terms.

Estate tax treatment of portfolio obligations

As a general rule, estate tax is imposed on the transfer of the taxable estate of every decedent nonresident who was not a citizen of the United States. For this purpose, the value of the gross estate of such a decedent that is subject to tax is that part of his or her gross estate which at the time of death (or as provided in section 2104(b)) is situated in the United States. Certain types of property are specifically excluded by statute from a nonresident decedent's ****1341*652** gross estate. One type of property granted such an exclusion is a debt obligation if any interest thereon would be eligible for the exemption from income tax for portfolio interest were such interest received by the decedent at the time of his or her death, determined without regard to whether a statement has been received that the beneficial owner of the obligation is not a United States person.

HOUSE BILL

The House bill makes the portfolio interest exemption inapplicable to certain contingent interest income received by foreign persons. In the case of an instrument on which a foreign holder earns both contingent and non-contingent interest, denial of the portfolio interest exemption applies only to the portion of the interest which is contingent interest.

Under the House bill, contingent interest includes interest determined by reference to any of the following attributes of the debtor or any related person: receipts, sales, or other cash flow; income or profits; or changes in the value of property.[83] In addition, contingent interest includes interest determined by reference to any dividend, partnership distribution, or similar payment made by the debtor or a related person.

The House bill provides a number of exceptions to the general definition of contingent interest as detailed above. Under one such exception, interest is not considered contingent solely because the timing of the interest or any related principal payment is subject to a contingency. In addition, portfolio interest treatment is not denied under the House bill solely because the interest is paid with respect to nonrecourse or limited recourse indebtedness. Interest also is not denied portfolio treatment under the House bill if all or substantially all of it is determined by reference to certain other amounts of interest that is not described as contingent above (or by reference to the principal amount of indebtedness on which such other interest is paid). In determining whether all or substantially all of an amount of interest payable on a debt obligation is computed by reference to another amount of interest that is not contingent interest, other factors that affect the amount of interest payable on the debt obligation, but which are not contingencies as contemplated by the House bill, are not taken into account.

Another of the House bill's exceptions provides that interest is not denied portfolio treatment solely because the debtor or a related person enters into a hedging transaction to reduce the risk of interest rate or currency fluctuations with respect to such interest. Interest also is not denied portfolio treatment under the House bill if it is determined by reference to changes in the value of (or any index of the value of) actively traded property other than a USRPI. For this purpose, the term "property" includes stock, and the term "actively traded" has the meaning given to that term under section 1092(d) of the Code. In general, portfolio treatment also is not denied ****1342*653** if the interest is determined by reference to the yield (or any index of the yield) on such actively traded property. However, this exception for interest contingent on the yield of actively traded property does not apply if the property is a debt instrument that itself pays contingent interest as described above, or the actively traded property is stock or other property that represents a beneficial interest in the debtor or a related person.

The House bill provides that application of the provision may be extended to any type of contingent interest not specifically described in the bill, if identified by the Treasury Secretary in regulations. The Secretary is granted authority under the House bill to issue such regulations to supplement the statutory description of contingent interest in order to address cases where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of U.S. income tax. The House bill additionally provides that the Secretary may by regulation exempt any type of interest from denial, under the bill, of portfolio treatment.

The provision is not intended to override existing treaties that reduce or eliminate U.S. withholding tax on interest paid to foreign persons.

Effective date.–The provision applies to interest received after December 31, 1993. It does not apply, however, to any interest paid or accrued with respect to any indebtedness with a fixed term that was issued on or before April 7, 1993, or was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with one clarification. In addition, the conference agreement provides specific rules for the estate tax treatment of contingent interest obligations.

The conferees wish to clarify the treatment under the provision of a debt instrument with a minimum non-contingent interest rate. For example, assume that the interest rate on a debt instrument is stated as the greater of either of two amounts–6% of the principal amount or 10% of gross profits. In such a case, only the gross-profits-based interest is contingent interest. The conferees wish to clarify that with respect to such an instrument, only the excess of the contingent amount, if any, over the minimum fixed interest amount is disqualified from portfolio interest treatment.

The conference agreement provides that, for purposes of determining the gross estate of a nonresident noncitizen decedent subject to the estate tax, a special rule applies to debt instruments that provide for both contingent and noncontingent interest. Under the conference agreement, an appropriate portion of the value of such an instrument, as determined in a manner

prescribed by the Secretary of the Treasury, is treated as property within the United States and, thus, is included in the decedent's gross estate. Until rules are issued that provide guidance as to the proper method for ****1343*654** determining the appropriate portion of such an instrument that is treated as situated in the United States, the conferees intend that taxpayers be permitted to use any reasonable method for making such determination.

The estate tax provision is effective for decedents dying after December 31, 1993. The provision does not apply to any obligation with a fixed term that was issued on or before April 7, 1993, or was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before it was issued.

6. Regulatory authority to address multiple-party financing arrangements (sec. 14238 of the House bill, sec. 8238 of the Senate amendment, sec. 13238 of the conference agreement, and new sec. 7701(l) of the Code)

PRESENT LAW

The tax treatment of a transaction may depend on the identity of the parties to the transaction. For example, a loan by a controlled foreign corporation to a related U.S. borrower is treated as an investment in U.S. property under Code section 956, and as such, may result in an inclusion of income to U.S. shareholders of the foreign corporation. On the other hand, an income inclusion to the U.S. shareholders of the foreign corporation would not have resulted had the loan been made by the same foreign corporation to an unrelated foreign borrower.

Under the Code, payments of interest by U.S. persons to related foreign persons may be subject to 30-percent gross-basis withholding tax. On the other hand, no such tax applies to payments by U.S. persons to unrelated foreign persons of so-called portfolio interest. Under treaties, payments of interest by U.S. persons to related foreign persons who are resident in the treaty country may be subject to little or no U.S. gross-basis tax. By contrast, if the related recipient of interest is resident in a country with respect to which no U.S. income tax treaty is in force, the 30-percent gross-basis tax would be imposed.

Courts have stated that the incidence of taxation depends upon the substance of a transaction as a whole.[84] In certain cases, courts have recharacterized transactions in order to impose tax consistent with this principle. For example, where three parties have engaged in a chain of transactions, the courts have at times ignored the "middle" party as a mere "conduit," and imposed tax as if a single transaction had been carried out between the parties at the ends of the chain.

In Aiken Industries, Inc. v. Commissioner,[85] the Tax Court recharacterized an interest payment by a U.S. person on its note held by a related treaty-country resident, which in turn had a precisely matching obligation to a related non-treaty-country resident, as a payment directly by the U.S. person to the non-treaty-country resident. The transaction in its recharacterized form resulted in a loss of the treaty protection that would otherwise have applied on the payment of interest by the U.S. person to the treaty-country ****1344*655** resident, and thus caused the interest payment to give rise to 30-percent U.S. tax.

The IRS has taken the position that it will apply a similar result in cases where the back-to-back related party debt obligations are less closely matched than those in Aiken Industries, so long as the intermediary entity does not obtain complete dominion and control over the interest payments.[86] The IRS has taken an analogous position where an unrelated financial intermediary is interposed between the two related parties as lender to one and borrower from the other, as long as the intermediary would not have made or maintained the loan on the same terms without the corresponding borrowing.[87] In a recent technical advice memorandum, the IRS has taken the position that interest payments by a U.S. company to a related, treaty-protected financial intermediary may be treated as payments by the U.S. company directly to the foreign parent of the financial intermediary even though the matching payments from the intermediary to the parent are not interest payments, but rather are dividends.[88]

HOUSE BILL

The House bill authorizes the Treasury Secretary to promulgate regulations that set forth rules for recharacterizing any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by the Internal Revenue Code.

It is intended that the provision apply not solely to back-to-back loan transactions, but also to other financing transactions. For example, it would be within the proper scope of the provision for the Secretary to issue regulations dealing with multiple-party transactions involving debt guarantees or equity investments.

Effective date.–The provision is effective on date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

7. Exports of certain unprocessed softwood timber (sec. 8239 of the Senate amendment, sec. 13239 of the conference agreement, and secs. 861–865, 921–927, 951–964, and 991–996 of the Code)

PRESENT LAW

Rules for sourcing income

Subject to significant exceptions, income from the sale of personal property generally is sourced on the basis of the residence of ****1345*656** the seller. One set of exceptions apply to sales of inventory property. Income derived from the purchase of inventory property within the United States and its sale outside the United States constitutes foreign source income. Similarly, income derived from the purchase of inventory property outside the United States and its sale within the United States constitutes domestic source income. Income attributable to the marketing of inventory property by U.S. residents in other cases may also have its source determined to be the place of sale. For this purpose, the place of sale generally is the place where title to the property passes to the purchaser (the "title passage" rule).

Income derived from the manufacture of products in the United States and their sale elsewhere is treated as having a divided source. Under Treasury regulations, 50 percent of such income generally is attributed to the place of production (in this case, the United States), and 50 percent of the income is attributed to marketing activities and is sourced on the basis of the place of sale (determined under the title passage rule). Under certain circumstances, the division of the income between production and marketing activities must be made on the basis of an independent factory or production price, rather than on a 50–50 basis, where a taxpayer sells part of its output to wholly independent distributors or other selling concerns in such a way as to establish fairly the independent factory or production price unaffected by considerations of tax liability (Treas. Reg. sec. 1.863–3(b)(2), Example (1); Notice 89–10, 1989–4 I.R.B. 10).

Income earned by foreign corporations

The United States exerts jurisdiction to tax all income, whether derived in the United States or elsewhere, of U.S. citizens, residents, and corporations. By contrast, the United States taxes nonresident aliens and foreign corporations only on income with a sufficient nexus to the United States. In the case of income earned by a U.S.-owned foreign corporation, generally no U.S. tax is imposed until that income is distributed to the U.S. shareholders as a dividend.

When a U.S.-controlled foreign corporation earns so-called "subpart F income," the United States generally taxes the corporation's 10-percent U.S. shareholders currently on their pro-rata share of that income regardless of whether the income is actually distributed currently to the shareholders. Included among the types of income deemed distributed (generally referred to as "subpart F income") is foreign base company sales income.

Certain subpart F income derived by a controlled foreign corporation that is an export trade corporation (ETC) from certain export activities is exempt from current taxation. Under this exemption, the subpart F income of an ETC is reduced by certain amounts that constitute export trade income (as defined in section 971). No foreign corporation may qualify as an ETC unless it has so qualified generally since 1971.

Foreign sales corporations

A portion of the income of an eligible foreign sales corporation (FSC) that is generated from export property is exempt from Federal ****1346*657** income tax. If the income earned by the FSC is determined under special administrative pricing rules, then the exempt foreign trade income generally is 15/23 of the foreign trade income the FSC derives from the transaction. In addition, a domestic corporation is allowed a 100-percent dividends-received deduction for dividends distributed from the FSC out of earnings attributable to certain foreign trade income. Thus, there generally is no corporate level tax imposed on a portion of the income from exports of a FSC.

Foreign trade income is defined as the gross income of a FSC attributable to foreign trading gross receipts. Foreign trade income includes both the profits earned by the FSC itself from exports and commissions earned by the FSC from products exported by others and services related thereto. In general, the term foreign trading gross receipts means the gross receipts of a FSC which are attributable to the export of certain goods and services. Foreign trading gross receipts are the gross receipts of the FSC that are attributable to the following types of transactions: the sale of export property, the lease or rental of export property, services related and subsidiary to the sale or lease of export property, engineering and architectural services, and export management services.

Export property, for purposes of the FSC rules, is defined as property that is (1) manufactured, produced, grown, or extracted in the United States by a person other than a FSC, (2) held primarily for sale, lease, or rental, in the ordinary conduct of a trade or business by, or to, a FSC, for direct use, consumption, or disposition outside the United States, and (3) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

Domestic International Sales Corporations

Prior law provided for a system of tax deferral for corporations known as Domestic International Sales Corporations, or "DISCs," and their shareholders. Under this system, the profits of a DISC were not taxed to the DISC but were taxed to the shareholders of the DISC when distributed or deemed distributed to them. Each year, a DISC was deemed to have distributed a portion of its income, thereby subjecting that income to current taxation in its shareholders' hands. Federal income tax could generally be deferred on the remaining portion of the DISC's taxable income until the income was actually distributed to the shareholders.

Under current law, a DISC is permitted to continue to defer income attributable to $10 million or less of qualified export receipts. However, unlike the prior-law DISC rules, an interest charge is imposed on the shareholders of the DISC. The amount of the interest is based on the tax otherwise due on the deferred income computed as if the income were distributed. Taxable income of the DISC attributable to qualified export receipts that exceed $10 million is deemed distributed to the DISC's shareholders.

To qualify for DISC treatment, at least 95 percent of a domestic corporation's gross receipts must consist of qualified export receipts. In general, qualified export receipts are receipts, including commission receipts, derived from the sale or lease for use outside the United States of export property, or from the furnishing of services related or subsidiary to the sale or lease of export property. ****1347*658** Export property must be manufactured, produced, grown, or extracted in the United States.

HOUSE BILL

No provision.

Senate Amendment

The Senate amendment modifies certain provisions of the Internal Revenue Code as they apply to exporters of unprocessed timber which is a softwood. For this purpose, the term "unprocessed timber" means any log, cant, or similar form of timber.

The Senate amendment excludes from the definition of "export property" for purposes of the FSC rules any unprocessed timber which is a softwood. Similarly, the Senate amendment excludes from the definition of "export property" for purposes of the DISC rules any unprocessed timber which is a softwood.

The Senate amendment also amends the sales source rules as they apply to inventory property. In this case, the Senate amendment provides that any income from the sale of any unprocessed timber which is a softwood and which was cut from an area located in the United States would be domestic source income.

Finally, the Senate amendment treats as subpart F foreign base company sales income any income derived by a controlled foreign corporation in connection with the sale of any unprocessed timber which is a softwood and was cut from an area located in the United States. In addition, the Senate amendment treats as subpart F foreign base company sales income any income derived by a controlled foreign corporation from the milling of any such timber outside the United States. Any income treated as subpart F income under the Senate amendment that is earned by an export trade corporation is not subject to reduction by the export trade income of the corporation.

Effective date.–The Senate amendment provision is effective for transactions occurring after date of enactment of the proposal.

Conference Agreement

The conference agreement follows the Senate amendment.

D. Energy and Motor Fuels Tax Provisions

1. Energy Btu tax (sec. 14241 of the House bill)

Present Law

No comprehensive Federal energy tax is imposed under present law. Specific Federal excise taxes are imposed on motor fuels (gasoline, special motor fuels, and diesel fuel) used for highway transportation, gasoline and special motor fuels used in motorboats, diesel fuel used in trains, fuels used in inland waterway transportation, and aviation fuels used in noncommercial aviation. Excise taxes also are imposed on coal from domestic mines and on crude oil received at domestic refineries and petroleum products entered into the United States.

****1348*659** House Bill

In general

The House bill imposes excise taxes on petroleum products, natural gas, coal, alcohol fuels, and electricity. The taxes are imposed at a base rate of 26.8 cents per million Btus on all fuels; an additional (supplemental) rate of 34.2 cents per million Btus is imposed on most petroleum products and on alcohol fuels. The electricity tax rate is calculated separately by each seller based on the Btu content of the fuels used in generating its electricity, and on statutorily assumed Btu contents for hydro- and nuclear-generated electricity.

The bill imposes an imputed Btu tax on imported products that the Treasury Department designates as "energy intensive."

The tax applies only to products of industries classified, or individual products classified, as having direct energy inputs, measured as a percentage of the value of the finished product, in excess of two percent.

Points of collection

The petroleum and alcohol fuels taxes are collected on removal of those fuels from registered terminal facilities. The natural gas, coal, and electricity taxes are collected at the retail level. Use of these products is taxable if the use occurs before the point at which tax normally is imposed.

Exemptions

Number 2 distillate fuel oil used for the heating of any building and gasoline and diesel fuel used on farms are exempt from the supplemental petroleum rate. Full exemptions are provided for: electricity generated from renewable sources or biomass; direct energy exports; feedstocks (including electricity used in electrolytic production processes); certain fuels used to produce taxable energy products; fuels used in international commercial transportation; a portion of coal used in certain coke production; and methane recovered from biomass or certain coal mining operations.

Effective date

Effective on July 1, 1994, with the full tax rates being phased in ratably over a three-year period. After that period, the tax rates are indexed for inflation. Floor stocks taxes are imposed on taxable products held beyond the point of collection on July 1, 1994, and on the date of each subsequent rate change.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

****1349*660** 2. Transportation fuels tax increase (sec. 8241 of the Senate amendment, sec. 13241 of the conference agreement, and secs. 4041, 4042, 4081, 4091, 6416, 6421, 6427, 9502, 9503 of the Code)

Present Law

Several separate Federal excise taxes are imposed on specified transportation fuels. Taxable fuels include motor fuels (gasoline, diesel fuel and special motor fuels[89]) used for highway transportation gasoline used in motorboats diesel fuel used in trains fuels used in inland waterways transportation and aviation fuel (gasoline and jet fuel) used in most aviation.

In general, gasoline and special motor fuels used in highway vehicles and motorboats are taxed at a total rate of 14.1 cents per gallon; highway diesel fuel is taxed at a total rate of 20.1 cents per gallon (except certain intercity bus diesel fuel is taxed at a reduced rate of 3.1 cents per gallon); noncommercial aviation gasoline is taxed at a total rate of 15.1 cents per gallon; noncommercial aviation jet fuel is taxed at a total rate of 17.6 cents per gallon; commercial aviation fuels are taxed at a total rate of 0.1 cent per gallon; railroad diesel fuel is taxed at a total rate of 2.6 cents per gallon; and inland waterways fuels are taxed at a total rate of 17.1 cents per gallon in 1993 (increasing to 19.1 cents per gallon in 1994 and 20.1 cents per gallon in 1995 and thereafter).

Revenues from most of these excise taxes are deposited in various trust funds to finance specific Federal public works and

environmental programs. The set of fuels subject to each tax generally reflects the purposes of the trust fund to which the revenues are dedicated. The above rates also include a 2.5-cents-per-gallon general deficit reduction tax (in effect through September 30, 1995[90]) imposed on highway motor fuels, motorboat gasoline and special motor fuels, and train diesel fuel. Revenues from this deficit reduction tax are retained in the General Fund of the Treasury.

One of the dedicated excise taxes is a 0.1 cent per gallon tax (0.05 cent per gallon for qualified ethanol and methanol fuels) imposed on all of the fuels listed above, except liquefied petroleum gas. This tax, in effect through 1995, is deposited into the Leaking Underground Storage Tank ("LUST") Trust Fund, which is used to fund cleanup costs associated with leaking underground storage tanks containing petroleum products.

Certain fuel uses are exempt from the LUST excise tax. Exempt uses include No. 2 distillate fuel oil[91] used as heating oil; gasoline and diesel fuel used on farms for farming purposes; off-highway business uses of fuel (for example, fuel used to operate pumps, generators, compressors, forklift trucks, or bulldozers, or fuel used in vessels used by fisheries or whaling businesses); fuels used by State and local governments; fuels used by nonprofit educational organizations; exported fuels, including fuels used in international ****1350*661** aviation and international shipping; and fuel for military ships and aircraft.

The gasoline excise tax (including the LUST rate on gasoline) is imposed when the fuel leaves terminal storage facilities (i.e., at the terminal rack). The diesel fuel excise tax is imposed on the wholesale sale of that fuel.

House Bill

No provision.

Senate Amendment

In general

The Senate amendment imposes a permanent excise tax of 4.3 cents per gallon on: (1) all transportation fuels currently subject to the Leaking Underground Storage Tank Trust Fund ("LUST") excise tax, except jet fuels used in aviation; (2) liquefied petroleum gases currently taxable as special motor fuels; and (3) diesel fuel used in noncommercial motorboats. Taxable fuels include motor fuels (gasoline, diesel fuel and special motor fuels) used for highway transportation or in motorboats; gasoline used in aviation; gasoline used in off-highway non-business uses (e.g., small engines and recreational trail uses); diesel fuel used in trains; and fuels used in inland waterways transportation.

Point of collection

The new 4.3-cents-per-gallon excise tax generally is collected in the same manner as the existing excise taxes on these fuels (i.e., the tax on gasoline and diesel fuel (see item II.D.3., below) is collected on removal of these fuels from registered terminal facilities, the tax on special motor fuels is collected upon the retail sale of these fuels, and the tax on fuels used in inland waterways is collected on the use of these fuels).

Exemptions

Most fuel uses that are exempt from the LUST tax are exempt from the new tax. These uses include, for example, number 2 distillate (diesel) fuel used as heating oil; gasoline and diesel fuel used on farms for farming purposes; off-highway business uses (such as to operate stationary pumps or compressors or in construction vehicles or vessels operated by fisheries); fuels used by State and local governments and nonprofit schools including fuel used in privately operated school and intracity buses; exported fuels; fuels used in international aviation; and, international and domestic shipping (other than shipping on the inland waterways system).

Disposition of revenues

The 4.3-cents-per-gallon highway and rail fuel revenues are to be transferred to the Highway Trust Fund; aviation gasoline revenues are to be transferred to the Airport and Airway Trust Fund; inland waterways transportation fuel revenues are to be transferred to the Inland Waterways Trust Fund; motorboat fuels and small-engine gasoline revenues are to be transferred to the Aquatic Resources Trust Fund; and non-highway recreational vehicle fuels ****1351*662** revenues are to be transferred to the National Recreational Trails Trust Fund.

Effective date

The provision is effective on October 1, 1993, with appropriate floor stocks taxes being imposed on that date.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications.

The tax base is expanded to include compressed natural gas (CNG) used in highway motor vehicles or motorboats, and jet fuel used in noncommercial aviation. In addition, gasoline and jet fuel used in commercial aviation is subject to the 4.3 cent-per-gallon rate beginning on October 1, 1995 (with appropriate floor stocks taxes being imposed on that date).

CNG used in highway vehicles or motorboats is taxed at a rate of 48.54 cents per mcf (thousand cubic feet) at standard temperature and pressure. The tax is collected on the retail sale or use of CNG under the same provisions as the special motor fuels tax currently is collected.

Revenues from the new 4.3-cents-per-gallon tax (48.54 cents per mcf on compressed natural gas) are retained in the General Fund of the Treasury.

Effective Date.–The provision is effective on October 1, 1993, with appropriate floor stocks taxes being imposed on that date.

3. Modification of the collection of the diesel fuel excise tax (secs. 14242–14243 of the House bill, secs. 8242–8243 of the Senate amendment, secs. 13242–13243 of the conference agreement, and secs. 4041, 4081 and 4091 of the Code)

Present Law

Diesel fuel tax collection

Taxes totalling 20.1 cents per gallon generally are imposed on the sale of diesel fuel by a producer or importer. A reduced rate of 3.1 cents per gallon applies to sales of diesel fuel for use in certain intercity buses. A reduced rate of 2.6 cents per gallon applies to sales of diesel fuel for use in trains.

Diesel fuel for heating and for certain other non-taxable uses (including use on a farm for farming purposes) is exempt from tax. Diesel fuel may be sold without the payment of tax only if certain prescribed conditions are satisfied, which may include registration by the buyer and seller and certification of exempt use by the buyer to the seller.

The producer making a taxable sale generally is liable for the tax. The term producer generally includes refiners, compounders, blenders, wholesale distributors of diesel fuel and dealers selling any diesel fuel exclusively to producers of diesel fuel. Producers must be registered with the Internal Revenue Service ("IRS") and, as a condition of registration, may be required to post a bond. Producers who are registered may sell diesel fuel to other registered ****1352*663** producers without the payment of tax. Thus, in general, most diesel fuel tax is collected at the wholesale distributor level.

Reduced-rate and exempt users who buy diesel fuel after tax has been paid on the fuel may file a claim for credit or refund.

These users must, however, keep business records that will enable the IRS to verify the amount claimed.

Gasoline tax collection

Taxes totalling 14.1 cents a gallon generally are imposed on (1) the removal of gasoline from any refinery, (2) the removal of gasoline from any terminal, (3) the entry of gasoline into the United States, and (4) the sale to any unregistered person unless there was a prior taxable removal or entry of the gasoline under (1), (2), or (3) above. The tax, however, does not apply to any entry or removal of gasoline transferred in bulk to a terminal if all the persons involved (including the terminal operator) are registered. Thus, tax generally is imposed when gasoline is removed by truck from a terminal (this is called removal at the "terminal rack").

As under the diesel fuel tax, exemptions from the gasoline tax are provided for certain uses, such as for farming or for off-highway business use. Taxpayers who use gasoline for an exempt use are eligible to claim a credit or refund of the excise tax included in the price of the gasoline.

Under Treasury Department regulations, the person liable for the tax imposed on gasoline removed from a terminal rack is the "position holder," which, in general, is the person that holds the inventory position to gasoline as reflected on the records of the terminal operator (i.e., has a contract with the terminal operator for the use of storage facilities and terminaling services at a terminal). In addition, the terminal operator may be jointly and severally liable for the tax if the position holder is not registered with Treasury. Terminal operators are required to be registered and, as a condition of registration, may be required to post a bond in such sum as the Treasury determines.

House Bill

Point of collection

The House bill provides that the full 20.1 cents per gallon diesel fuel excise tax rate will be collected on removal from a terminal (i.e., at the terminal rack) under generally the same rules as the gasoline tax currently is collected. However, unlike the gasoline tax, removal of diesel fuel that is destined for an exempt use will not be taxed as the fuel is removed from the terminal if certain dyeing (and marking) requirements are met.

As under present law, a reduced-rate or exempt user that uses tax-paid undyed diesel fuel is permitted a refund if the user establishes that a prior tax was paid with respect to the fuel and that the fuel has been used for an exempt or reduced-rate use.

Administrative provisions

As under present law, the Treasury Department is permitted to require appropriate registration, record-keeping and reporting by persons necessary to implement the collection of the diesel fuel tax.

****1353*664** In addition, the Treasury Department is authorized to impose a new penalty on any person who sold dyed fuel to a person whom the seller knew or had reason to know would use the fuel for a taxable use, or any person who knew or had reason to know that it used dyed fuel for a taxable use. This new penalty is the greater of $1,000 or twice the otherwise applicable tax on the diesel fuel so used.

Effective date

The provision applies to diesel fuel removed from terminals after March 30, 1994.

Senate Amendment

The Senate amendment generally is the same as the House bill, except that marking is not permitted for fuel that is destined for an exempt use. The amendment also provides that the color of the dye may be chosen by the person who is dyeing the fuel but the color must be approved by the Treasury Department or selected from a list of approved colors.

In addition, vendors to farmers and State and local governments are required to apply for refunds for these exempt users, if the vendors sell tax-paid fuel to these persons for use in an exempt use. For other cases of exempt use of tax-paid fuel (e.g., construction, mining, mineral extraction, timber, home heating fuel, nonprofit educational organizations), the exempt user must apply for the refund if tax-paid fuel is used.

Effective date.–The Senate amendment applies to diesel fuel removed from terminals after December 31, 1993.

Conference Agreement

The conference agreement follows the Senate amendment, except that marking is permitted (as provided by regulations) for fuel that is destined for an exempt use. In addition, the conference agreement clarifies that Treasury has authority to physically inspect terminals, dyes and dyeing equipment and storage facilities, and downstream storage facilities; to stop, detain and inspect vehicles, and to establish vehicle inspection sites. The conference agreement provides a $1,000 penalty on facility owners who refuse to permit the Treasury to perform its inspection duties.

The agreement also modifies the penalty for persons who improperly sell or use dyed fuel to be the greater of $1,000 or $10 for each gallon of dyed fuel involved in the violation. For repeated violations, the penalty is multiplied by the number of prior penalties that had been imposed under this provision. Any officer, employee, or agent who willfully participated in any act giving rise to the above penalties will be jointly and severally liable with any business entity that is liable for the penalty. Dyed fuel means any fuel that is dyed, regardless of whether or not the fuel was dyed to administer compliance with the diesel fuel tax provisions.

Effective date.–The conference agreement follows the Senate amendment.

****1354*665** 4. Extend the current 2.5-cents-per-gallon motor fuels excise tax rate; Transfer of revenues (sec. 14244 of the House bill, sec. 8244 of the Senate amendment, sec. 13244 of the conference agreement, and secs. 4041, 4081, and 4091 of the Code)

Present Law

The Federal motor fuels excise taxes generally are imposed on motor fuels (gasoline, special motor fuels, and diesel fuel) used for highway transportation, gasoline and special motor fuels used in motorboats, and diesel fuel used in trains. Off-highway business uses generally are exempt from motor fuels taxes, as are sales for export, for the exclusive use of State and local governments and nonprofit educational organizations, and for farming uses.

The rate of tax on motor fuels is 14.1 cents per gallon on gasoline and special motor fuels and 20.1 cents per gallon on diesel fuel; this rate includes a "deficit reduction rate" (General Fund rate) of 2.5 cents per gallon and a Leaking Underground Storage Tank (LUST) Trust Fund rate of 0.1 cents per gallon. Diesel used in trains is subject only to the 2.5-cents deficit reduction rate and to the 0.1-cents LUST rate (not to the full 20.1 cents per gallon rate). The deficit reduction rate does not apply after September 30, 1995. Revenues from the deficit reduction rate are retained in the General Fund, while the balance of the highway motor fuels tax revenues are transferred to the Highway Trust Fund through September 30, 1999. Revenues from the 0.1-cent-per-gallon LUST tax rate are transferred to the LUST Trust Fund through December 31, 1995.

House Bill

The House bill extends the additional 2.5-cents-per-gallon motor fuels tax rate from October 1, 1995, through September 30, 1999. The revenues from this rate generally are to be transferred into the Highway Trust Fund, with revenues equivalent to 2 cents per gallon credited to the Highway Account and 0.5 cent per gallon to the Mass Transit Account. However, revenues

from the 2.5-cents-per-gallon tax on diesel used in trains are to be retained in the General Fund as are revenues from 2.5 cents per gallon of the tax on motorboat, small-engine, and nonhighway recreational fuels. The provision retains present-law motor fuels tax exemptions.

Effective date.–The extension of the 2.5-cents-per-gallon rate applies after September 30, 1995.

Senate Amendment

The Senate amendment follows the House bill, except that the revenues from the taxes on motorboat fuels and small-engine gasoline are to be transferred to the Aquatic Resources Trust Fund.

Conference Agreement

The conference agreement follows the House bill, except that the tax is 1.25 cents per gallon on diesel used in trains (with the revenues to be retained in the general fund).

****1355*666** 5. Increase inland waterways fuel excise tax (secs. 14413 and 8002 of the House bill and sec. 4042 of the Code)

Present Law

A Federal inland waterway fuel tax is imposed on diesel and other liquid fuels used by commercial cargo vessels on specified inland or intracoastal waterways of the United States (sec. 4042). Revenues from this tax are transferred to the Inland Waterways Trust Fund (sec. 9506).

The tax rate on these fuels is 17 cents per gallon for 1993, 19 cents per gallon for 1994, and 20 cents per gallon for 1995 and thereafter. In addition, there is a 0.1-cent-per-gallon tax on such fuels for the Leaking Underground Storage Tank Trust Fund through December 31, 1995 (sec. 9508).

House Bill

Title XIV

The House bill (sec. 14413) increases the Federal inland waterway fuel tax by 50 cents per gallon in a series of steps. Under the House bill, inland waterways fuel is to be taxed at a rate of 24 cents per gallon in 1994, 40 cents per gallon in 1995, 55 cents per gallon in 1996, and 70 cents per gallon in 1997 and thereafter. The House bill does not change the additional 0.1-cent-per-gallon fuel tax imposed for the Leaking Underground Storage Tank Trust Fund.

Effective date.–The provision is effective beginning January 1, 1994.

Title VIII

The House bill (sec. 8002) also includes a Sense of Congress resolution that the inland waterways fuel tax should not be further increased beyond those increases already scheduled under present law.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provisions.

E. Compliance Provisions

1. Reporting rule for service payments to corporations (sec. 14251 of the House bill, and secs. 6041 and 6041A of the Code)

Present Law

A person engaged in a trade or business who makes payments during the calendar year of $600 or more to a person for services performed must file an information return with the Internal Revenue Service ("IRS") reporting the amount of such payments, as well ****1356*667** as the name, address and taxpayer identification number of the person to whom such payments were made. A similar statement must also be furnished to the person to whom such payments were made. Treasury regulations generally provide, however, that payments to corporations (including payments for services) need not be reported (Treas. Reg. sec. 1.6041–3(c); Prop. Treas. Reg. sec. 1.6041A–1(d)(2)).[92]

House Bill

The House bill provides that payments for services purchased in the course of the payor's trade or business will not be exempt from the information reporting requirements merely because the payments are made to a corporation.

Effective date.– The provision in the House bill applies to payments for services made after December 31, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

The conferees intend that the Office of Management and Budget (OMB) provide a report to the chairmen of the House Ways and Means Committee and the Senate Finance Committee within six months from the date of enactment recommending ways to improve information reporting compliance by Federal executive agencies. Such recommendations could include, for example, requiring Federal executive agencies to disclose their level of compliance in their published annual reports and requiring OMB to report annually to the chairmen of the two tax-writing committees regarding Federal executive agencies' compliance with information reporting obligations. The OMB report should also address appropriate sanctions for Federal executive agency noncompliance with all information reporting requirements and any changes to the law that may be needed to impose such sanctions. For example, IRS could be permitted to assess penalties on an agency for failure to comply with information reporting requirements and to collect the penalties assessed out of the agency's appropriated funds.

The conferees understand that the effectiveness of information reporting generally will be enhanced, and the burden on reporting businesses will be reduced, by a comprehensive taxpayer identification number (TIN) matching system. Accordingly, the conferees encourage the IRS to establish a TIN matching pilot program as soon as practicable and to include governmental agencies in such pilot program.

****1357*668** 2. Raise standard for accuracy-related and preparer penalties (sec. 14252(a) of the House bill, sec. 8252(a) of the Senate amendment, sec. 13251 of the conference agreement, and secs. 6662 and 6694 of the Code)

Present Law

A 20-percent penalty is imposed on any portion of an underpayment of tax that is attributable either to a substantial understatement of income tax on a return, or to negligence or disregard of rules or regulations (sec. 6662).

For this purpose, an understatement[93] is considered substantial if it exceeds the greater of 10 percent of the tax required to be shown on the year's return or $5,000 ($10,000 for corporations other than S corporations and personal holding companies). In determining whether an understatement is substantial, the amount of the understatement is reduced by any portion attributable to an item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the tax return (or a statement attached to the return), provided that the treatment of the disclosed item was not "frivolous" (Treas. Reg. sec. 1.6662–4). Special rules apply to tax shelters.

The term "negligence" includes any failure to make a reasonable attempt to comply with the internal revenue laws, a failure to exercise ordinary and reasonable care in the preparation of a tax return, and a failure to keep adequate books and records or to substantiate items properly (Treas. Reg. sec. 1.6662–3(b)(1)). The term "disregard" includes any careless, reckless, or intentional disregard of rules or regulations (sec. 6662(c)). The penalty for negligence or disregard of rules or regulations does not apply where the position taken is adequately disclosed, the position is not "frivolous", and the taxpayer has adequate books and records and has substantiated items properly (Treas. Reg. sec. 1.6662–3(c)).[94]

A $250 penalty with respect to a return or claim for refund of income tax may be imposed on the preparer if any understatement of tax liability on the return or claim for refund resulted from a position that did not have a realistic possibility of being sustained on its merits and the preparer knew or reasonably should have known of the position (sec. 6694(a)). The penalty is $1,000 per return or claim for refund if the understatement is due to any reckless or intentional disregard of rules or regulations (sec. 6694(b)). These penalties may be avoided where the position taken on the return or claim for refund is adequately disclosed and is not "frivolous" (Treas. Reg. secs. 1.6694–2(c), 1.6694–3(c)(2)).[95]

A "frivolous" position with respect to an item for purposes of all of these penalty provisions is one that is "patently improper" (Treas. Reg. sec. 1.6662–3(b)(3), 1.6662–4(e)(2)(i), 1.6694–2(c)(2), 1.6694 3(c)(2)).

****1358*669** House Bill

The House bill replaces the "not frivolous" standard with a "reasonable basis" standard for purposes of the accuracy-related and income tax return preparer penalties. Thus, under the House bill, a taxpayer can avoid a substantial understatement penalty by adequately disclosing a return position only if the position has at least a reasonable basis. Similarly, a taxpayer can avoid the penalty that applies to disregarding rules or regulations by adequately disclosing a return position only if the position has at least a reasonable basis. The disclosure exception is no longer relevant with respect to the penalty for negligence, because a taxpayer generally is not considered to have been negligent with respect to a return position, regardless of whether it was disclosed, if the position has a reasonable basis. Also, a preparer can avoid a penalty by adequately disclosing a return position only if the position has at least a reasonable basis.

The House bill also eliminates the reasonable cause and good faith exception for fraud, because fraud is inconsistent with reasonable cause and good faith.

Effective date.–The provision in the House bill applies to tax returns due (without regard to extensions) after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that (i) the "not frivolous" standard remains applicable with respect to the income tax return preparer penalty, and (ii) the reasonable cause and good faith exception for fraud is not eliminated.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees intend that "reasonable basis" be a relatively high standard of tax reporting, that is, significantly higher than "not patently improper." This standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim.

3. Modify tax shelter rules for purposes of the substantial understatement penalty (sec. 14252(b) of the House bill and sec. 6662(d) of the Code)

Present Law

Under present law, a 20-percent penalty applies to any portion of an underpayment of income tax required to be shown on a return that is attributable to a substantial understatement of income tax (sec. 6662). For this purpose, an understatement is considered substantial if it exceeds the greater of (1) 10 percent of the tax required to be shown on the return, or (2) $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company). The amount of an understatement of income tax is the excess of the tax required to be shown on the return, over the tax imposed which is shown on the return (reduced by any rebates of tax).

****1359*670** In determining whether an understatement is substantial, the understatement generally is reduced by the portion of the understatement that is attributable to an item for which there was substantial authority or adequate disclosure (sec. 6662(d)(2)). However, in the case of tax shelter items, the understatement is reduced only by the portion of the understatement that is attributable to an item both for which there was substantial authority and with respect to which the taxpayer reasonably believed that the claimed treatment of the item was more likely than not the proper treatment (sec. 6662(d)(2)(C)(i)). Disclosure made with respect to a tax shelter item does not affect the amount of an understatement.

A "tax shelter" is any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if the principal purpose of such partnership, entity, plan or arrangement is to avoid or to evade Federal income tax (sec. 6662(d)(2)(C)(ii)). An item of income, gain, loss, deduction or credit is a "tax shelter item" if the item is directly or indirectly attributable to the principal purpose of the tax shelter (Treas. Reg. sec. 1.6662–4(g)(3)).

House Bill

Under the House bill, an understatement is reduced by the portion of the understatement attributable to a tax shelter item only if, in addition to satisfying existing requirements, the taxpayer can demonstrate that the reasonably anticipated after-tax benefits from the taxpayer's investment in the shelter do not significantly exceed the reasonably anticipated net pre-tax economic profit from such investment. The House bill does not alter the definition of "tax shelter" for purposes of the substantial understatement penalty and, therefore, applies only to investments in arrangements that are considered tax shelters without regard to the House bill.

Effective date.–This provision in the House bill applies to tax returns due (without regard to extensions) after December 31, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

4. Information returns relating to the discharge of indebtedness by certain financial entities (sec. 14253 of the House bill, sec. 8253 of the Senate amendment, sec. 13252 of the conference agreement, and sec. 6050P of the Code)

Present Law

Under section 61(a)(12), a taxpayer's gross income includes income from the discharge of indebtedness. The Code, however, does ****1360*671** not currently require lenders to file information returns with respect to discharged debt.[96]

The determination of when a discharge of indebtedness occurs under section 61(a)(12) is a question of fact. See, e.g., Carl T. Miller Trust v. Commissioner, 76 T.C. 191 (1981). In general, a debtor has discharge of indebtedness income where a debt is repurchased or otherwise deemed satisfied for less than its outstanding balance. For example, discharge of indebtedness income may be triggered by a debt modification under Code section 1001 or where a court adjudicates favorably a defense for the borrower. Discharge of indebtedness income is generally not deemed to result merely because the lender (1) has not actively pursued its claim against the debtor, provided a legal claim still exists, (2) claims a deduction for financial or regulatory reporting purposes, or (3) claims a partial or full bad debt deduction for tax purposes. However, the existence of several factors such as these may, when considered collectively, indicate that a discharge of indebtedness has occurred.

Pursuant to a 1984 Office of Management and Budget memorandum, Treasury Department guidelines currently require Federal agencies to report forgiven debt amounts exceeding $600 to the Internal Revenue Service (IRS) on a Form 1099–G, except where prohibited by law. The Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC) do not issue such reports because of concerns that information reporting may violate the Right to Financial Privacy Act of 1978 (RFPA). The RFPA permits such information reporting if the Code specifically requires it.

House Bill

The House bill requires "applicable financial entities" to file information returns with the IRS regarding any discharge of indebtedness (within the meaning of sec. 61(a)(12)) of $600 or more. Such information returns are required regardless of whether the debtor is subject to tax on the discharged debt. For example, Congress does not expect reporting financial institutions and agencies to determine whether the debtor qualifies for an exclusion under section 108.

The information return must set forth the name, address and taxpayer identification number of the person whose debt was discharged, the amount of debt discharged, and the date on which the debt was discharged.[97] The information return must be filed in the manner and at the time specified by the IRS. The same information also must be provided to the person whose debt is discharged by January 31 of the year following the discharge.

For purposes of the House bill, "applicable financial entities" include: (1) the FDIC, the RTC, the National Credit Union Administration, ****1361*672** and any successor or subunit of any of them;[98] (2) any financial institution (as described in secs. 581 or 591(a)); (3) any credit union; and (4) any subsidiary of an entity described in (2) or (3) which, by virtue of being affiliated with such entity, is subject to supervision and examination by a Federal or State agency regulating such entities.

Under the House bill, the penalties for failure to file correct information reports with the IRS and to furnish statements to taxpayers are similar to those imposed with respect to a failure to provide other information returns. For example, the penalty for failure to furnish statements to taxpayers is generally $50 per failure, subject to a maximum of $100,000 for any calendar year.[99] These penalties are not applicable if the failure is due to reasonable cause and not to willful neglect.

Effective date.–The provision applies to discharges of indebtedness after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill with a technical modification clarifying that other Federal agencies (which are required to report under the current Treasury Department guidelines) are also subject to this provision, so that all Federal agencies are subject to uniform rules.

Conference Agreement

The conference agreement follows the Senate amendment, except that non-governmental entities are only required to report under the provision with respect to discharges of indebtedness after December 31, 1993. Accordingly, governmental entities are required to report under the provision with respect to discharges of indebtedness after the date of enactment. The conferees do not intend that this provision alter the present law determination of when a discharge of indebtedness occurs under section 61(a)(12).

F. Treatment of Intangibles

1. Amortization of goodwill and certain other intangible assets (sec. 14261 of the House bill, sec. 8261 of the Senate amendment, sec. 13261 of the conference agreement, and new sec. 197 of the Code)

Present Law

In determining taxable income for Federal income tax purposes, a taxpayer is allowed depreciation or amortization deductions for the cost or other basis of intangible property that is used in a trade or business or held for the production of income if the property has a limited useful life that may be determined with reasonable accuracy. Treas. Reg. sec. 1.167(a)–(3). These Treasury ****1362*673** Regulations also state that no depreciation deductions are allowed with respect to goodwill.

The U.S. Supreme Court recently held that a taxpayer able to prove that a particular asset can be valued, and that the asset has a limited useful life which can be ascertained with reasonable accuracy, may depreciate the value over the useful life regardless of how much the asset appears to reflect the expectancy of continued patronage. However, the Supreme Court also characterized the taxpayer's burden of proof as "substantial" and stated that it "often will prove too great to bear." Newark Morning Ledger Co. v. United States, — U.S.—, 61 U.S.L.W. 4313 at 4320, 4319 (April 20, 1993).

House Bill

In general

The bill allows an amortization deduction with respect to the capitalized costs of certain intangible property (defined as a "section 197 intangible") that is acquired by a taxpayer and that is held by the taxpayer in connection with the conduct of a trade or business or an activity engaged in for the production of income. The amount of the deduction is determined by amortizing the adjusted basis (for purposes of determining gain) of the intangible ratably over a 14-year period that begins with the month that the intangible is acquired.[1] No other depreciation or amortization deduction is allowed with respect to a section 197 intangible that is acquired by a taxpayer.

In general, the bill applies to a section 197 intangible acquired by a taxpayer regardless of whether it is acquired as part of a trade or business. In addition, the bill generally applies to a section 197 intangible that is treated as acquired under section 338 of the Code. The bill generally does not apply to a section 197 intangible that is created by the taxpayer if the intangible is not created in connection with a transaction (or series of related transactions) that involves the acquisition of a trade or business or a substantial portion thereof.

Except in the case of amounts paid or incurred under certain covenants not to compete (or under certain other arrangements that have substantially the same effect as covenants not to compete) and certain amounts paid or incurred on account of the transfer of a franchise, trademark, or trade name, the bill generally does not apply to any amount that is otherwise currently deductible (i.e., not capitalized) under present law.

No inference is intended as to whether a depreciation or amortization deduction is allowed under present law with respect to any intangible property that is either included in, or excluded from, the definition of a section 197 intangible. In addition, no inference is intended as to whether an asset is to be considered tangible or intangible property for any other purpose of the Internal Revenue Code.

****1363*674** Definition of section 197 intangible

In general

The term "section 197 intangible" is defined as any property that is included in any one or more of the following categories: (1) goodwill and going concern value; (2) certain specified types of intangible property that generally relate to workforce, information base, know-how, customers, suppliers, or other similar items; (3) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof; (4) any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (5) any franchise, trademark, or trade name.

Certain types of property, however, are specifically excluded from the definition of the term "section 197 intangible." The term "section 197 intangible" does not include: (1) any interest in a corporation, partnership, trust, or estate; (2) any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract; (3) any interest in land; (4) certain computer software; (5) certain interests in films, sound recordings, video tapes, books, or other similar property; (6) certain rights to receive tangible property or services; (7) certain interests in patents or copyrights; (8) any interest under an existing lease of tangible property; (9) any interest under an existing indebtedness (except for the deposit base and similar items of a financial institution); (10) a franchise to engage in any professional sport, and any item acquired in connection with such a franchise; and (11) certain transaction costs.

In addition, the Treasury Department is authorized to issue regulations that exclude certain rights of fixed duration or amount from the definition of a section 197 intangible.

Goodwill and going concern value

For purposes of the bill, goodwill is the value of a trade or business that is attributable to the expectancy of continued customer patronage, whether due to the name of a trade or business, the reputation of a trade or business, or any other factor.

In addition, for purposes of the bill, going concern value is the additional element of value of a trade or business that attaches to property by reason of its existence as an integral part of a going concern. Going concern value includes the value that is attributable to the ability of a trade or business to continue to function and generate income without interruption notwithstanding a change in ownership. Going concern value also includes the value that is attributable to the use or availability of an acquired trade or business (for example, the net earnings that otherwise would not be received during any period were the acquired trade or business not available or operational).

****1364*675** Workforce, information base, know-how, customer-based intangibles, supplier-based intangibles and other similar items

Workforce.–The term "section 197 intangible" includes workforce in place (which is sometimes referred to as agency force or assembled workforce), the composition of a workforce (for example, the experience, education, or training of a workforce), the terms and conditions of employment whether contractual or otherwise, and any other value placed on employees or any of their attributes. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a highly-skilled workforce is to be amortized over the 14-year period specified in the bill. As a further example, the cost of acquiring an existing employment contract (or contracts) or a relationship with employees or consultants (including but not limited to any "key employee" contract or relationship) as part of the acquisition of a trade or business is to be amortized over the 14-year period specified in the bill.

Information base.–The term "section 197 intangible" includes business books and records, operating systems, and any other information base including lists or other information with respect to current or prospective customers (regardless of the method of recording such information). Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the intangible value of technical manuals, training manuals or programs, data files, and accounting or inventory control systems is to be amortized over the 14-year period specified in the bill. As a further example, the cost of acquiring customer lists, subscription lists, insurance expirations,[2] patient or client files, or lists of newspaper, magazine, radio or television advertisers is to be amortized over the 14-year period specified in the bill.

Know-how.–The term "section 197 intangible" includes any patent, copyright, formula, process, design, pattern, know-how, format, or other similar item. For this purpose, the term "section 197 intangible" is to include package designs, computer software, and any interest in a film, sound recording, video tape, book, or other similar property, except as specifically provided otherwise in the bill.[3]

Customer-based intangibles.–The term "section 197 intangible" includes any customer-based intangible, which is defined as the composition of market, market share, and any other value resulting from the future provision of goods or services pursuant to relationships with customers (contractual or otherwise) in the ordinary course of business. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of customer base, circulation base, undeveloped market or market growth, insurance in force, mortgage servicing contracts, investment management contracts, or other relationships with customers that involve the future provision of goods or ****1365*676** services, is to be amortized over the 14-year period specified in the bill. On the other hand, the portion (if any) of the purchase price of an acquired trade or business that is attributable to accounts receivable or other similar rights to income for those goods or services that have been provided to customers prior to the acquisition of a trade or business is not to be taken into account under the bill.[4]

In addition, the bill specifically provides that the term "customer-based intangible" includes the deposit base and any similar asset of a financial institution. Thus, for example, the portion (if any) of the purchase price of an acquired financial institution that is attributable to the checking accounts, savings accounts, escrow accounts and other similar items of the financial institution is to be amortized over the 14-year period specified in the bill.

Supplier-based intangibles.–The term "section 197 intangible" includes any supplier-based intangible, which is defined as the value resulting from the future acquisition of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a favorable relationship with persons that provide distribution services (for example, favorable shelf or display space at a retail outlet), the existence of a favorable credit rating, or the existence of favorable supply contracts, is to be amortized over the 14-year period specified in the bill.[5]

Other similar items.–The term "section 197 intangible" also includes any other intangible property that is similar to workforce, information base, know-how, customer-based intangibles, or supplier-based intangibles.

Licenses, permits, and other rights granted by governmental units

The term "section 197 intangible" also includes any license, permit, or other right granted by a governmental unit or any agency or instrumentality thereof (even if the right is granted for an indefinite period or the right is reasonably expected to be renewed for an indefinite period).[6] Thus, for example, the capitalized cost of acquiring from any person a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (which is sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license is to be amortized over the 14-year period specified in the bill. For purposes of the bill, the issuance or renewal of a license, permit, or other right granted by a governmental ****1366*677** unit or an agency or instrumentality thereof is to be considered an acquisition of such license, permit, or other right.

Covenants not to compete and other similar arrangements

The term "section 197 intangible" also includes any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete; hereafter "other similar arrangement") entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof). For this purpose, an interest in a trade or business includes not only the assets of a trade or business, but also stock in a corporation that is engaged in a trade or business or an interest in a partnership that is engaged in a trade or business.

Any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof) is chargeable to capital account and is to be amortized ratably over the 14-year period specified in the bill. In addition, any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) after the taxable year in which the covenant (or other similar arrangement) was entered into is to be amortized ratably over the remaining months in the 14-year amortization period that applies to the covenant (or other similar arrangement) as of the beginning of the month that the amount is paid or incurred.

For purposes of this provision, an arrangement that requires the former owner of an interest in a trade or business to continue to perform services (or to provide property or the use of property) that benefit the trade or business is considered to have substantially the same effect as a covenant not to compete to the extent that the amount paid to the former owner under the arrangement exceeds the amount that represents reasonable compensation for the services actually rendered (or for the property or use of property actually provided) by the former owner. As under present law, to the extent that the amount paid or incurred under a covenant not to compete (or other similar arrangement) represents additional consideration for the acquisition of stock in a corporation, such amount is not to be taken into account under this provision but, instead, is to be included as part of the acquirer's basis in the stock.

Franchises, trademarks, and trade names

The term "section 197 intangible" also includes any franchise, trademark, or trade name. For this purpose, the term "franchise" is defined, as under present law, to include any agreement that provides one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.[7] In addition, as provided under present law, the renewal of ****1367*678** a franchise, trademark, or trade name is to be treated as an acquisition of such franchise, trademark, or trade name.[8]

The bill continues the present-law treatment of certain contingent amounts that are paid or incurred on account of the transfer of a franchise, trademark, or trade name. Under these rules, a deduction is allowed for amounts that are contingent on the productivity, use, or disposition of a franchise, trademark, or trade name only if (1) the contingent amounts are paid as part of a series of payments that are payable at least annually throughout the term of the transfer agreement, and (2) the payments are substantially equal in amount or payable under a fixed formula.[9] Any other amount, whether fixed or contingent, that is paid or incurred on account of the transfer of a franchise, trademark, or trade name is chargeable to capital account and is to be amortized ratably over the 14-year period specified in the bill.

Exceptions to the definition of a section 197 intangible

In general.–The bill contains several exceptions to the definition of the term "section 197 intangible." Several of the exceptions contained in the bill apply only if the intangible property is not acquired in a transaction (or series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business. It is anticipated that the Treasury Department will exercise its regulatory authority to require any intangible property that would otherwise be excluded from the definition of the term "section 197 intangible" to be taken into account under the bill under circumstances where the acquisition of the intangible property is, in and of itself, the acquisition of an asset which constitutes a trade or business or a substantial portion of a trade or business.

The determination of whether acquired assets constitute a substantial portion of a trade or business is to be based on all of the facts and circumstances, including the nature and the amount of the assets acquired as well as the nature and amount of the assets retained by the transferor. It is not intended, however, that the value of the assets acquired relative to the value of the assets retained by the transferor is determinative of whether the acquired assets constitute a substantial portion of a trade or

business.

For purposes of the bill, a group of assets is to constitute a trade or business if the use of such assets would constitute a trade or business for purposes of section 1060 of the Code (i.e., if the assets are of such a character that goodwill or going concern value could under any circumstances attach to the assets). In addition, the acquisition of a franchise, trademark or trade name is to constitute the acquisition of a trade or business or a substantial portion of a trade or business.

In determining whether a taxpayer has acquired an intangible asset in a transaction (or series of related transactions) that involves the acquisition of assets that constitute a trade or business ****1368*679** or a substantial portion of a trade or business, only those assets acquired in a transaction (or a series of related transactions) by a taxpayer (and persons related to the taxpayer) from the same person (and any related person) are to be taken into account. In addition, any employee relationships that continue (or covenants not to compete that are entered into) as part of the transfer of assets are to be taken into account in determining whether the transferred assets constitute a trade or business or a substantial portion of a trade or business.

Interests in a corporation, partnership, trust, or estate.–The term "section 197 intangible" does not include any interest in a corporation, partnership, trust, or estate. Thus, for example, the bill does not apply to the cost of acquiring stock, partnership interests, or interests in a trust or estate, whether or not such interests are regularly traded on an established market.[10]

Interests under certain financial contracts.–The term "section 197 intangible" does not include any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract, whether or not such interest is regularly traded on an established market. Any interest under a mortgage servicing contract, credit card servicing contract or other contract to service indebtedness issued by another person, and any interest under an assumption reinsurance contract[11] is not excluded from the definition of the term "section 197 intangible" by reason of the exception for interests under certain financial contracts.

Interests in land.–The term "section 197 intangible" does not include any interest in land. Thus, the cost of acquiring an interest in land is to be taken into account under present law rather than under the bill. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral rights, timber rights, grazing rights, riparian rights, air rights, zoning variances, and any other similar rights with respect to land. An interest in land is not to include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television services.

The costs of acquiring licenses, permits, and other rights relating to improvements to land, such as building construction or use permits, are to be taken into account in the same manner as the underlying improvement in accordance with present law.

Certain computer software.–The term "section 197 intangible" does not include computer software (whether acquired as part of a trade or business or otherwise) that (1) is readily available for purchase by the general public; (2) is subject to a non-exclusive license; and (3) has not been substantially modified. In addition, the term "section 197 intangible" does not include computer software which is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

****1369*680** For purposes of the bill, the term "computer software" is defined as any program (i.e., any sequence of machine-readable code) that is designed to cause a computer to perform a desired function. The term "computer software" includes any incidental and ancillary rights with respect to computer software that (1) are necessary to effect the legal acquisition of the title to, and the ownership of, the computer software, and (2) are used only in connection with the computer software. The term "computer software" does not include any data base or similar item (other than a data base or item that is in the public domain and that is incidental to the software)[12] regardless of the form in which it is maintained or stored.

If a depreciation deduction is allowed with respect to any computer software that is not a section 197 intangible, the amount of the deduction is to be determined by amortizing the adjusted basis of the computer software ratably over a 36-month period that begins with the month that the computer software is placed in service. For this purpose, the cost of any computer software that is taken into account as part of the cost of computer hardware or other tangible property under present law is to continue to be taken into account in such manner under the bill. In addition, the cost of any computer software that is currently deductible (i.e., not capitalized) under present law is to continue to be taken into account in such manner under the

bill.

Certain interests in films, sound recordings, video tapes, books, or other similar property.–The term "section 197 intangible" does not include any interest (including an interest as a licensee) in a film, sound recording, video tape, book, or other similar property (including the right to broadcast or transmit a live event) if the interest is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

Certain rights to receive tangible property or services.–The term "section 197 intangible" does not include any right to receive tangible property or services under a contract (or any right to receive tangible property or services granted by a governmental unit or an agency or instrumentality thereof) if the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

If a depreciation deduction is allowed with respect to a right to receive tangible property or services that is not a section 197 intangible, the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. It is anticipated that the regulations may provide that in the case of an amortizable right to receive tangible property or services in substantially equal amounts over a fixed period that is not renewable, the cost of acquiring the right will be taken into account ratably over such fixed period. It is also anticipated that the regulations may provide that in the case of a right to receive a fixed amount of tangible property or services over an unspecified period, the cost of acquiring such right will be taken into account ****1370*681** under a method that allows a deduction based on the amount of tangible property or services received during a taxable year compared to the total amount of tangible property or services to be received.

For example, assume that a taxpayer acquires from another person a favorable contract right of such person to receive a specified amount of raw materials each month for the next three years (which is the remaining life of the contract) and that the right to receive such raw materials is not acquired as part of the acquisition of assets that constitute a trade or business or a substantial portion thereof (i.e., such contract right is not a section 197 intangible). It is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract right ratably over the three-year remaining life of the contract. Alternatively, if the favorable contract right is to receive a specified amount of raw materials during an unspecified period, it is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract right by multiplying such cost by a fraction, the numerator of which is the amount of raw materials received under the contract during any taxable year and the denominator of which is the total amount of raw materials to be received under the contract.

It is also anticipated that the regulations may require a taxpayer under appropriate circumstances to amortize the cost of acquiring a renewable right to receive tangible property or services over a period that includes all renewal options exercisable by the taxpayer at less than fair market value.

Certain interests in patents or copyrights.–The term "section 197 intangible" does not include any interest in a patent or copyright which is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

If a depreciation deduction is allowed with respect to an interest in a patent or copyright and the interest is not a section 197 intangible, then the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. It is expected that the regulations may provide that if the purchase price of a patent is payable on an annual basis as a fixed percentage of the revenue derived from the use of the patent, then the amount of the depreciation deduction allowed for any taxable year with respect to the patent equals the amount of the royalty paid or incurred during such year.[13]

Interests under leases of tangible property.–The term "section 197 intangible" does not include any interest as a lessor or lessee under an existing lease of tangible property (whether real or personal).[14] The cost of acquiring an interest as a lessor under a lease of tangible property where the interest as lessor is acquired in connection with the acquisition of the tangible property is to be taken into account as part of the cost of the tangible property. For example, if a taxpayer acquires a shopping center that is leased to tenants ****1371*682** operating retail stores, the portion (if any) of the purchase price of the shopping

center that is attributable to the favorable attributes of the leases is to be taken into account as a part of the basis of the shopping center and is to be taken into account in determining the depreciation deduction allowed with respect to the shopping center.

The cost of acquiring an interest as a lessee under an existing lease of tangible property is to be taken into account under present law (see section 178 of the Code and Treas. Reg. sec. 1.162–11(a)) rather than under the provisions of the bill.[15] In the case of any interest as a lessee under a lease of tangible property that is acquired with any other intangible property (either in the same transaction or series of related transactions), however, the portion of the total purchase price that is allocable to the interest as a lessee is not to exceed the excess of (1) the present value of the fair market value rent for the use of the tangible property for the term of the lease,[16] over (2) the present value of the rent reasonably expected to be paid for the use of the tangible property for the term of the lease.

Interests under indebtedness.–The term "section 197 intangible" does not include any interest (whether as a creditor or debtor) under any indebtedness that was in existence on the date that the interest was acquired.[17] Thus, for example, the value of assuming an existing indebtedness with a below-market interest rate is to be taken into account under present law rather than under the bill. In addition, the premium paid for acquiring the right to receive an above-market rate of interest under a debt instrument may be taken into account under section 171 of the Code, which generally allows the amount of the premium to be amortized on a yield-to-maturity basis over the remaining term of the debt instrument. This exception for interests under existing indebtedness does not apply to the deposit base and other similar items of a financial institution.

Professional sports franchises.–The term "section 197 intangible" does not include a franchise to engage in professional baseball, basketball, football, or other professional sport, and any item acquired in connection with such a franchise. Consequently, the cost of acquiring a professional sports franchise and related assets (including any goodwill, going concern value, or other section 197 intangibles) is to be allocated among the assets acquired as provided under present law (see, for example, section 1056 of the Code) and is to be taken into account under the provisions of present law.

Certain transaction costs.–The term section 197 intangible does not include the amount of any fees for professional services, and any transaction costs, incurred by parties to a transaction ***683** with ****1372** respect to which any portion of the gain or loss is not recognized under part III of subchapter C. This provision addresses a concern that some taxpayers might attempt to contend that the 14-year amortization provided by the provision applies to any such amounts that may be required to be capitalized under present law but that do not relate to any asset with a readily identifiable useful life.[18] The exception is provided solely to clarify that section 197 is not to be construed to provide 14-year amortization for any such amounts. No inference is intended that such amounts would (but for this provision) be properly characterized as amounts eligible for such 14-year amortization, nor is any inference intended that any amounts not specified in this provision should be so characterized. In addition, no inference is intended regarding the proper treatment of professional fees or transaction costs in other circumstances under present law.

Regulatory authority regarding rights of fixed term or duration.– The bill authorizes the Treasury Department to issue regulations that exclude a right received under a contract, or granted by a governmental unit or an agency or instrumentality thereof, from the definition of a section 197 intangible if (1) the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof) and (2) the right either (A) has a fixed duration of less than 14 years or (B) is fixed as to amount[19] and the cost is properly recoverable (without regard to this provision) under a method similar to the unit of production method.

Generally, it is anticipated that the mere fact that a taxpayer will have the opportunity to renew a contract or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will not be taken into account in determining the duration of such right or whether it is for a fixed amount. However, the fact that competitive bidding occurs at the time of renewal and that there are or may be modifications in price (or in terms or requirements relating to the right that increase the cost to the bidder) shall not be within the scope of the preceding sentence unless the bidding also actually produces a fair market value price comparable to the price that would obtain if the rights were purchased immediately after renewal from a person (other than the person granting the renewal) in an arm's length transaction. Furthermore, it is expected that, as under present law, the Treasury Department will take into account all the facts and circumstances, including any facts indicating an actual practice of renewals or expectancy of renewals.

For example, assume Company A enters into a license with Company B to use certain know-how developed by B. In addition, assume that the license is for five years, that the license cannot be ****1373*684** renewed by A except on terms that are fully available to A's competitors and that the price paid by A will reflect the arm's length price that a third party would pay A for the license immediately after renewal. Finally, assume that the license does not constitute a substantial portion of a trade or business and is not entered into as part of a transaction (or series of related transactions) that constitute the acquisition of a trade or business or substantial portion thereof. It is anticipated that in these circumstances the regulations will provide that the license is not a section 197 intangible because it is of fixed duration.

The regulations may also prescribe rules governing the extent to which renewal options and similar items will be taken into account for the purpose of determining whether rights are fixed in duration or amount. It is also anticipated that such regulations may prescribe the appropriate method of amortizing the capitalized costs of rights which are excluded by such regulations from the definition of a section 197 intangible.

Exception for certain self-created intangibles

The bill generally does not apply to any section 197 intangible that is created by the taxpayer if the section 197 intangible is not created in connection with a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion thereof.

For purposes of this exception, a section 197 intangible that is owned by a taxpayer is to be considered created by the taxpayer if the intangible is produced for the taxpayer by another person under a contract with the taxpayer that is entered into prior to the production of the intangible. For example, a technological process or other know-how that is developed specifically for a taxpayer under an arrangement with another person pursuant to which the taxpayer retains all rights to the process or know-how is to be considered created by the taxpayer.

The exception for "self-created" intangibles does not apply to the entering into (or renewal of) a contract for the use of a section 197 intangible. Thus, for example, the exception does not apply to the capitalized costs incurred by a licensee in connection with the entering into (or renewal of) a contract for the use of know-how or other section 197 intangible. These capitalized costs are to be amortized over the 14-year period specified in the bill.

In addition, the exception for "self-created" intangibles does not apply to: (1) any license, permit, or other right that is granted by a governmental unit or an agency or instrumentality thereof; (2) any covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (3) any franchise, trademark, or trade name. Thus, for example, the capitalized costs incurred in connection with the development or registration of a trademark or trade name are to be amortized over the 14-year period specified in the bill.

****1374*685** Special rules

Determination of adjusted basis

The adjusted basis of a section 197 intangible that is acquired from another person generally is to be determined under the principles of present law that apply to tangible property that is acquired from another person. Thus, for example, if a portion of the cost of acquiring an amortizable section 197 intangible is contingent, the adjusted basis of the section 197 intangible is to be increased as of the beginning of the month that the contingent amount is paid or incurred. This additional amount is to be amortized ratably over the remaining months in the 14-year amortization period that applies to the intangible as of the beginning of the month that the contingent amount is paid or incurred.

Treatment of certain dispositions of amortizable section 197 intangibles

Special rules apply if a taxpayer disposes of a section 197 intangible that was acquired in a transaction or series of related

transactions and, after the disposition,[20] the taxpayer retains other section 197 intangibles that were acquired in such transaction or series or related transactions.[21] First, no loss is to be recognized by reason of such a disposition. Second, the adjusted bases of the retained section 197 intangibles that were acquired in connection with such transaction or series of related transactions are to be increased by the amount of any loss that is not recognized. The adjusted basis of any such retained section 197 intangible is increased by the product of (1) the amount of the loss that is not recognized solely by reason of this provision, and (2) a fraction, the numerator of which is the adjusted basis of the intangible as of the date of the disposition and the denominator of which is the total adjusted bases of all such retained section 197 intangibles as of the date of the disposition.

For purposes of these rules, all persons treated as a single taxpayer under section 41(f)(1) of the Code are treated as a single taxpayer. Thus, for example, a loss is not to be recognized by a corporation upon the disposition of a section 197 intangible if after the disposition a member of the same controlled group as the corporation retains other section 197 intangibles that were acquired in the same transaction (or a series of related transactions) as the section 197 intangible that was disposed of. It is anticipated that the Treasury Department will provide rules for taking into account the amount of any loss that is not recognized due to this rule (for example, by allowing the corporation that disposed of the section 197**1375*686 intangible to amortize the loss over the remaining portion of the 14-year amortization period).

Treatment of certain nonrecognition transactions

If any section 197 intangible is acquired in a transaction to which section 332, 351, 361, 721, 731, 1031, or 1033 of the Code applies (or any transaction between members of the same affiliated group during any taxable year for which a consolidated return is filed),[22] the transferee is to be treated as the transferor for purposes of applying this provision with respect to the amount of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor.

For example, assume that an individual owns an amortizable section 197 intangible that has been amortized under section 197 for 4 full years and has a remaining unamortized basis of $300,000. In addition, assume that the individual exchanges the asset and $100,000 for a like-kind amortizable section 197 intangible in a transaction to which section 1031 applies. Under the bill, $300,000 of the basis of the acquired amortizable section 197 intangible is to be amortized over the 10 years remaining in the original 14-year amortization period for the transferred asset and the other $100,000 of basis is to be amortized over the 14-year period specified in the bill.[23]

Treatment of certain partnership transactions

Generally, consistent with the rules described above for certain nonrecognition transactions, a transaction in which a taxpayer acquires an interest in an intangible held through a partnership (either before or after the transaction) will be treated as an acquisition to which the bill applies only if, and to the extent that, the acquiring taxpayer obtains, as a result of the transaction, an increased basis for such intangible.[24]

For example, assume that A, B and C each contribute $700 for equal shares in partnership P, which on January 1, 1994, acquires as its sole asset an amortizable section 197 intangible for $2,100. Assume that on January 1, 1998, (1) the sole asset of P is the intangible acquired in 1994, (2) the intangible has an unamortized basis of $1,500 and A, B, and C each have a basis of $500 in their partnership interests, and (3) D (who is not related to A, B, or C) acquires A's interest in P for $800. Under the bill, if there is no section 754 election in effect for 1998, there will be no change in the basis or amortization of the intangible and D will merely step into the shoes of A with respect to the intangible. D's share of the basis in the intangible will be $500, which will be amortized over the 10 years remaining in the amortization period for the intangible.

**1376*687 On the other hand, if a section 754 election is in effect for 1998, then D will be treated as having an $800 basis for its share of P's intangible. Under section 197, D's share of income and loss will be determined as if P owns two intangible assets. D will be treated as having a basis of $500 in one asset, which will continue to be amortized over the 10 remaining years of the original 14-year life. With respect to the other asset, D will be treated as having a basis of $300 (the amount of step-up obtained by D under section 743 as a result of the section 754 election) which will be amortized over a 14-year period starting with January of 1998. B and C will each continue to share equally in a $1,000 basis in the intangible and amortize that amount over the remaining 10-year life.

As an additional example, assume the same facts as described above, except that D acquires both A's and B's interests in P for $1,600. Under section 708, the transaction is treated as if P is liquidated immediately after the transfer, with C and D each receiving their pro rata share of P's assets which they then immediately contribute to a new partnership. The distributions in liquidation are governed by section 731. Under the bill, C's interest in the intangible will be treated as having a $500 basis, with a remaining amortization period of 10 years. D will be treated as having an interest in two assets: one with a basis of $1,000 and a remaining amortization period of 10 years, and the other with a basis of $600 and a new amortization period of 14 years.

As discussed more fully below, the bill also changes the treatment of payments made in liquidation of the interest of a deceased or retired partner in exchange for goodwill. Except in the case of payments made on the retirement or death of a general partner of a partnership for which capital is not a material income-producing factor, such payments will not be treated as a distribution of partnership income. Under the bill, however, if the partnership makes an election under section 754, section 734 will generally provide the partnership the benefit of a stepped-up basis for the retiring or deceased partner's share of partnership goodwill and an amortization deduction for the increase in basis under section 197.

For example, using the facts from the preceding examples, assume that on January 1, 1998, A retires from the partnership in exchange for a payment from the partnership of $800, all of which is in exchange for A's interest in the intangible asset owned by P. Under the bill, if there is a section 754 election in effect for 1998, P will be treated as having two amortizable ***688**section 197 intangibles: one with a basis of $1,500 and a remaining life of 10 years, and the other with a basis of $300 and a new life of 14 years.

Treatment of certain reinsurance transactions

The bill applies to any insurance contract that is acquired from another person through an assumption reinsurance transaction (but not through an indemnity reinsurance transaction).[25] The amount taken into account as the adjusted basis of such a ****1377**section 197 intangible, however, is to equal the excess of (1) the amount paid or incurred by the acquirer/reinsurer under the assumption reinsurance transaction,[26] over (2) the amount of the specified policy acquisition expenses (as determined under section 848 of the Code) that is attributable to premiums received under the assumption reinsurance transaction. The amount of the specified policy acquisition expenses of an insurance company that is attributable to premiums received under an assumption reinsurance transaction is to be amortized over the period specified in section 848 of the Code.

Treatment of amortizable section 197 intangible as depreciable property

For purposes of chapter 1 of the Internal Revenue Code, an amortizable section 197 intangible is to be treated as property of a character which is subject to the allowance for depreciation provided in section 167. Thus, for example, an amortizable section 197 intangible is not a capital asset for purposes of section 1221 of the Code, but an amortizable section 197 intangible held for more than one year generally qualifies as property used in a trade or business for purposes of section 1231 of the Code. As further examples, an amortizable section 197 intangible is to constitute section 1245 property, and section 1239 of the Code is to apply to any gain recognized upon the sale or exchange of an amortizable section 197 intangible, directly or indirectly, between related persons.

Treatment of certain amounts that are properly taken into account in determining the cost of property that is not a section 197 intangible

The bill does not apply to any amount that is properly taken into account under present law in determining the cost of property that is not a section 197 intangible. Thus, for example, no portion of the cost of acquiring real property that is held for the production of rental income (for example, an office building, apartment building or shopping center) is to be taken into account under the bill (i.e., no goodwill, going concern value or any other section 197 intangible is to arise in connection with the acquisition of such real property). Instead, the entire cost of acquiring such real property is to be included in the basis of the real property and is to be recovered under the principles of present law applicable to such property.

Modification of purchase price allocation and reporting rules for certain asset acquisitions

Sections 338(b)(5) and 1060 of the Code authorize the Treasury Department to promulgate regulations that provide for the allocation of purchase price among assets in the case of certain asset acquisitions. Under regulations that have been promulgated pursuant to this authority, the purchase price of an acquired trade or business must be allocated among the assets of the trade or business using the "residual method."

****1378*689** Under the residual method specified in the Treasury regulations, all assets of an acquired trade or business are divided into the following four classes: (1) Class I assets, which generally include cash and cash equivalents; (2) Class II assets, which generally include certificates of deposit, U.S. government securities, readily marketable stock or securities, and foreign currency; (3) Class III assets, which generally include all assets other than those included in Class I, II, or IV (generally all furniture, fixtures, land, buildings, equipment, other tangible property, accounts receivable, covenants not to compete, and other amortizable intangible assets); and (4) Class IV assets, which include intangible assets in the nature of goodwill or going concern value. The purchase price of an acquired trade or business (as first reduced by the amount of the assets included in Class I) is allocated to the assets included in Class II and Class III based on the value of the assets included in each class. To the extent that the purchase price (as reduced by the amount of the assets in Class I) exceeds the value of the assets included in Class II and Class III, the excess is allocable to assets included in Class IV.

It is expected that the present Treasury regulations which provide for the allocation of purchase price in the case of certain asset acquisitions will be amended to reflect the fact that the bill allows an amortization deduction with respect to intangible assets in the nature of goodwill and going concern value. It is anticipated that the residual method specified in the regulations will be modified to treat all amortizable section 197 intangibles as Class IV assets and that this modification will apply to any acquisition of property to which the bill applies.

Section 1060 also authorizes the Treasury Department to require the transferor and transferee in certain asset acquisitions to furnish information to the Treasury Department concerning the amount of any purchase price that is allocable to goodwill or going concern value. The bill provides that the information furnished to the Treasury Department with respect to certain asset acquisitions is to specify the amount of purchase price that is allocable to amortizable section 197 intangibles rather than the amount of purchase price that is allocable to goodwill or going concern value. In addition, it is anticipated that the Treasury Department will exercise its existing regulatory authority to require taxpayers to furnish such additional information as may be necessary or appropriate to carry out the provisions of the bill, including the amount of purchase price that is allocable to intangible assets that are not amortizable section 197 intangibles.[27]

General regulatory authority

The Treasury Department is authorized to prescribe such regulations as may be appropriate to carry out the purposes of the bill including such regulations as may be appropriate to prevent avoidance of the purposes of the bill through related persons or otherwise. It is anticipated that the Treasury Department will exercise ****1379*690** its regulatory authority where appropriate to clarify the types of intangible property that constitute section 197 intangibles.

Study

The Treasury Department is directed to conduct a continuing study of the implementation and effects of the bill, including effects on merger and acquisition activities (including hostile takeovers and leveraged buyouts). It is expected that the study will address effects of the legislation on the pricing of acquisitions and on the reported values of different types of intangibles (including goodwill). The Treasury Department is to report the initial results of such study as expeditiously as possible and no later than December 31, 1994. The Treasury Department is to provide additional reports annually thereafter.

Report regarding backlog of pending cases

The purpose of the provision is to simplify the law regarding the amortization of intangibles. The severe backlog of cases in audit and litigation is a matter of great concern, and any principles established in such cases will no longer have precedential

value due to the provision. Therefore, the Internal Revenue Service is urged in the strongest possible terms to expedite the settlement of cases under present law. In considering settlements and establishing procedures for handling existing controversies in an expedient and balanced manner, the Internal Revenue Service is strongly encouraged to take into account the principles of the bill so as to produce consistent results for similarly situated taxpayers. However, no inference is intended that any deduction should be allowed in these cases for assets that are not amortizable under present law.

The Treasury Department is required to report annually to the House Ways and Means Committee and the Senate Finance Committee, regarding the volume of pending disputes in audit and litigation involving the amortization of intangibles and the progress made in resolving such disputes. It is expected that the report will also address the effects of the provision on the volume and nature of disputes regarding the amortization of intangibles. The first such report is to be made no later than December 31, 1994.

Effective date

In general

The provision generally applies to property acquired after the date of enactment of the bill. As more fully described below, however, a taxpayer may elect to apply the bill to all property acquired after July 25, 1991. In addition, a taxpayer that does not make this election may elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill pursuant to a binding written contract in effect on the date of enactment of the bill and at all times thereafter until the property is acquired. Finally, special "anti-churning" rules may apply to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable ****1380*691** under present law into amortizable property to which the bill applies.

Election to apply bill to property acquired after July 25, 1991

A taxpayer may elect to apply the bill to all property acquired by the taxpayer after July 25, 1991. If a taxpayer makes this election, the bill also applies to all property acquired after July 25, 1991, by any taxpayer that is under common control with the electing taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)) of the Code) at any time during the period that began on November 22, 1991, and that ends on the date that the election is made.[28]

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[29] and the election may be revoked only with the consent of the Treasury Department.

Elective binding contract exception

A taxpayer may also elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill if the property is acquired pursuant to a binding written contract that was in effect on the date of enactment of the bill and at all times thereafter until the property is acquired. This election may not be made by any taxpayer that is subject to either of the elections described above that apply the provisions of the bill to property acquired before the date of enactment of the bill.

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[30] and the election may be revoked only with the consent of the Treasury Department.

Anti-churning rules

Special rules are provided by the bill to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable under present law into amortizable property to which the bill applies.

Under these "anti-churning" rules, goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions ****1381*692** of the bill [31] may not be amortized as an amortizable section 197 intangible if: (1) the section 197 intangible is acquired by a taxpayer after the date of enactment of the bill; and (2) either (a) the taxpayer or a related person held or used the intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill; (b) the taxpayer acquired the intangible from a person that held such intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill. The anti-churning rules, however, do not apply to the acquisition of any intangible by a taxpayer if the basis of the intangible in the hands of the taxpayer is determined under section 1014(a) (relating to property acquired from a decedent).

For purposes of the anti-churning rules, a person is related to another person if: (1) the person bears a relationship to that person which would be specified in section 267(b)(1) or 707(b)(1) of the Code if those sections were amended by substituting 20 percent for 50 percent; or (2) the persons are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of the Code). A person is treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

In addition, in determining whether the anti-churning rules apply with respect to any increase in the basis of partnership property under section 732, 734, or 743 of the Code, the determinations are to be made at the partner level and each partner is to be treated as having owned or used the partner's proportionate share of the partnership property. Thus, for example, the anti-churning rules do not apply to any increase in the basis of partnership property that occurs upon the acquisition of an interest in a partnership that has made a section 754 election if the person acquiring the partnership interest is not related to the person selling the partnership interest.[32]

These "anti-churning" rules are not to apply to any section 197 intangible that is acquired from a person with less than a 50-percent relationship to the acquirer to the extent that: (1) the seller recognizes gain on the transaction with respect to such intangible; and (2) the seller agrees, notwithstanding any other provision of ****1382*693** the Code, to pay a tax on such gain which, when added to any other Federal income tax imposed on such gain, equals the product of such gain and the highest rate of tax imposed by section 1 or 11 of the Code, whichever is applicable. The seller is treated as satisfying the second requirement if the excess of (1) the total tax liability for the year of the transaction over (2) what its tax liability for such year would have been had the sale of the intangible (but not the remainder of the transaction) been excluded from the computation equals or exceeds the product of the gain on that asset times the relevant maximum rate.

The bill also contains a general anti-abuse rule that applies to any section 197 intangible that is acquired by a taxpayer from another person. Under this rule, a section 197 intangible may not be amortized under the provisions of the bill if the taxpayer acquired the intangible in a transaction one of the principal purposes of which is to (1) avoid the requirement that the intangible be acquired after the date of enactment of the bill or (2) avoid any of the anti-churning rules described above that are applicable to goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill.

Finally, the special rules described above that apply in the case of a transaction described in section 332, 351, 361, 721, 731, 1031, or 1033 of the Code also apply for purposes of the effective date. Consequently, if the transferor of any section 197 property is not allowed an amortization deduction with respect to such property under this provision, then the transferee is not allowed an amortization deduction under this provision to the extent of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor. In addition, this provision is to apply to any subsequent transfers of any such property in a transaction described in section 332, 351, 361, 721, 731, 1031, or 1033.

Senate Amendment

The Senate Amendment is the same as the House bill with the following modifications:

The amount of deduction with respect to any amortizable section 197 intangible is determined by amortizing 75 percent of

the adjusted basis of the intangible over 14 years. The remaining 25 percent of adjusted basis is not amortizable.

Purchased mortgage servicing rights not acquired with a trade or business or substantial portion thereof are excluded from the definition of a section 197 intangible. Any depreciation deduction allowable with respect to such excluded rights must be taken over 9 years (108 months) on a straight-line basis.

In addition to the provisions of the House bill regarding computer software, special allocation and amortization rules apply to acquisitions of certain businesses that have made certain computer software expenditures. Fifty percent of the amortizable portion of "amortizable section 197 intangibles" (i.e., 50 percent of 75 percent of the basis of such assets) is amortized on a straight-line basis over 5 years. The remaining 50 percent of 75 percent is amortized over 14 years under the general rule of the provision.

****1383*694** The Senate amendment does not contain any requirement of reports from the Treasury department.

Conference Agreement

The conference agreement follows the House bill, deleting the statutory requirements of reports from the Treasury Department and with the following additional modifications:

Period of amortization

The straight line amortization period for an amortizable section 197 intangible is 15 years rather than 14 years.

Treasury regulatory authority regarding rights of fixed duration or amount

As a conforming amendment to the change in amortization period, under the conference agreement the Treasury regulatory authority regarding rights of fixed duration or amount applies to rights that have a fixed duration of less than 15 years (rather than 14 years).

Purchased mortgage servicing rights

The conference agreement follows the Senate bill in excluding purchased mortgage servicing rights (not acquired in connection with the acquisition of a trade or business or substantial portion thereof) from the definition of a section 197 intangible. Any depreciation deduction allowable with respect to such excluded rights must be computed on a straight line basis over a period of 9 years (108 months).[33]

Technical correction regarding losses on covenants not to compete

The conference agreement contains a technical correction conforming the statute to both the House and Senate committee reports regarding the amortization of covenants not to compete. The correction provides that a covenant not to compete (or other arrangement to the extent such arrangement has substantially the same effect as a covenant not to compete) shall not be considered to have been disposed of or to have become worthless until the disposition or worthlessness of all interests in the trade or business or substantial portion thereof that was directly or indirectly acquired in connection with such covenant (or other arrangement).

Thus, for example, in the case of an indirect acquisition of a trade or business (e.g., through the acquisition of stock that is not treated as an asset acquisition), it is clarified that a covenant not to compete (or other arrangement) entered into in connection with the indirect acquisition cannot be written off faster than on a straight-line basis over 15 years (even if the covenant or other arrangement expires or otherwise becomes worthless) unless all the ****1384*695** trades or businesses indirectly acquired (e.g., acquired through such stock interest) are also disposed of or become worthless.

Modification of related party rule for purposes of the July 25, 1991 election

The conference agreement modifies the rules regarding the effect of an election on certain related parties, in order to reflect the passage of time since the election was originally proposed (H. Res. 292, introduced November 22, 1991).

The conference agreement provides that an election by a taxpayer affects all property acquired by that taxpayer since July 25, 1991, and also affects all property acquired since that date by parties that are related to the taxpayer at any time between August 2, 1993 (rather than November 22, 1991) and the date of the election.

Consistent with the operation of the consolidated return rules, for this purpose it is intended that any property acquired after July 25, 1991 by an entity that is a member of an affiliated group filing a consolidated return at the time of such acquisition is treated as property acquired by the taxpayer group filing such return for purposes of any election by that taxpayer group.

An election by an affiliated group filing a consolidated return would not force an election to be made by an acquirer of a former group member, even if such acquirer would normally continue the treatment of such former group member's assets (e.g., an acquirer in a transaction that does not affect the inside basis of the assets of the former group member). Similarly, a failure by the former group to make an election would not affect the ability of the former group member, or a new acquirer that is related to such member on the date of the election, to make an election that would affect the post-July 25, 1991 intangible asset acquisitions of that former group member (including such intangible asset acquisitions made while it was a member of the former group).[34]

The conferees expect that the Treasury Department will provide rules regarding appropriate adjustments, if any, to be made where property acquired after July 25, 1991 has been transferred from one related party group to another in a transaction that would not involve a change in asset basis and one or both groups independently make a July 25, 1991 election that would affect the amortization of such property.[35]

****1385*696** Reports regarding backlog of pending cases and implementation and effects of the bill

The conferees reiterate the intended purpose of the provision, as stated in both the House and Senate reports, to simplify the law regarding the amortization of intangibles. The severe backlog of cases in audit and litigation is a matter of great concern to the conferees; and any principles established in such cases will no longer have precedential value due to the provision contained in the conference agreement. Therefore, the conferees urge the Internal Revenue Service in the strongest possible terms to expedite the settlement of cases under present law. In considering settlements and establishing procedures for handling existing controversies in an expedited and balanced manner, the conferees strongly encourage the Internal Revenue Service to take into account the principles of the bill so as to produce consistent results for similarly situated taxpayers. However, no inference is intended that any deduction should be allowed in these cases for assets that are not amortizable under present law.

The conferees intend that the Treasury Department report annually to the House Ways and Means Committee and the Senate Finance Committee regarding the volume of pending disputes in audit and litigation involving the amortization of intangibles and the progress made in resolving disputes. It is intended that the report also address the effects of the provision on the volume and nature of disputes regarding the amortization of intangibles. It is intended that the first such report shall be made no later than December 31, 1994.

The conferees also intend that the Treasury Department conduct a continuing study of the implementation and effects of the bill, including effects on merger and acquisition activities (including hostile takeovers and leveraged buyouts). It is expected that the study will address effects of the legislation on the pricing of acquisitions and on the reported values of different types of intangibles (including goodwill). It is intended that the Treasury Department will report the initial results of such study as expeditiously as possible and no later than December 31, 1994. The Treasury Department is expected to provide additional reports annually thereafter.

2. Modify special treatment of certain liquidation payments (sec. 14262 of the House bill, sec. 8262 of the Senate amendment, sec. 13262 of the conference agreement, and sec. 736 of the Code)

Present Law

Payments for purchase of goodwill and accounts receivable

A current deduction generally is not allowed for a capital expenditure (i.e., an expenditure that yields benefits beyond the current taxable year). The cost of goodwill acquired in connection with the assets of a going concern normally is a capital expenditure, as is the cost of acquiring accounts receivable. The cost of acquiring ****1386*697** goodwill is recovered only when the goodwill is disposed of, while the cost of acquiring accounts receivable is taken into account only when the receivable is disposed of or becomes worthless.

Payments made in liquidation of partnership interest

The tax treatment of a payment made in liquidation of the interest of a retiring or deceased partner depends upon whether the payment is made in exchange for the partner's interest in partnership property. A liquidating payment made in exchange for such property is treated as a distribution by the partnership (sec. 736(b)). Such distribution generally results in gain to the retiring partner only to the extent that the cash distributed exceeds such partner's adjusted basis in the partnership interest.

A liquidating payment not made in exchange for the partner's interest in partnership property receives either of two possible treatments. If the amount of the payment is determined without reference to partnership income, it is treated as a guaranteed payment and is generally deductible (sec. 736(a)(2)). If the amount of payment is determined by reference to partnership income, the payment is treated as a distributive share of partnership income, thereby reducing the distributive shares of other partners (which is equivalent to a deduction) (sec. 736(a)(2)).

A special rule treats amounts paid for goodwill of the partnership (except to the extent provided in the partnership agreement) and unrealized receivables as not made in exchange for an interest in partnership property (sec. 736(b)(2)(B)). Thus, such amounts may be deductible. Unrealized receivables include unbilled amounts, accounts receivable, depreciation recapture, market discount, and certain other items (sec. 751(c)).

Sale or exchange of a partnership interest

The sale or exchange of a partnership interest results in capital gain or loss to the transferor partner, except to the extent that ordinary income or loss is recognized with respect to the partner's share of the partnership's unrealized receivables and substantially appreciated inventory items (sec. 741). It is often unclear whether a payment by a partnership to a retiring partner is made in sale or exchange of, or in liquidation of, a partnership interest.

House bill

In general

The bill generally repeals the special treatment of liquidation payments made for goodwill and unrealized receivables. Thus, such payments would be treated as made in exchange for the partner's interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent. The bill does not change present law with respect to payments made to a general partner in a partnership in which capital is not a material income-producing factor. The determination of whether capital is a material income-producing factor would be ****1387*698** made under principles of present and prior law.[36] For purposes of this provision, capital is not a material income-producing factor where substantially all the gross income of the business consists of fees, commissions, or other compensation for personal services performed by an individual. The practice of his or her profession by a doctor, dentist, lawyer, architect, or accountant will not, as such, be treated as a trade or business in which capital is a material income-producing factor even though the practitioner may have a substantial capital investment in professional equipment or in the physical plant constituting the office from which such individual conducts his or her practice so long as such capital investment is merely incidental to such professional practice. In addition, the bill does not affect the deductibility of compensation paid to a retiring partner for past

services.

Unrealized receivables

The bill also repeals the special treatment of payments made for unrealized receivables (other than unbilled amounts and accounts receivable) for all partners. Such amounts would be treated as made in exchange for the partner's interest in partnership property. Thus, for example, a payment for depreciation recapture would be treated as made in exchange for an interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent.

Effective Date

The provision generally applies to partners retiring or dying on or after January 5, 1993. The provision does not apply to any partner who retires on or after January 5, 1993, if a written contract to purchase the partner's interest in the partnership was binding on January 4, 1993 and at all times thereafter until such purchase. For this purpose, a written contract is to be considered binding only if the contract specifies the amount to be paid for the partnership interest and the timing of any such payments.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement is the same as the House bill and the Senate amendment.

****1388*699** G. Miscellaneous Revenue-Raising Provisions

1. Expansion of 45-day interest-free period for certain refunds (sec. 14273 of the House bill, sec. 7950 of the Senate amendment, sec. 13271 of the conference agreement, and sec. 6611(e) of the Code)

Present Law

No interest is paid by the Government on a refund arising from an original income tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed (sec. 6611(e)).

There is no parallel rule for refunds of taxes other than income taxes (i.e., employment, excise, and estate and gift taxes), for refunds of any type of tax arising from amended returns, or for claims for refunds of any type of tax.

If a taxpayer files a timely original return with respect to any type of tax and later files an amended return claiming a refund, and if the IRS determines that the taxpayer is due a refund on the basis of the amended return, the IRS will pay the refund with interest computed from the due date of the original return.

House Bill

No interest is to be paid by the Government on a refund arising from any type of original tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed.

A parallel rule applies to amended returns and claims for refunds: if the refund is issued by the 45th day after the date the amended return or claim for refund is filed, no interest is to be paid by the Government for that period of up to 45 days (interest would continue to be paid for the period from the due date of the return to the date the amended return or claim for refund is filed). If the IRS does not issue the refund by the 45th day after the date the amended return or claim for refund is filed, interest would be paid (as under present law) for the period from the due date of the original return to the date the IRS pays the refund.

A parallel rule also applies to IRS-initiated adjustments (whether due to computational adjustments or audit adjustments). With respect to these adjustments, the IRS is to pay interest for 45 fewer days than it otherwise would.

Effective date.–The extension of the 45-day processing rule is effective for returns required to be filed (without regard to extensions) on or after January 1, 1994. The amended return rule is effective for amended returns and claims for refunds filed on or after January 1, 1995 (regardless of the taxable period to which they relate). The rule relating to IRS-initiated adjustments applies to refunds paid on or after January 1, 1995 (regardless of the taxable period to which they relate).

****1389*700** Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Deny deductions relating to travel expenses paid or incurred in connection with travel of taxpayer's spouse or dependents (sec. 14274 of the House bill, sec. 8271 of the Senate amendment, sec. 13272 of the conference agreement, and sec. 274(m) of the Code)

Present Law

In general, a taxpayer is permitted a deduction for all ordinary and necessary expenses paid or incurred during the taxable year (1) in carrying on any trade or business and (2) in the case of an individual, for the production of income. Such deductible expenses may include reasonable travel expenses paid or incurred while away from home, such as transportation costs and the cost of meals and lodging.

In the case of ordinary and necessary business expenses, if a taxpayer travels to a destination and while at that destination engages in both business and personal activities, travel expenses to and from such destination are deductible only if the trip is related primarily to the taxpayer's trade or business. If the trip is primarily personal in nature, expenses while at the destination that are properly allocable to the taxpayer's trade or business are deductible even though the traveling expenses to and from the destination are not deductible (Treas. Reg. sec. 1.162–2(b)(1)).

Under Treasury regulations, if the taxpayer's spouse accompanies the taxpayer on a business trip, expenses attributable to the spouse's travel are not deductible unless it is adequately shown that the spouse's presence on the trip has a bona fide business purpose (Treas. reg. sec. 1.162–2(c)). The performance of some incidental service by the spouse does not cause the expenses to qualify as deductible business expenses. Under the Treasury regulations, the same rules apply to any other members of the taxpayer's family who accompany the taxpayer on such a trip.

House Bill

The House bill denies a deduction for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying a person on business travel, unless (1) the spouse, dependent, or other individual accompanying the

person is a bona fide employee of the person paying or reimbursing the expenses, (2) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and (3) the expenses of the spouse, dependent, or other individual would otherwise be deductible. No inference is intended as to the deductibility of these expenses under present law. The denial of the deduction does not apply to expenses that would otherwise qualify as deductible moving expenses.

****1390*701** Effective date.–The provision is effective for amounts paid or incurred after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Increase withholding rate on supplemental wage payments (sec. 14275 of the House bill, sec. 8272 of the Senate amendment, sec. 13273 of the conference agreement, and sec. 3402(g) of the Code)

Present Law

Under Treasury regulations, withholding on supplemental wage payments (such as bonuses, commissions, and overtime pay) that are not paid concurrently with wages (or that are paid concurrently with wages, but are separately stated) for a payroll period may be done at a rate of 20 percent (at the employer's election) (Treas. Reg. sec. 31.3402(g)–1).[37]

House Bill

The House bill increases the applicable withholding rate on supplemental wage payments to 28 percent.

Effective date.–The provision is effective for payments made after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

****1391*702** III. EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

1. Tax benefits for empowerment zones and enterprise communities (secs. 14301–14304 of the House bill, sec. 15001 of the Senate amendment, secs. 13301–13304 of the conference agreement, and new secs. 1391–1397D of the Code)

Present Law

The Internal Revenue Code does not contain general rules that target specific geographic areas for special Federal income tax treatment. Within certain Code sections, however, there are definitions of targeted areas for limited purposes (e.g.,

low-income housing credit and qualified mortgage bond provisions target certain economically distressed areas). In addition, present law provides favorable Federal income tax treatment for certain U.S. corporations that operate in Puerto Rico, the U.S. Virgin Islands, or possessions of the United States to encourage the conduct of trades or businesses within these areas.

House Bill

Designation of eligible areas

In general

A total of 10 empowerment zones and 100 enterprise communities will be designated (subject to availability of eligible areas) during 1994 and 1995. Empowerment zones and enterprise communities will be designated from areas nominated by State and local governments or a governing body of an Indian reservation.[38] Empowerment zones will be eligible for additional tax incentives beyond those provided in the areas designated as enterprise communities.

The Secretary of Housing and Urban Development (HUD) will designate in eligible urban areas six empowerment zones and 65 enterprise communities. (The six empowerment zones located in urban areas will include at least one zone in an urban area the most populous city of which has a population of 500,000 or less.) The Secretary of Agriculture will designate in eligible rural areas[39] three empowerment zones and 30 enterprise communities. In addition, the Secretary of the Interior will designate in eligible Indian reservation areas one empowerment zone and five enterprise communities.[40] Nominated areas located in Indian reservations also will be eligible for designation (provided the bill's criteria are met) as rural areas. All designations will be made in consultation with an Enterprise Board (to be established in the future), which will include ****1392*703** officials from various Federal agencies. The designations will be made prior to January 1, 1996.

Designations of areas as empowerment zones or enterprise communities generally will remain in effect for 10 years. An area's designation can be revoked if the local government(s) or State(s) modify the boundaries of the designated area or do not comply with the agreed-upon strategic plan for the area (described below).[41]

Eligibility criteria for zones

The eligibility criteria for urban areas, rural areas, and Indian reservations generally are the same (except as noted below). To be eligible for designation, a nominated area is required to possess all of the following characteristics:

Resident population.–An eligible urban area is subject to a maximum population of the lesser of (1) 200,000, or (2) the greater of 50,000 or 10 percent of the population of the most populous city within the nominated area. (In addition, the Secretary of HUD is required to designate empowerment zones located in urban areas in such a manner that the aggregate population of such zones does not exceed 750,000.) Rural areas are subject to a maximum population of 30,000. Indian reservations are not subject to a population limit.

General condition.–An eligible area must have a condition of pervasive poverty, unemployment, and general economic distress (which may include distress from a high incidence of crime and narcotics use).

Area.–The nominated area must either (1) have a continuous boundary, or (2) except in the case of a rural area located in more than one State, consist of not more than three noncontiguous parcels. Urban areas must be located entirely within no more than two contiguous States, and rural areas must be located entirely within no more than three contiguous States.

Size.–The nominated area must not exceed (1) 20 square miles for urban areas, or (2) 1,000 square miles for rural areas and Indian reservations.

Poverty.–Each of the census tracts within a nominated area must have a poverty rate of at least 20 percent;[42] at least 90 percent of the area's census tracts must each have a poverty rate of at least 25 percent; and at least 50 percent of the area's census tracts must each have a poverty rate of at least 35 percent.[43] For purposes of these measurements, unpopulated census

tracts and census tracts with limited populations and 75 percent or more zoned for commercial or industrial use will be treated as satisfying the bill's 20-percent and 25-percent poverty rate criteria. With respect ****1393*704** to empowerment zones, each census tract located in a central business district (as such term is used for purposes of the most recent Census of Retail Trade) must have a poverty rate of at least 35 percent. With respect to enterprise communities, each census tract located in a central business district must have a poverty rate of at least 30 percent.[44] If the nominated area consists of noncontiguous parcels, each parcel must separately satisfy the above poverty criteria.

Strategic plan.–A strategic plan must be submitted by the nominating body for purposes of accomplishing the goals of this legislation.

Contents of strategic plan

In order for a nominated area to be eligible for designation, the local government(s) and State(s) in which the area is located[45] are required to provide a strategic plan that: (1) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area; (2) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process; (3) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities; (4) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities; (5) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and (6) generally does not include any action to assist any establishment in relocating from an area outside the nominated area to the nominated area.[46]

Selection process and criteria

From among the eligible areas, designations of empowerment zones and enterprise communities will be made on the basis of (1) the effectiveness of the strategic plan for a nominated area and the assurances that such plan will be implemented and (2) criteria specified by the Enterprise Board.

****1394*705** Tax incentives for empowerment zones

Employer wage credit

A 25-percent credit against income tax liability is available to all employers for the first $20,000 of qualified wages paid to each employee who (1) is a zone resident (i.e., his or her principal place of abode is within the zone[47]), and (2) performs substantially all employment services within the zone in a trade or business of the employer.

The maximum credit per qualified employee is $5,000 per year. Wages paid to a qualified employee continue to be eligible for the credit if the employee earns more than $20,000, although only the first $20,000 of wages will be eligible for the credit.[48] The wage credit is available with respect to a qualified employee, regardless of the number of other employees who work for the employer or whether the employer meets the definition of an "enterprise zone business" (which applies for the investment tax incentives described below).[49]

The credit will be phased out beginning in 2001. The credit rate will be reduced to 20 percent in 2001, 15 percent in 2002, 10 percent in 2003, and five percent in 2004. The credit will not be available after December 31, 2004.

Qualified wages include the first $20,000 of "wages," defined to include (1) salary and wages as generally defined for FUTA purposes, and (2) certain training and educational expenses paid on behalf of a qualified employee, provided that (a) the expenses are paid to an unrelated third party and are excludable from gross income of the employee under section 127 (which is retroactively and permanently extended under another provision of the bill), or (b) in the case of an employee under age 19,

the expenses are incurred by the employer in operating a youth training program in conjunction with local education officials.

The credit is allowed with respect to full-time and part-time employees. However, the employee must be employed by the employer for a minimum period of at least 90 days. Wages are not eligible for the credit if paid to certain relatives of the employer or, if the employer is a corporation or partnership, certain relatives of a person who owns more than 50 percent of the business. In addition, wages are not eligible for the credit if paid to a person who owns more than five percent of the stock (or capital or profits interests) of the employer.[50]

****1395*706** An employer's deduction otherwise allowed for wages paid is reduced by the amount of credit claimed for that taxable year. Wages are not be taken into account for purposes of the empowerment zone employment credit if taken into account in determining the employer's targeted jobs tax credit (TJTC).

The credit is allowable to offset up to 25 percent of alternative minimum tax liability.

Expansion of targeted jobs tax credit (TJTC)

The present-law targeted jobs tax credit (sec. 51) is expanded so that an economically disadvantaged person[51] who resides in an empowerment zone but is employed outside of an empowerment zone will be treated as a member of a targeted group for purposes of that credit.[52] Thus, employers located outside of empowerment zones are entitled to claim the 40-percent TJTC credit on up to $6,000 of qualified first-year wages paid to economically disadvantaged employees who reside within an empowerment zone. An employer located in an empowerment zone may be able to claim the TJTC with respect to wages paid to a member of another targeted group (e.g., a qualified summer youth employee or a participant in a school-to-work program), but such an employer may not utilize the bill's expanded TJTC provision for certain empowerment zone residents who work outside of the zone.

As under present law, an employer's deduction otherwise allowed for wages paid is reduced by the amount of TJTC claimed for that taxable year.

Empowerment savings credit

A tax credit is available to employers for certain contributions made to a tax-qualified defined contribution plan on behalf of employees with respect to whom the wage credit could be claimed. Thus, in general, the credit is available with respect to contributions made on behalf of employees who (1) are zone residents and (2) perform substantially all employment services within the zone in a trade or business of the employer.[53] The credit is equal to 50 percent of contributions up to two percent of compensation (as defined in sec. 414(s)) not in excess of $35,000. If an area is not designated as an empowerment zone for an entire taxable year, the $35,000 compensation limit is ratably reduced to reflect the portion of the year the designation is not in effect.

The credit is available for contributions to any tax-qualified defined contribution plan other than an employee stock ownership plan, stock bonus plan, or a plan subject to the minimum funding requirements (sec. 412). Contributions may also be made to a simplified employee pension (as defined in sec. 408(k) (SEP)). Except as specifically provided, the rules applicable to qualified plans and ****1396*707** SEPs (as the case may be) apply to contributions for which the credit is available.

To be eligible for the credit, the employer contribution must be 100 percent vested, and must be either a matching or nonelective contribution; salary reduction contributions are not eligible for the credit. The plan is required to permit an employee with respect to whom the credit can be claimed to withdraw contributions from the plan (and earnings thereon) for higher education or health expenses, first-time home purchase, or to invest in a qualified enterprise zone business. A plan that permits such withdrawals will not fail to be a tax-qualified plan merely because it does so. The 10-percent early withdrawal tax (sec. 72(t)) will not apply to such withdrawals. The special withdrawal provisions apply only while the employee meets the qualifications for the credit.

The credit is available in lieu of the otherwise available deduction for the contributions and may be claimed in addition to the

employment and training credit. The credit is elective.

Definition of "enterprise zone business"

The investment tax incentives for empowerment zones described below (but not the labor incentives described above) are available only with respect to trade or business activities that satisfy the criteria for an "enterprise zone business." Under the proposal, an "enterprise zone business" is defined as a corporation or partnership (or proprietorship) if for the taxable year: (1) the sole trade or business of the corporation or partnership is the active conduct of a qualified business within an empowerment zone;[54] (2) at least 80 percent of the total gross income is derived from the active conduct of a "qualified business" within a zone; (3) substantially all of the use of its tangible property occurs within a zone; (4) substantially all of its intangible property is used in, and exclusively related to, the active conduct of such business; (5) substantially all of the services performed by employees are performed within a zone; (6) at least 35 percent of the employees are residents of the zone;[55] and (7) no more than five percent of the average of the aggregate unadjusted bases of the property owned by the business is attributable to (a) certain financial property, or (b) collectibles not held primarily for sale to customers in the ordinary course of an active trade or business.

A "qualified business" is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license.[56] In addition, ****1397*708** the leasing of real property that is located within the empowerment zone to others is treated as a qualified business only if (1) the leased property is not residential property, and (2) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses. The rental of tangible personal property to others is not a qualified business unless substantially all of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

Activities of legally separate (even if related) parties would not be aggregated for purposes of determining whether an entity qualifies as an enterprise zone business.

Increased section 179 expensing

The expensing allowance for certain depreciable business property provided under section 179 is increased to $75,000 for qualified zone property of an enterprise zone business (as defined above). In addition, the types of property eligible for section 179 expensing are expanded to include buildings used in enterprise zone businesses.

"Qualified zone property" is defined as depreciable tangible property (including buildings), provided that: (1) such property was acquired by the taxpayer (but not from a related party) after the zone designation took effect; (2) the original use of the property in the zone commences with the taxpayer;[57] and (3) substantially all of the use of the property is in the zone in the active conduct of a trade or business by the taxpayer in the zone. In the case of property which is substantially renovated by the taxpayer, however, such property need not be acquired by the taxpayer after zone designation or originally used by the taxpayer within the zone if during any 24-month period after zone designation the additions to the taxpayer's basis in such property exceed 100 percent of the taxpayer's basis in such property at the beginning of the period or $5,000 (whichever is greater).[58]

As under present law, the section 179 expensing allowance is phased out for certain taxpayers with investment in qualified property during the taxable year above a specified threshold. However, under the bill, the present-law phase-out range is applied by decreasing the amount of the cost of qualified zone property that is deductible under section 179 by one-half of the amount by which the cost of qualified zone property (other than real estate) and other section 179 property exceeds $200,000. Thus, the section 179 deduction applicable to qualified zone property is completely phased-out when the cost of qualified zone property (other than real estate) and other section 179 property placed in service during the taxable year reaches $350,000. For example, assume that a taxpayer places $270,000 of qualified zone property (none of which is real estate) in service during the taxable year and that the taxpayer ****1398*709** does not place any property in service outside the zone. Under the bill, the taxpayer will be allowed to claim a section 179 deduction of $40,000 ($75,000 section 179 amount less $35,000 (one-half of the difference between $270,000 and $200,000)).

As under present-law section 179, all component members of a controlled group are treated as one taxpayer for purposes of

the expensing allowance and application of the phaseout range (sec. 179(d)(6)). Also, as under present law, the $75,000 expensing allowance is to apply at both the partnership (and S corporation) and partner (and shareholder) levels.

The increased expensing allowance would apply for purposes of the alternative minimum tax (i.e., it is not treated as an adjustment for purposes of the alternative minimum tax). The section 179 expensing deduction will be recaptured if the property is not used predominantly in a enterprise zone business (under rules similar to present-law section 179(d)(10)).

Accelerated depreciation

An enterprise zone business (as defined above) will determine depreciation deductions with respect to "qualified zone property" (also defined above) by using the following recovery periods:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
The shorter recovery periods allowed for qualified zone property of enterprise zone businesses will be allowed for alternative minimum tax purposes.

Tax-exempt financing

In general.–The House bill creates a new category of exempt facility private activity bonds, qualified enterprise zone facility bonds for use in empowerment zones. Generally qualified enterprise zone facility bonds are bonds 95 percent or more of the net proceeds of which is used to finance qualified zone property (as generally defined under the bill) for a qualified enterprise zone business (as generally defined under the bill) and land located in the empowerment zone which is functionally related and subordinate to the qualified zone property. These bonds may be issued only while a zone designation is in effect.

Special rules on issue size and use to finance certain facilities.–The aggregate face amount of all outstanding qualified enterprise zone bonds per qualified enterprise zone business may not exceed $3 million for each zone. In addition total outstanding qualified enterprise zone bond financing for each qualified enterprise zone business may not exceed $20 million for all zones. For purposes of these determinations, the aggregate amount of outstanding enterprise zone facility bonds allocable to any business shall be determined under rules similar to rules contained in section 144(a)(10).

****1399*710** As with other exempt facility bonds, these bonds may be issued only to finance identified facilities. However the House committee report indicates that it is not intended that the $3 million per enterprise zone business requirement will limit issuance of a single issue of bonds (in excess of $3 million) for more than one identified facility, provided that the $3 million limit is satisfied with respect to each zone business. The House committee report contemplates that ease of marketing these exempt facility bonds, like other exempt facility bonds, may require common marketing of separate issues of bonds for discrete facilities if such issues are simultaneous or proximate in time.

The House bill exempts qualified enterprise zone facility bonds from the general restrictions on financing the acquisition of existing property (sec. 147(d)). Additionally, these bonds are exempted from the general restriction on financing land (or an interest therein) with 25 percent or more of the net proceeds of a bond issue (sec. 147(c)(1)(A)). Unless otherwise noted, all tax-exempt bond rules relating to exempt facility bonds shall apply to qualified enterprise zone facility bonds.

Penalty for failure to continue as zone business or to use bond-financed property in the zone business.–The House bill extends change-in-use rules to qualified enterprise zone facility bonds. Accordingly, interest on all bond-financed loans to a business that no longer qualifies as an enterprise zone business, or on loans to finance property that ceases to be used by the business in the enterprise zone, becomes nondeductible, effective from the first day of the taxable year in which the disqualification or cessation of use occurs. This penalty is waived if: (1) the issuer and principal user in good faith attempted to meet these requirements and (2) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered. This penalty does not apply solely by reason of the termination or revocation of a designation as an empowerment zone. The good faith rule described above also applies to certain other requirements of qualified enterprise zone facility bonds.

Partial exemption from State volume limitations.–Under the House bill, only 25 percent of the amount of qualified enterprise

zone facility bonds is subject to the State private activity volume cap, provided that enterprise zone residents possess more than a 50-percent ownership interest in the principal user of the bond-proceeds. If the resident ownership requirement is not satisfied, then 50 percent of the qualified enterprise zone facility bonds (rather than 25 percent) is subject to the State private activity volume cap.

Exception from bank pro rata interest deduction disallowance.–The House bill exempts financial institutions from the general rule denying them a ratable portion of their otherwise allowable interest expense deductions to the extent that they have invested in qualified enterprise zone facility bonds (sec. 265(b)).

****1400*711** Tax incentives available in both empowerment zones and enterprise communities

Tax-exempt financing

Under the House bill, the tax-exempt financing benefits described above are available (with one modification) to otherwise qualifying businesses that are located in enterprise communities. The one modification to the tax-exempt financing benefits is that 50 percent (rather than 25 percent) of the amount of the enterprise zone facility bonds is subject to the State private activity volume cap, regardless of whether enterprise zone residents possess more than a 50 percent ownership interest in the principal user of the bond-proceeds.

Low-income housing credit (LIHC) expansion

For purposes of the low-income housing credit (sec. 42),[59] a building located (1) in an empowerment zone or an enterprise community, and (2) in a census tract having a poverty rate of at least 30 percent will be treated as being located in a "difficult to develop" area, within which the eligible basis of buildings for purposes of computing the credit is 130 percent of the cost basis. (Thus, the credit will be based on 91 percent of present value instead of the regular LIHC rate of 70 percent of present value.) The present-law State credit cap and other rules continue to apply.

The House bill also provides an additional housing credit dollar amount of $818,000 to each empowerment zone and enterprise community. Allocation of this amount may be made over a three-year period. This amount is available for allocation only during calendar years 1994, 1995, and 1996. The House committee report indicates that it is intended that these amounts be allocated in a way that will not displace, but will supplement, allocations to low-income housing credit buildings located within empowerment zones and enterprise communities.

Effective date

Under the House bill, empowerment zone and enterprise community designations will be made only during calendar years 1994 and 1995. The tax incentives will be available during the period that the designation remains in effect, which generally will be a period of 10 years.

Senate Amendment

No provision. (However, section 15001 of the Senate amendment states that it is the sense of the Senate that Congress should adopt Federal enterprise zone legislation.)

Conference Agreement

The conference agreement generally follows the House bill in providing certain tax benefits for areas designated as empowerment zones and enterprise communities. However, the conference agreement makes certain modifications regarding the ****1401*712** designation of areas as zones or communities as well as the extent and nature of tax incentives available in such areas.[60]

Designation of eligible areas

In general

The conference agreement follows the House bill, except that Indian reservations are not eligible for designation as empowerment zones or enterprise communities. The conference agreement provides separate tax incentives for businesses operating in Indian reservations in sections 13411 and 13412. Thus, under the conference agreement, nine empowerment zones and 95 enterprise communities will be designated (subject to availability of eligible areas) during 1994 and 1995. Six empowerment zones and 65 enterprise communities will be located in eligible urban areas[61] and three empowerment zones and 30 enterprise communities will be located in rural areas.[62]

Eligibility criteria for zones

The conference agreement follows the House bill, except that, with respect to an area nominated to be an empowerment zone, the conference agreement does not allow the appropriate Secretary (the Secretary of HUD with respect to urban areas and the Secretary of Agriculture with respect to rural areas) discretion to reduce the applicable poverty criteria in a nominated area.[63] In addition, as under the House bill, no area may be designated as an empowerment zone or enterprise community unless the nominating State and local governments provide written assurances that their strategic plan will be implemented.[64]

"General distress" may be indicated by factors such as high crime rates, high vacancy rates, or designation of an area as a disaster area or high intensity drug trafficking area ("HIDTA") under the Anti-Drug Abuse Act of 1988; job loss (including manufacturing job loss); and economic distress due to closures of military bases or restrictions on timber harvesting. In addition, consideration should be given to communities along the U.S. border in which population ****1402*713** has increased significantly, without a corresponding expansion of basic infrastructure, and in which a significant portion of the area's population reside in substandard housing.

Tax incentives for empowerment zones

The conference agreement provides the following tax incentives for areas designated as empowerment zones:

Employer wage credit

A 20-percent credit against income tax liability is available to all employers for the first $15,000 of qualified wages paid to each employee who (1) is a zone resident (i.e., his or her principal place of abode is within the zone[65]), and (2) performs substantially all employment services within the zone in a trade or business of the employer.

The maximum credit per qualified employee is $3,000 per year. Wages paid to a qualified employee continue to be eligible for the credit if the employee earns more than $15,000, although only the first $15,000 of wages will be eligible for the credit.[66] The wage credit is available with respect to a qualified employee, regardless of the number of other employees who work for the employer or whether the employer meets the definition of an "enterprise zone business" (which applies for the increased section 179 expensing and the tax-exempt financing provisions described below).[67]

The credit will be phased out beginning in 2002. The credit rate will be reduced to 15 percent in 2002, 10 percent in 2003, and five percent in 2004. The credit will not be available after December 31, 2004.

Qualified wages include the first $15,000 of "wages," defined to include (1) salary and wages as generally defined for FUTA purposes, and (2) certain training and educational expenses paid on behalf of a qualified employee, provided that (a) the expenses are paid to an unrelated third party and are excludable from gross income of the employee under section 127 (which is retroactively and permanently extended under another provision of the bill), or (b) in the case of an employee under age 19, the expenses are incurred by the employer in operating a youth training program in conjunction with local education officials.

The credit is allowed with respect to full-time and part-time employees. However, the employee must be employed by the employer for a minimum period of at least 90 days. Wages are not eligible for the credit if paid to certain relatives of the employer or, if the employer is a corporation or partnership, certain relatives of a person who owns more than 50 percent of the business. In addition, wages are not eligible for the credit if paid to a person who ****1403*714** owns more than five percent of the stock (or capital or profits interests) of the employer.[68]

An employer's deduction otherwise allowed for wages paid is reduced by the amount of credit claimed for that taxable year. Wages are not be taken into account for purposes of the empowerment zone employment credit if taken into account in determining the employer's targeted jobs tax credit (TJTC).

The credit is allowable to offset up to 25 percent of alternative minimum tax liability.

Increased section 179 expensing

For an enterprise zone business, the expensing allowance for certain depreciable business property provided under section 179 is increased by the lesser of: (1) $20,000 or (2) the cost of section 179 property that is "qualified zone property" (as defined in the House bill) and that is placed in service during the taxable year. As under present law, the types of property eligible for section 179 expensing under this provision do not include buildings.

As under present law, the section 179 expensing allowance is phased out for certain taxpayers with investment in qualified property during the taxable year above a specified threshold. However, under the conference agreement, the present-law phase-out range is applied by taking into account only one-half of the cost of qualified zone property that is section 179 property. In applying the section 179 phaseout, the cost of section 179 property that is not qualified zone property is not reduced.

In general, all other provisions of present-law section 179 apply to the increased expensing for enterprise zone businesses. Thus, all component members of a controlled group are treated as one taxpayer for purposes of the expensing allowance and the application of the phaseout range (sec. 179(d)(6)). The limitations apply at both the partnership (and S corporation) and partner (and shareholder) levels. The increased expensing allowance is allowed for purposes of the alternative minimum tax (i.e., it is not treated as an adjustment for purposes of the alternative minimum tax). The section 179 expensing deduction will be recaptured if the property is not used predominantly in a enterprise zone business (under rules similar to present-law section 179(d)(10)).

Definition of "enterprise zone business"

The conference agreement follows the House bill.

****1404*715** Tax-exempt facility bonds available for both empowerment zones and enterprise communities

In general

The conference agreement creates a new category of exempt facility private activity bonds–qualified enterprise zone facility bonds–for use in empowerment zones and enterprise communities. These bonds are fully subject to the State private activity bond volume limitations.

Generally, qualified enterprise zone facility bonds are bonds 95 percent or more of the net proceeds of which are used to finance: (1) qualified zone property the principal user of which is a qualified enterprise zone business, and (2) functionally related and subordinate land located in the empowerment zone or enterprise community. Qualified zone property for these purposes is generally defined as under the House bill, except that it also includes property which would qualify as qualified zone property but for the fact that it is located in an enterprise community rather than in an empowerment zone. For these purposes, the term "enterprise zone business" has the same meaning generally given to it under the House bill, but also

includes a business located in a zone or community which would qualify as an enterprise zone business if it were separately incorporated.[69] These bonds may only be issued while an empowerment zone or enterprise community designation is in effect.

Special rules on issue size and use to finance certain facilities

The aggregate face amount of all outstanding qualified enterprise zone bonds per qualified enterprise zone business may not exceed $3 million for each zone or community. In addition, total outstanding qualified enterprise zone bond financing for each principal user of these bonds may not exceed $20 million for all zones and communities. For purposes of these determinations, the aggregate amount of outstanding enterprise zone facility bonds allocable to any business shall be determined under rules similar to rules contained in section 144(a)(10).

As with other exempt facility bonds, these bonds may be issued only to finance identified facilities. However, the $3 million-per-enterprise zone business requirement should not limit issuance of a single issue of bonds (in excess of $3 million) for more than one identified facility, provided that the $3 million limit is satisfied with respect to each zone business. The conferees recognize that it may be necessary to permit common marketing of separate issues of bonds for discrete facilities (if such issues are simultaneous or proximate in time) to enable qualified enterprise zone facility bonds to be marketed in a manner comparable to other exempt facility bonds.

The conference agreement exempts qualified enterprise zone facility bonds from the general restrictions on financing the acquisition of existing property (sec. 147(d)). Additionally, these bonds ****1405*716** are exempted from the general restriction on financing land (or an interest therein) with 25 percent or more of the net proceeds of a bond issue (sec. 147(c)(1)(A)). Unless otherwise noted, all other tax-exempt bond rules relating to exempt facility bonds (including the restrictions on bank deductibility of interest allocable to tax-exempt bonds) apply to qualified enterprise zone facility bonds.

Penalty for failure to continue as zone business or to use bond-financed property in the zone business

The conference agreement extends change-in-use rules to qualified enterprise zone facility bonds. Accordingly, interest on all bond-financed loans to a business that no longer qualifies as an enterprise zone business, or on loans to finance property that ceases to be used by the business in the empowerment zone or enterprise community, becomes nondeductible, effective from the first day of the taxable year in which the disqualification or cessation of use occurs. This penalty is waived if: (1) the issuer and principal user in good faith attempted to meet these requirements and (2) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered. This penalty does not apply solely by reason of the termination or revocation of a designation as an empowerment zone or enterprise community. The good faith rule described above also applies to certain other requirements of qualified enterprise zone facility bonds.

Effective date

The conference agreement follows the House bill.

2. Tax credit for contributions to certain community development corporations (sec. 14311 of the House bill, sec. 13311 of the conference agreement, and sec. 38 of the Code)

Present Law

There are no tax credits available for contributions to community development corporations (CDCs).

House Bill

Under the House bill, a taxpayer will receive a credit for qualified cash contributions made to certain CDCs. If a taxpayer

makes a qualified contribution, the credit may be claimed by the taxpayer for each taxable year during a 10-year period beginning with the taxable year during which the contribution was made. The credit that may be claimed for each year is equal to five percent of the amount of the contribution to the CDC. Thus, during the 10-year credit period, the taxpayer may claim aggregate credit amounts totalling 50 percent of the contribution.

For purposes of this provision, a qualified contribution is defined as any transfer of cash that meets the following requirements: (1) it is made to one of up to 10 CDCs selected by the Secretary of HUD, provided that the contribution is made during the five-year period after the CDC is so selected by the Secretary of HUD; (2) the amount is available for use by the CDC for at least ****1406*717** 10 years;[70] (3) the contribution is to be used by the CDC to provide qualified low-income assistance[71] within its operational area; and (4) the CDC designates the contribution as eligible for the credit. The aggregate amount of contributions which may be designated by a selected CDC as eligible for the credit may not exceed $4 million.

Prior to July 1, 1994, the Secretary of HUD may select up to 10 CDCs as eligible to participate in the program (subject to the availability of eligible CDCs), at least four of which must operate in rural areas. To be selected, a CDC must have the following characteristics: (1) it must be a tax-exempt charity described in section 501(c)(3) of the Code; (2) its principal purposes must include promoting employment and business opportunities for individuals who are residents of its operational area; and (3) its operational area must (a) meet the geographic limitations that would apply if the area were designated as an empowerment zone or enterprise community, (b) have an unemployment rate that is not less than the national average, and (c) have a median family income which does not exceed 80 percent of the median family income of residents within the jurisdiction of the local government.

The credit is subject to the general business credit limitations of section 38 and, therefore, may not be used to reduce tentative minimum tax.

Effective date.–The provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the aggregate amount of contributions which may be designated by a selected CDC as eligible for the credit may not exceed $2 million, and the Secretary of HUD may select up to 20 CDCs as eligible to participate in the program.[72] In addition, the conferees intend that, in selecting CDCs, the Secretary of HUD shall give priority to corporations with a demonstrated record of performance in administering community development programs which target at least 75 percent of the jobs emanating from their investment funds to low income or unemployed individuals.

****1407*718** 3. Tax incentives for businesses on Indian reservations (secs. 8181–8182 of the Senate amendment, sec. 13321–13322 of the conference agreement, secs. 280C(a), 196(c), 39(d), and 38(b), and new secs. 168(j) and 45A of the Code)

Present Law

The Internal Revenue Code does not contain general rules that target specific geographic areas for special Federal income tax treatment. Within certain Code sections, however, there are definitions of targeted areas for limited purposes (e.g., low-income housing credit and qualified mortgage bond provisions target certain economically distressed areas). In addition, present law provides favorable Federal income tax treatment for certain U.S. corporations that operate in Puerto Rico, the U.S. Virgin Islands, or a possession of the United States to encourage the conduct of trades or businesses within these areas.

House Bill

No provision.

Senate Amendment

In general

Under the Senate amendment, businesses located on Indian reservations[73] generally are allowed a credit against income tax liability for certain investments (the "Indian reservation credit") and a credit against income tax liability for certain wages and health insurance costs (the "Indian employment credit").

Indian reservation credit

A credit against income tax liability is allowed for investments in certain property located or used within an Indian reservation which has a level of unemployment that greatly exceeds the national average. In general, the amount of the credit allowed a taxpayer for any taxable year equals the sum of: (1) 10 percent of the qualified investment in "reservation personal property" placed in service by the taxpayer during the taxable year; and (2) 15 percent of the qualified investment in "new reservation construction property" and "reservation infrastructure investment" placed in service by the taxpayer during the taxable year.

The full amount of the credit is allowed only if the Indian unemployment rate[74] on the applicable Indian reservation exceeds 300 percent of the national average unemployment rate at any time during the calendar year in which the property is placed in service or during either of the immediately preceding two calendar years.[75]****1408*719** If the Indian unemployment rate on the applicable Indian reservation exceeds 150 percent but does not exceed 300 percent of the national average unemployment rate at any time during the relevant calendar years, then only one-half of the otherwise allowable credit may be claimed (i.e., the credit rates are 7.5 percent and 5 percent). If the Indian unemployment rate on the applicable Indian reservation does not exceed 150 percent of the national average unemployment rate at any time during the relevant calendar years, then no credit is allowed.

For purposes of the credit, "reservation personal property" is defined as property: (1) for which a depreciation deduction is allowable under section 168 of the Code; (2) which is not nonresidential real property, residential rental property, or any other real property with a class life of more than 12.5 years; (3) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; and (4) which is not used or located outside the Indian reservation on any regular basis.

In addition, "new reservation construction property" is defined as property: (1) which is nonresidential real property, residential rental property, or any other real property with a class life of more than 12.5 years for which a depreciation deduction is allowable under section 168 of the Code; (2) which is located in an Indian reservation; (3) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation;[76] and (4) which is originally placed in service by the taxpayer.

Further, "reservation infrastructure investment" is defined as property: (1) for which a depreciation deduction is allowable under section 168 of the Code (whether real or personal property); (2) which benefits the tribal infrastructure; (3) which is available to the general public; and (4) which is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation. The term "reservation infrastructure investment" is to include otherwise qualifying property that is used or located outside an Indian reservation only if the purpose of the property is to connect to existing tribal infrastructure in the reservation (including, but not limited to, roads, power lines, water systems, railroad spurs, and communications facilities).

Notwithstanding the above definitions, property will not qualify for the Indian reservation credit if the property is acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section

465(b)(3)(C) of the Code). In addition, property will not qualify for the credit if the property (or any portion thereof) is placed in service for purposes of conducting or housing certain gaming activities.[77] Finally, property will not qualify for the Indian reservation credit if the energy ****1409*720** credit or the rehabilitation credit is allowed with respect to the property.

In the case of reservation personal property and new reservation construction property, the qualified investment for purposes of determining the amount of the credit is the taxpayer's basis in the property. In the case of reservation infrastructure investment, the qualified investment for purposes of determining the amount of the credit is the amount expended by the taxpayer for the acquisition or construction of the property. The at-risk rules of section 49 of the Code also apply in determining the amount of the qualified investment for purposes of the Indian reservation credit.

The basis of new reservation construction property is reduced by the full amount of the credit allowed with respect to the property. The basis of reservation personal property and reservation infrastructure investment is reduced by only 50 percent of the credit allowed with respect to the property. The Indian reservation credit is recaptured (i.e., the amount of tax due is increased) if, before the end of the applicable recovery period with respect to the property, the property is disposed of by the taxpayer, or, in the case of reservation personal property, is removed from the Indian reservation, converted, or otherwise ceases to be reservation personal property with respect to the taxpayer.

Indian employment credit

A credit against income tax liability is also allowed to employers for certain wages and health insurance costs paid or incurred by the employer with respect to certain employees. In general, the amount of the credit allowed an employer for any taxable year equals 10 percent[78] of the sum of (1) the wages paid or incurred by the employer for services performed by an employee while the employee is a qualified employee ("qualified wages");[79] and (2) the amount paid or incurred by the employer for health insurance (other than health insurance provided pursuant to a salary reduction arrangement) to the extent that such amount is attributable to coverage provided to an employee while the employee is a qualified employee ("qualified employee health insurance costs").

The credit is available to an employer, however, only to the extent its qualified wages and health insurance costs during the current year exceed such wages and costs incurred by the employer during 1993. Specifically, the amount of the credit allowed an employer for any taxable year is limited to an amount equal to the credit rate multiplied by the excess (if any) of (1) the sum of the qualified wages and qualified ****1410** health insurance costs paid or incurred by the employer during the taxable year with respect to employees whose wages (which are paid or incurred by the employer) for such taxable year do not exceed the amount determined at an annual rate of $30,000 (as adjusted for inflation for years beginning after 1993), over (2) the sum of the qualified wages and qualified ***721** health insurance costs paid or incurred by the employer (or any predecessor) during the 1993 calendar year with respect to employees whose wages (which are paid or incurred by the employer or any predecessor) for such taxable year do not exceed the amount determined at an annual rate of $30,000.[80] For purposes of this limitation, all employees of a controlled group of corporations (or partnerships or proprietorships under common control) are treated as employed by a single employer.

In general, an individual is a qualified employee of an employer for any period only if: (1) the individual is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe;[81] (2) substantially all of the services performed during such period by the employee for such employer are performed within an Indian reservation; (3) the principal place of abode of the employee while performing such services is on or near the Indian reservation within which the services are performed; and (4) the employee began work for such employer on or after January 1, 1994.

An employee may be treated as a qualified employee for a maximum period of seven years after the day on which the employee first begins work for the employer. In addition, an employee will not be treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during such taxable year (whether or not for services rendered within the Indian reservation) exceeds an amount determined at an annual rate of $30,000 (as adjusted for inflation for years beginning after 1993). Further, an employee will be treated as a qualified employee for a taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer.

Qualified employees do not include certain relatives or dependents of the employer (described under present-law section

51(i)(1)) or, if the employer is a corporation, certain relatives of a person who owns more than 50 percent of the corporation. In addition, any person who owns more than five percent of the stock of the employer (or if the employer is not a corporation, more than five percent of the capital or profits interests in the employer) cannot be a qualified employee. Finally, a qualified employee does not include any individual if the services performed by the individual for the employer involve certain gaming activities or are performed in a building housing such gaming activities.[82]

****1411*722** The Indian employment credit is allowed with respect to full-time and part-time employees. However, if an employee is terminated less than one year after the date of initial employment, the amount of credits previously claimed by the employer with respect to that employee generally is recaptured (unless the employee voluntarily leaves, becomes disabled, or is fired due to misconduct).

An employer's deduction otherwise allowed for wages is reduced by the amount of the credit claimed for the taxable year. The Senate amendment also provides that the employment credit is not refundable. Finally, the Indian employment credit is subject to the general business credit limitations of section 38,[83] and, therefore, the credit may not be used to reduce tentative minimum tax.

Effective date

Under the Senate amendment, the Indian reservation credit applies to property placed in service after December 31, 1993, and the Indian employment credit applies to wages paid or incurred after December 31, 1993.

Conference Agreement

The conference agreement provides the following tax incentives for Indian reservations.[84]

Accelerated Depreciation

With respect to certain property used in connection with the conduct of a trade or business within an Indian reservation, depreciation deductions for purposes of section 168 will be determined using the following recovery periods:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

"Qualified Indian reservation property" eligible for accelerated depreciation includes property which is (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation,[85] (2) not used or located outside the reservation on a regular basis, (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and (4) described in the recovery-period table above.[86] In addition, property is not "qualified Indian ****1412*723** reservation property" if it is placed in service for purposes of conducting gaming activities.[87]

The conference agreement includes a special rule for "qualified infrastructure property" which may be eligible for the accelerated depreciation even if located outside an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (e.g., roads, power lines, water systems, railroad spurs, and communications facilities). For this purpose, "qualified infrastructure property" must be property that is (1) allowed a depreciation deduction under section 168, (2) benefits the tribal infrastructure, (3) available to the general public, and (4) placed in service in connection with the taxpayer's active conduct of a trade or business within a reservation.

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax.

Indian employment credit

The conference agreement follows the Senate amendment, except that (1) a single-rate 20-percent credit applies (rather than the two-tiered 10-percent and 30-percent credit rates of the Senate amendment); and (2) the credit is available only for the first $20,000 of qualified wages and qualified employee health insurance costs paid to each qualified employee.

As under the Senate amendment, a tribal member or spouse is a qualified employee only if he or she works on a reservation (and lives on or near that reservation) and is paid wages that do not exceed $30,000 annually.[88] The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to $20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993 to employees whose wages did not exceed $30,000.

Effective date

The accelerated depreciation for Indian reservations is available with respect to property placed in service on or after January 1, 1994, and before December 31, 2003. The wage credit is available for wages paid or incurred on or after January 1, 1994, in a taxable year that begins before December 31, 2003.

****1413*724** IV. OTHER REVENUE PROVISIONS

A. DISCLOSURE PROVISIONS

1. Extend access to tax information for the Department of Veterans Affairs (sec. 14401 of the House bill, secs. 7901 and 13008 of the Senate amendment, sec. 13401 of the conference agreement, and sec. 6103 of the Code)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service (IRS) to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Among the disclosures permitted under the Code is disclosure to the Department of Veterans Affairs ("DVA") of self-employment tax information and certain tax information supplied to the Internal Revenue Service and Social Security Administration by third parties. Disclosure is permitted to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs (sec. 6103(l)(7)(D)(viii)). The income tax returns filed by the veterans themselves are not disclosed to DVA.

The DVA is required to comply with the safeguards currently contained in the Code and in section 1137(c) of the Social Security Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.

The DVA disclosure provision is scheduled to expire after September 30, 1997.

House Bill

The House bill extends the authority to disclose tax information to the DVA for one year, through September 30, 1998.

Effective date.–The provision in the House bill applies after September 30, 1997.

Senate Amendment

Section 7901 of the Senate amendment is the same as the House bill. Section 13008 of the Senate amendment permanently extends the authority to disclose tax information to the DVA.

Conference Agreement

The conference agreement follows the House bill and section 7901 of the Senate amendment.

****1414*725** 2. Access to tax information by the Department of Education (secs. 4032, 4033, and 14402 of the House bill, secs. 7902, 12011, and 12055 of the Senate amendment, sec. 13402 of the conference agreement and sec. 6103 of the Code)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information except to the extent specifically authorized by the Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service (IRS) to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

The IRS may disclose to the Department of Education the mailing address of taxpayers who have defaulted on certain student loans. The Department of Education may in turn make this information available to its agents and to the holders of such loans (and their agents) for the purpose of locating the taxpayers and collecting the loan.

House Bill

Access to certain tax return information to implement direct student loan program

Section 14402 of the House bill gives the Department of Education access to certain tax return information in order to implement a direct student loan program. The only information the Department of Education is permitted to obtain is the name, address, taxpayer identification number, filing status, and adjusted gross income of the former student. Disclosure of this information may be made only to Department of Education employees and may only be used by these employees in establishing the appropriate income-contingent repayment amount for an applicable student loan. Applicable student loans are loans under the new direct student loan program and other student loans that are in default and have been assigned to the Department of Education. The Department of Education and its employees would be subject to the restrictions on unauthorized disclosure in present law.

The authority to disclose tax information to the Department of Education for purposes of implementing the direct student loan program expires on September 30, 1998.

Access to mailing addresses of taxpayers owing overpayments of Pell Grants

Section 14402 of the House bill also permits the Department of Education to obtain the mailing address of any taxpayer who owes an overpayment (i.e., has received more than the proper amount) on a Federal Pell Grant or who has defaulted on certain additional student loans administered by the Department of Education. This authority is permanent.

****1415*726** Evaluation of student loan repayment through wage withholding

Section 14402 of the House bill requires the Treasury Department, in consultation with the Department of Education, to conduct a study of the feasibility of student loan repayment through wage withholding or other means involving the IRS. The

study is to include an examination of (1) whether the IRS could conduct such a system of student loan repayment within its current resources and without impairing its ability to collect tax revenues, (2) the impact of increased disclosure of tax information on voluntary compliance with the tax laws, (3) the effect of such a system of student loan repayment on collections and repayment of such loans, and (4) the ability of the IRS to service student loans. The study must be submitted to the Congress within six months of the date of enactment. If the Treasury Department finds that the IRS's current resources are inadequate to permit the IRS to increase its involvement in student loan collection, then it should identify the amount of additional resources or appropriations needed.

Section 4032 of the House bill contains the same provision for a feasibility study, except that the requirement is imposed on the Department of Education, in consultation with the Treasury Department.

Preference for IRS collection of student loan repayments

Section 4033 of the House bill expresses the sense of the Committee on Education and Labor supporting IRS collection of student loan repayments.

Effective date

The provisions in section 14402 of the House bill are effective on the date of enactment.

Senate Amendment

Access to certain tax return information to implement direct student loan program

With respect to this provision, Section 7902 of the Senate amendment is the same as section 14402 of the House bill.

With respect to this provision, Section 12055 of the Senate amendment is the same as both section 7902 of the Senate amendment and section 14402 of the House bill, except that disclosure of the tax return information is permitted to agents of the Department of Education.

Access to mailing addresses of taxpayers owing overpayments of Pell Grants

With respect to this provision, Section 7902 of the Senate amendment is the same as section 14402 of the House bill.

With respect to this provision, Section 12055 of the Senate amendment is the same as both section 7902 of the Senate amendment and section 14402 of the House bill, except that the authority expires after September 30, 1998.

****1416*727** Evaluation of student loan repayment through wage withholding

Section 12011 of the Senate amendment requires the Secretaries of Education and Treasury to present to the President a plan that provides for repayment of student loans through wage withholding and evaluates the feasibility of other wage withholding repayment options for such loans. The study must be submitted to the President within six months of the date of enactment.

With respect to this provision, Section 12055 of the Senate amendment is similar to section 14402 of the House bill, except that (1) no study is required; (2) upon a determination by the President (pursuant to the study described in section 12011 of the Senate amendment) that repayment of student loans should be done through wage withholding or other means involving the IRS, the Secretary of the Treasury may enter into an agreement with the Secretary of Education to allow the IRS to collect student loan repayments as if they were taxes (without the need for additional legislative authorization); and (3) the agreement described in (2) is authorized to include an alternate system of fees and penalties for nonpayment of amounts due.

Effective date

Same as the provisions in section 14402 of the House bill.

Conference Agreement

Access to certain tax return information to implement direct student loan program

With respect to this provision, the conference agreement follows section 14402 of the House bill and section 7902 of the Senate amendment.

Access to mailing addresses of taxpayers owing overpayments of Pell Grants

With respect to this provision, the conference agreement follows section 14402 of the House bill and section 7902 of the Senate amendment.

Evaluation of student loan repayment through wage withholding

With respect to this provision, the conference agreement does not include the provisions in sections 4032, 4033, or 14402 of the House bill or sections 12011 or 12055 of the Senate amendment.

The conferees direct the Treasury Department, in consultation with the Department of Education, to conduct a study of the feasibility of implementing a system for the repayment of Federal student loans through wage withholding or other means involving the IRS. Such study should include an examination of: (1) whether the IRS could implement such a system of student loan repayment with its current resources and without adversely affecting its ability to collect tax revenues, (2) the cumulative impact of increased disclosure of tax information and increased IRS involvement in nontax collection activities on voluntary compliance with the tax laws, (3) the ability of the IRS to enforce collection of student loans ****1417*728** using an alternate system of dispute resolution, penalties, and collection devices, (4) the effect of separating loan collection from other loan servicing functions, and (5) the anticipated effect on the management of Federal student loan collections and on borrower repayment of such loans. If the study concludes that IRS collection is feasible, the Treasury Department and the Department of Education should develop a plan to implement such a collection system. The feasibility study and any plan that is developed, together with any legislative recommendations that the Secretaries may deem advisable, should be submitted to the Congress within six months of the date of enactment.

Effective date

The provisions in the conference agreement are effective on the date of enactment.

3. Access to tax information by the Department of Housing and Urban Development (sec. 14403 of the House bill, secs. 7903 and 3003 of the Senate amendment, sec. 13403 of the conference agreement, and sec. 6103 of the Code)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

House Bill

The House bill permits disclosure of certain tax information with respect to applicants for, and participants in, certain Department of Housing and Urban Development (HUD) programs. Such disclosure may be made only to HUD employees and is to be used solely in verifying the taxpayer's eligibility for (or correct amount of benefits under) those HUD programs. The House bill extends the current law restrictions on unauthorized disclosure to HUD and its employees. HUD employees may not redisclose tax information to State or local housing agencies, public housing authorities, or any other third party. However, they may inform such parties of the fact that a discrepancy exists between the information provided by the applicant (or participant) and information provided by other sources.

The House bill requires the Treasury Department, in consultation with HUD, to conduct a study to determine (1) whether the tax return information disclosed to HUD is being used effectively, (2) whether HUD is complying with the Code's safeguards against unauthorized disclosure of the information, and (3) the impact on the privacy rights of applicants and participants in HUD housing ****1418*729** programs. The study must be submitted to the tax-writing committees before January 1, 1998.

Effective date.–The provision in the House bill is effective on the date of enactment. The authority to disclose tax information to HUD under the House bill expires after September 30, 1998.

Senate Amendment

Section 7903 of the Senate amendment is the same as the House bill, except that no study is required. Section 3003 of the Senate amendment is the same as the House bill, except that (1) requests for disclosure need not be written, (2) information may only be disclosed with respect to applicants for, and participants in, HUD programs who have executed consent forms under section 904(b)(3) of the Stewart B. McKinney Homeless Assistance Act of 1988, and (3) no study is required.

Conference Agreement

The conference agreement follows section 7903 of the Senate amendment. The conferees anticipate that information will be provided to HUD by means of low-cost computer exchanges of information. The conferees intend that the Treasury Department, in consultation with HUD, shall conduct a study to determine (1) whether the tax return information disclosed to HUD is being used effectively, (2) whether HUD is complying with the Code's safeguards against unauthorized disclosure of the information, and (3) the impact on the privacy rights of applicants and participants in HUD housing programs. The study shall be submitted to the tax-writing committees before January 1, 1998.

B. Increase in Public Debt Limit (sec. 14421 of the House bill, sec. 7955 of the Senate amendment, and sec. 13411 of the conference agreement)

Present Law

The statutory limit on the public debt currently is $4.37 trillion. It was set at this level temporarily in P.L. 103–12, enacted into law on April 6, 1993. The current debt limit will expire after September 30, 1993.

House Bill

The bill repeals the temporary limit that expires after September 30, 1993, and instead increases the statutory limit on the public debt to $4.9 trillion. The new debt limit has no expiration date.

Effective date.–The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

****1419*730** C. Vaccine Provisions:

Extension of the excise tax on certain vaccines for the Vaccine Injury Compensation Trust Fund; Provisions relating to the childhood vaccine immunization program (secs. 14431–14433 of the House bill, secs. 8237 and 12203(b) of the Senate amendment, secs. 13421–13422 of the conference agreement, and secs. 4131, 4980B(f), and 9510 of the Code)

PRESENT LAW

The Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") provides a source of revenue to compensate individuals who are injured (or die) as a result of the administration of certain vaccines: diphtheria, pertussis, and tetanus ("DPT"); diphtheria and tetanus ("DT"); measles, mumps, and rubella ("MMR"); and polio. The Vaccine Trust Fund provides the funding source for the National Vaccine Injury Compensation Program ("Program"), which provides a substitute, Federal "no-fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers.

Under the Program, all persons who were immunized with a covered vaccine after the effective date of the Program, October 1, 1988, are prohibited from commencing a civil action in State court for vaccine-related damages unless they first file a petition with the United States Claims Court, where such petitions are assigned to a special master and governed by streamlined procedural rules designed to expedite the proceedings.[89] In these cases, the Federal Government is the respondent party in the proceedings, and the claimant generally must show only that certain medical conditions (or death) followed the administration of a covered vaccine and that the first onset of symptoms occurred within a prescribed time period.[90] Compensation under the Program generally is limited to actual and projected unreimbursed medical, rehabilitative, and custodial expenses, lost earnings, pain and suffering (or, in the event of death, a recovery for the estate) up to $250,000, and reasonable attorney's fees.[91] Only if the final settlement under the Program is rejected may the claimant proceed with a civil tort action in the appropriate State court, where recovery generally will be governed by State tort law principles,[92] subject to certain limitations and specifications imposed by the National Childhood Vaccine Injury Act of 1986.[93]

****1420*731** Present law authorizes up to $6 million per year from the Vaccine Trust Fund for administrative expenses incurred in administering the Vaccine Injury Compensation Program.

The Vaccine Trust Fund is funded by net revenues from a manufacturer's excise tax on DPT, DT, MMR, and polio vaccines (and any other vaccines used to prevent these diseases). Prior to the expiration of the vaccine excise tax, the excise tax per dose was $4.56 for DPT, $0.06 for DT, $4.44 for MMR, and $0.29 for polio vaccines.

The vaccine excise tax expired after December 31, 1992. Amounts in the Vaccine Trust Fund are available for the payment of compensation under the Program with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

House Bill

Permanent extension of excise tax and Program funding

The House bill permanently extends the excise taxes imposed on certain vaccines. Authorization for compensation to be paid from the Vaccine Trust Fund under the National Vaccine Injury Compensation Program for certain damages resulting from vaccines administered after September 30, 1988, also is permanently extended.[94]

Study

The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, is directed to conduct a study of: (1) the estimated amount that will be paid from the Vaccine Trust Fund with respect to vaccines administered after September 30, 1988; (2) the rates of vaccine-related injury or death with respect to various types of vaccines; (3) new vaccines and immunization practices being developed or used for which amounts may be paid from the Vaccine Trust Fund; (4) whether additional vaccines should be included in the National Vaccine Injury Compensation Program; and (5) the appropriate treatment of vaccines produced by State governmental entities. Not later than one year after the date of enactment, the Secretary of the Treasury must submit a report detailing his findings to the House Committee on Ways and Means and the Senate Committee on Finance.

Childhood immunization program trust fund

The House bill establishes a new Childhood Immunization Trust Fund ("Childhood Trust Fund") in the Internal Revenue Code. Monies in the Childhood Trust Fund are to be available, subject to appropriations Acts, for the childhood immunization entitlement program (under part A of subtitle 3 of title XXI of the Public Health Service Act), adopted by the Committee on Energy and Commerce as part of its reconciliation recommendations.

****1421*732** Maintenance-of-effort requirement for pediatric vaccine health care coverage

The House bill makes the failure of health plans that provide coverage for the cost of pediatric vaccines as of May 1, 1993, to continue to provide that level of coverage subject to the excise tax penalty (under sec. 4980B(f)) applicable to plans that fail to provide COBRA health plan continuation coverage.

Effective date

The extension of coverage under the National Vaccine Injury Compensation Program is effective for vaccines administered on or after October 1, 1992. The extension of the vaccine excise taxes is effective on the date of enactment, with a floor stocks tax imposed on vaccines purchased after December 31, 1992, that are being held for sale or use on the date of enactment.

The maintenance-of-effort requirement for pediatric vaccine health care coverage applies to plan years beginning after the date of enactment.

Senate Amendment

Permanent extension of excise tax and Program funding

The Senate amendment is the same as the House bill.

Study

No provision.

Childhood immunization program trust fund

No provision for a childhood immunization program trust fund.

Maintenance-of-effort requirement for pediatric vaccine health care coverage

No tax provision.

Conference Agreement

Permanent extension of excise tax and Program funding

The conference agreement follows the House bill and the Senate amendment.

Study

The conference agreement follows the Senate amendment, but the conferees intend that the Secretary of the Treasury will conduct a study of the Vaccine Trust Fund and related matters as contemplated by the statutory provision contained in the House bill, including a report to the House Committee on Ways and Means and the Senate Committee on Finance within one year after the date of enactment.

Childhood immunization program trust fund

The conference agreement does not include the House bill provision for a childhood immunization program trust fund.

****1422*733** Maintenance-of-effort requirement for pediatric vaccine health care coverage

The conference agreement follows the House bill.

D. OTHER REVENUE-RELATED PROVISIONS

1. Disaster loss relief for individuals whose principal residences were damaged by Presidentially declared disasters (sec. 13431 of the conference agreement and sec. 1033 of the Code)

Present Law

Under present law, no gain is recognized by the taxpayer if property is involuntarily converted into property similar or related in service or use. If property is involuntarily converted into money or property not similar or related in service or use to the converted property, then gain generally is recognized. If during the applicable period, however, the taxpayer replaces the converted property with property similar or related in service or use to the converted property, the taxpayer may elect to recognize gain only to the extent that the amount realized upon such conversion exceeds the cost of the replacement property. The applicable period begins with the date of the disposition of the converted property (or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is earlier) and generally ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement contains provisions applicable to taxpayers whose principal residence[95] (or any of its contents) is involuntarily converted as a result of a Presidentially declared disaster. In such cases, no gain is recognized by reason of the receipt of insurance proceeds for unscheduled personal property that was part of the contents of such residence. In the case of any other insurance proceeds for such residence or its contents, the proceeds may be treated as a common pool of funds. If such pool of funds is used to purchase any property similar or related in service or use to the converted residence (or its contents), the taxpayer may elect to recognize gain only to the extent that the amount of the pool of funds exceeds the cost of the replacement property.

In addition, the conference agreement extends the ending of the applicable period for the replacement of property involuntarily ****1423*734** converted as a result of a Presidentially declared disaster to four years after the close of the first taxable year in which any part of the gain upon conversion is realized.

The conference agreement applies to residences located in areas subject to a disaster that resulted in a subsequent determination by the President that assistance by the Federal Government was warranted under the Disaster Relief and Emergency Assistance Act.

Effective date.–The provisions are effective for property involuntarily converted as a result of disasters for which a Presidential declaration is made on or after September 1, 1991, and to taxable years ending on or after such date.

2. Increase amount of Presidential Election Campaign Fund checkoff (sec. 7953 of the Senate amendment, sec. 13441 of the conference agreement, and sec. 6096(a) of the code)

Present Law

The Presidential Election Campaign Fund ("Fund") provides for public financing of a portion of qualified Presidential election campaign expenditures and certain qualified convention costs (sec. 9001 et seq.). The Fund is financed through the voluntary designation by individual taxpayers on tax returns of $1 of tax liability, which is commonly known as the Presidential election campaign checkoff. The Treasury Department accumulates revenues in the Fund over a four-year period and then disburses funds to eligible candidates for President, Vice President, and conventions during the Presidential election year.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the amount of the checkoff from $1 to $3.

Effective date.–Effective for tax returns required to be filed after December 31, 1993.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Disallowance of deduction for amounts paid or incurred in connection with certain noncomplying group health plans (sec. 13442 of the conference agreement and new sec. 162(n) of the Code)

Present Law

Under present law, employers can generally deduct the full cost of health coverage provided to participants under a group health plan. Under New York state law, commercial insurers of inpatient hospital services, group health plans, health maintenance organizations, and Blue Cross and Blue Shield corporations are required ****1424*735** to reimburse hospitals for inpatient hospital services at various rates set by the state of New York. In February of 1993, a Federal district court invalidated a number of New York statutes imposing inpatient hospital-rate surcharges on the ground that they were preempted by the Employee Retirement Income Security Act of 1974 (ERISA), but ordered insurers of inpatient hospital services to comply with New York's rate-setting statutes pending a final determination of the case.

House Bill

No provision. (However, section 4203 of the House bill would have temporarily waived ERISA preemption as applied to the New York surcharges and certain other New York statutes.)

Senate Amendment

No provision.

Conference Agreement

In general, the conference agreement disallows employer deductions for any amounts paid or incurred in connection with a group health plan (including amounts reimbursed through a voluntary employees' beneficiary association (VEBA)) if the plan fails to reimburse hospitals for inpatient services provided in the state of New York at the same rate that licensed commercial insurers are required to reimburse hospitals for inpatient services for individuals not covered by a group health plan. For purposes of this provision, a licensed commercial insurer is a commercial insurer licensed to do business in the state of New York and authorized to write accident and health insurance, and whose policies provide inpatient hospital coverage on an expense incurred basis. Blue Cross and Blue Shield is not a licensed commercial insurer for this purpose.

If a group health plan provides inpatient hospital services through a health maintenance organization (HMO), the conference agreement disallows employer deductions in connection with the plan if the plan fails to reimburse hospitals for inpatient services at the same rate (without regard to exempt individuals) that HMOs are required to reimburse hospitals for individuals not covered by a group health plan.

If a group health plan provides coverage for inpatient hospital services through a Blue Cross and Blue Shield corporation, the conference agreement disallows employer deductions in connection with the plan if the plan fails to reimburse hospitals for inpatient services at the same rate that such corporations are required to reimburse hospitals for individuals not covered by a group health plan.

The deduction disallowance does not apply to any group health plan which is not required under the laws of the state of New York (determined without regard to this provision or other provisions of Federal law) to reimburse for hospital services at the rates described above. Thus, self-insured plans are not subject to the deduction disallowance with respect to the 11 percent surcharge imposed on commercial insurers through March 31, 1993. Similarly, ****1425*736** the deduction disallowance does not apply to self-insured plans that do not provide for reimbursement directly to hospitals on an expense incurred basis. The

deduction denial also does not apply to payments by self-insured plans exempt from New York's all-payer reimbursement system because of agreements in effect on May 1, 1985.

No inference is intended as to whether any provision of the New York all-payer hospital reimbursement system is preempted by ERISA.

Effective date.–The provision is effective with respect to inpatient hospital services provided to participants after February 2, 1993, and on or before May 12, 1995.

4. Employer tax credit for FICA taxes paid on tip income (sec. 13443 of the conference agreement and sec. 45B of the Code)

PRESENT LAW

Under present law, all employee tip income is treated as employer-provided wages for purposes of the Federal Unemployment Tax Act (FUTA) and the Federal Insurance Contributions Act (FICA). For purposes of the minimum wage provisions of the Fair Labor Standards Act (FLSA), reported tips are treated as employer-provided wages to the extent they do not exceed one-half of such minimum wage.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides a business tax credit for food or beverage establishments in an amount equal to the employer's FICA tax obligation (7.65 percent) attributable to reported tips with respect to the food or beverage establishment in excess of those treated as wages for purposes of satisfying the minimum wage provisions of the FLSA. A food or beverage establishment is any trade or business (or portion thereof) which provides food or beverages for consumption on the premises and with respect to which the tipping of employees serving food or beverages by customers is customary. No credit is allowed with respect to FICA taxes paid on tips that are not received in connection with the provision of food or beverages on the premises of the establishment. It is intended that the rules under section 6053(c)(4) apply[96] in determining whether the tips are received with respect to a trade or business (or portion thereof) which provides food or beverages and with respect to which the tipping of employees serving food or beverages by customers is customary.

****1426*737** To prevent double dipping, no deduction is allowed for any amount taken into account in determining the credit. The conference agreement prohibits carryback of unused FICA credits to a taxable year ending before the date of enactment.

Effective date.–The provision is effective for taxes paid after December 31, 1993.

5. Availability and use of death information (sec. 13020 of the House bill, sec. 13444 of the conference agreement, and sec. 6103 of the Code)

Present Law

The Secretary of Health and Human Services is authorized to enter into voluntary contracts with the States for the purpose of

obtaining death certificate and other related information. In addition, the Secretary is authorized to redisclose this information to other Federal, State, and local agencies for certain specified purposes, subject to such safeguards as the Secretary determines are necessary to prevent any unauthorized redisclosure. However, because these contracts with the States are entirely voluntary, the States are able, at their discretion, to include contract provisions preventing the Secretary from redisclosing this information to other Federal, State, and local agencies.

House Bill

The House bill prohibits a State from using an individual's Social Security account number in the administration of any driver's license or motor vehicle registration law where the State has not entered into a contract to provide death certificate and related information to the Secretary, or where the State is a party to a contract with the Secretary which includes any restrictions on the use of the death information provided to the Secretary by the State, except to the extent that such use may be restricted under section 205(r)(6) of the Social Security Act.

In addition, the House bill requires the Secretary of Health and Human Services to conduct a study of possible improvements in the current methods of gathering and reporting death information by Federal, State, and local governments that would result in more efficient and expeditious handling of such information. The House bill also requires the Secretary to submit a written report by June 1, 1994, to the Committee on Ways and Means and the Committee on Finance setting forth the results of this study, together with such administrative and legislative recommendations as the Secretary considers appropriate.

Effective date.–The House bill is effective one year after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with modifications. The conference agreement prohibits the disclosure of Federal ****1427*738** tax returns or return information to any agency, body or commission of any State in connection with the administration of State tax laws where the State has not entered into a contract to provide death certificate and related information to the Secretary, or where the State is a party to a contract with the Secretary that includes any restrictions on the use of the death information provided to the Secretary by the State, except that such contract may provide that such information is only to be used for purposes of ensuring that Federal benefits or other payments are not erroneously paid to deceased individuals. The conference agreement does not apply to any State that, on July 1, 1993, was not furnishing by contract any death certificate or related information to the Secretary of Health and Human Services. The conference agreement does not include the provision in the House bill prohibiting a State from using Social Security account numbers for certain purposes.

Effective date.–The conference agreement is effective one year after the date of enactment, except that it is effective two years after the date of enactment with respect to a State if it is established to the satisfaction of the Secretary of the Treasury that it is legally impossible under existing State law for such a contract to be signed. The conferees intend that the authority of the Secretary of the Treasury to grant an extension of the effective date insure that those States that have not yet entered into a contract with the Federal Government allowing for government-wide dissemination of death information have up to two years to resolve, through their State legislatures, any legal impediments to the timely signing of such a contract.

6. BATF user fees for processing applications for alcohol certificates of label approval (sec. 14411 of the House bill and sec. 7951 of the Senate amendment)

Present Law

The Treasury Department's Bureau of Alcohol, Tobacco, and Firearms (BATF) is required to approve all alcoholic beverage labels and conduct various laboratory analyses to assure compliance with the Federal Alcohol Administration Act (27 U.S.C., Chapter 8) and Chapter 51 of the Internal Revenue Code. There is currently no charge or fee for these BATF services.

Under the Internal Revenue Code, annual alcohol occupational excise taxes are imposed as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****1428*739** House Bill

Under the House bill, BATF user fees are established for the processing of applications for certificates of alcohol label approval (or exemptions therefrom) required by the Federal Alcohol Administration Act and formula (and statement of process) reviews or laboratory tests and analyses performed under that Act and the Internal Revenue Code and regulations.

The Secretary of the Treasury is authorized to implement the user fee program and to establish fee rates: not less than $50 for each application and not less than $250 for each formula (and statement of process) review or test and analysis. The fees charged under this program are to be determined so that the Secretary estimates that the aggregate of such fees received during any fiscal year will be $5 million. A maximum of $5 million of these fees are to be offsetting receipts deposited in the Treasury and ascribed to BATF's Compliance Alcohol Program.

Effective date.–The provision applies for applications filed and for formula (and statement of process) reviews or tests and analyses initiated 90 days from the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement does not include the House bill provision or the Senate amendment.

7. Use of Harbor Maintenance Trust Fund for administrative expenses (sec. 14412 of the House bill, sec. 7952 of the Senate amendment, and sec. 9505(c) of the Code)

Present Law

Under present law (Code sec. 9595(c)), amounts in the Harbor Maintenance Trust Fund ("Harbor Fund") are available, as provided by appropriation Acts, for making expenditures:

(1) under section 210(a) of the Water Resources Development Act of 1986 (Army Corps of Engineers costs for dredging and maintaining harbors at U.S. ports);

(2) for payments of rebates of certain St. Lawrence Seaway tolls or charges; and

(3) for payment of expenses incurred by the Department of the Treasury in administering the harbor maintenance excise tax (but not more than $5 million per fiscal year) for periods during which no Customs processing fee applies under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("1985 Act").

The Customs processing fee currently is in effect through September 30, 1995.[97] Thus, since the Customs processing fee is in effect under the 1985 Act, the Harbor Fund is not currently permitted ****1429*740** to be used for Treasury expenses for administering the harbor maintenance excise tax.

House Bill

The House bill allows (subject to appropriations) up to $5 million per fiscal year from the Harbor Fund to be used by the Department of the Treasury to improve compliance with the existing harbor maintenance excise tax. This is accomplished by removing the current Harbor Fund restriction against such use while the Customs processing fee is in effect.

Effective date.–The provision applies to fiscal years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Senate amendment also includes the Army Corps of Engineers and the Department of Commerce as eligible to receive Harbor Fund money for expenses of administering the harbor maintenance excise tax.

Conference Agreement

The conference agreement does not include the House bill provision or the Senate amendment.

8. Federal and State income tax refund offset for medical assistance (sec. 7433 of the Senate amendment)

Present Law

Federal agencies are authorized to notify the IRS that a person owes a past due, legally enforceable debt to the agency. The IRS then is required to reduce the amount of any Federal tax refund due such person by the amount of the debt and pay that amount to the agency. The refund offset program applies with respect to debts of individuals and corporations.

Before a refund can be offset under this program, the agency owed the debt is required to certify to the IRS that the debtor has been notified about the proposed offset and has been given at least 60 days to present evidence that all or part of the debt is not past due or not legally enforceable. The agency also is required to enter into agreement with the IRS prior to transmitting proposed offsets. If a refund otherwise due an individual is subject to offset both under this provision and because of past-due support under the Aid to Families with Dependent Children (AFDC) program, the offset for AFDC past-due support is implemented first.

House Bill

No provision.

Senate Amendment

The Senate amendment permits States to request that the Internal Revenue Service offset a Federal income tax refund by the amount of a legally enforceable debt to the State for specified medical ****1430*741** assistance. A State may request a refund offset only if it has in place a parallel State refund offset program.

Effective date.–The provision is effective for taxable years beginning after December 31, 1993.

Conference Agreement

The conference agreement does not include the Senate amendment provision.

9. Annual report to taxpayers on Federal finances (sec. 15002 of the Senate amendment)

Present Law

The IRS is required to include two pie charts in individual income tax return instruction booklets: one showing sources of Government revenue and the other showing how that revenue is spent. There is no requirement that the instruction booklets include a financial report of the Federal government.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the director of the Office of Management and Budget is required to supervise and direct the content and preparation of an annual financial report of the Federal government. The Secretary of the Treasury is required each year to include in the instruction booklets for individual income tax returns a summary of the annual financial report. The complete annual financial report would be made available to taxpayers upon request (subject to a possible processing fee).

Effective date.–The provision is effective on the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

CHAPTER 2

SUBTITLE A–MEDICARE

PROVISIONS RELATING TO PART A

1. Inpatient Hospital Services Update (Sec. 13401 of the House bill; sec. 7101 of the Senate amendment)

Present Law

(a) PPS Hospitals.–The update factor for hospitals located in urban areas is set to equal the percentage increase in the hospital market basket for fiscal years 1994 and thereafter. The fiscal year 1994 update factor for rural hospitals is set to equal the increase in the hospital market basket plus 1.5 percentage points. For fiscal ****1431*742** year 1995, the update factor for rural hospitals is set to equal the market basket increase plus the amount needed to equalize the standardized amount for rural hospitals to the standardized amount for hospitals in urban areas other than those with more than one million people.

The standardized amounts are updated annually effective with discharges occurring on or after October 1 of each year. Other factors in PPS payments, including DRG classifications, the area wage index, outlier payment thresholds, and hospital geographic classification are also revised at the start of each fiscal year. Disproportionate share payments for urban hospitals with 100 or more beds are scheduled to increase, effective for discharges on or after October 1, 1993.

A sole community hospital or Medicare-dependent small rural hospital is paid based on the higher of the applicable

standardized amount or a hospital-specific rate. The hospital-specific rate is updated annually effective with the beginning of the hospital's cost reporting period. The update is set equal to the projected percentage increase in the hospital market basket for the fiscal year in which the cost reporting period begins.

(b) PPS-Exempt Hospitals.–For cost reporting periods beginning during fiscal years 1994 and thereafter, the target amounts for PPS-exempt hospitals are increased by the projected increase in the hospital market basket. The Secretary is authorized to grant exceptions or adjustments to target amounts to reflect cost increases beyond a hospital's control or other extraordinary circumstances.

House Bill

(a) PPS Hospitals.–For fiscal years 1994 and 1995 the market basket used in updating the prospective payment system standardized amounts would be deemed to equal zero. The additional amounts provided under current law to eliminate the differential between the rural and "other urban" standardized amounts by fiscal year 1995 would continue to apply.

(b) PPS-Exempt Hospitals.–For cost reporting periods beginning in fiscal years 1994 and 1995, the market basket used in updating the target amounts for PPS-exempt hospitals would be deemed to equal zero.

Senate Amendment

(a) PPS Hospitals.–PPS rates would be updated annually effective for discharges occurring on or after January 1 of each year. The payment rates in effect as of September 30, 1993 would continue in effect through December 31, 1993. No changes in the standardized amounts, DRG classification system or relative weights, outlier thresholds, wage index values, or in a hospital's geographic classification would occur until January 1, 1994. The increase in disproportionate share payments for urban hospitals with at least 100 beds would be postponed and would become effective for discharges occurring on or after January 1, 1994. The regional floor would be extended through December 31, 1993.

****1432*743** The standardized amounts would be updated on a calendar year basis as follows:

1994: The urban standardized amounts would be updated by the estimated percentage increase in the hospital market basket minus 2.18 percentage points. The rural standardized amounts would be updated by the market basket increase minus .68 percentage points.

1995: The urban standardized amounts would be updated by the estimated percentage increase in the hospital market basket minus 2.27 percentage points and the labor and non-labor portions of the standardized amounts would be recomputed based on the labor and non-labor proportions in the national average standardized amount for all hospitals. The rural standardized amount would be updated to equal the standardized amount applicable to hospitals located in "other urban" areas so that there would be a single standardized amount applicable to hospitals located in rural and "other urban" areas.

1996: The standardized amounts would be updated by the percentage increase in the hospital market basket minus 2.0 percentage points.

1997: The standardized amounts would be updated by the percentage increase in the hospital market basket minus 1.0 percentage point.

1998 and thereafter: The standardized amounts would be updated by the percentage increase in the hospital market basket.

The effective date of the update in the hospital-specific rate applicable to a sole community hospital or a Medicare-dependent, small rural hospital would be changed from the beginning of the hospital's cost reporting period to January 1. The update factor would equal 75 percent of the difference between the percentage increase in the hospital market basket and 2.0 percentage points in 1994 (after a 3 month freeze) and the percentage increase in the hospital market basket minus 2.0 percentage points in 1995. For 1996 and later years the update would be the same as for PPS hospitals.

(b) PPS-Exempt Hospitals.–Beginning January 1, 1994, the market basket projection would be made on a calendar year basis and would be applicable to cost reporting periods beginning in that calendar year. For cost reporting periods beginning in 1994, the update factor for the target amount would be determined based on 75 percent of the difference between the estimated percentage increase in the hospital market basket and 1.0 percentage point. For cost reporting periods beginning in 1995 through 1997, the update factor for the target amount would equal the percentage increase in the hospital market basket minus 1.0 percentage point.

Conference Agreement

(a) PPS Hospitals.–The conference agreement includes the Senate amendment, with modifications. Annual updates and other changes in PPS payment factors will continue to take effect on a fiscal year basis, and the scheduled change in disproportionate share payment policy is not postponed. The provision relating to recomputation of the labor and non-labor portions of the standardized amounts is not included.

****1433*744** Update factors are revised as follows:

Fiscal year 1994: For urban hospitals, the estimated percentage increase in the hospital market basket minus 2.5 percentage points; for rural hospitals, the market basket increase minus 1.0 percentage point.

Fiscal year 1995: For urban hospitals, the percentage increase in the hospital market basket minus 2.5 percentage points; for rural hospitals, the amount necessary to equalize the rural and “other urban” standardized amounts.

Fiscal year 1996: For all hospitals, the percentage increase in the hospital market basket minus 2.0 percentage points.

Fiscal year 1997: For all hospitals, the percentage increase in the hospital market basket minus 0.5 percentage points.

For fiscal years 1998 and thereafter, the update is set equal to the percentage increase in the hospital market basket.

The update factors for the hospital-specific rates applicable to a sole community hospital or a Medicare-dependent, small rural hospital are set equal to the percentage increase in the hospital market basket minus 2.3 percent in fiscal year 1994, and minus 2.2 percent in fiscal year 1995. These factors are equal to the weighted average updates for urban and rural hospitals in those years. For fiscal years 1996 and thereafter, the update is set equal to the update factors for other hospitals. The effective date of the update is moved from the beginning of the hospital’s cost reporting period to October 1. The conferees believe that the Secretary should evaluate the policy of combining base year data when two sole community hospitals merge.

For discharges occurring after fiscal year 1993, the agreement reduces the Federal rate for hospital capital expenses by 7.4 percent, to correct inflation forecast errors accrued prior to the most recent update of capital cost data. Effective with cost reporting periods beginning in fiscal year 1994, the Secretary is required to redetermine which capital payment methodology should be applied to each hospital, to take account of this reduction.

The conferees note that in the proposed rule for fiscal year 1994 changes to the hospital inpatient prospective payment systems that was published in the Federal Register on May 26, 1993, the Secretary indicated that insufficient information was available to complete a systematic evaluation of the obligated capital criteria for hospitals in States with a lengthy Certificate-of-Need process in time to consider appropriate changes during the fiscal year 1994 rule-making process. The conferees expect the Secretary to complete the assessment in time for consideration in the fiscal year 1995 rule-making process and that appropriate changes in payment policy will be made to address the problems of hospitals subject to a lengthy Certificate-of-Need review process or subject to other circumstances which are not fully addressed under the current transition rules. In addition, the conferees believe the Secretary should evaluate whether current policies provide adequate protection to sole community hospitals and hospitals that serve a disproportionate share of low income patients.

(b) PPS-Exempt Hospitals.–The conference agreement includes the Senate amendment, with modifications. Updates in target amounts will continue to take effect for cost reporting periods ****1434*745** beginning in a fiscal year. Update factors are set equal to the percentage increase in the hospital market basket minus 1.0 percentage point in fiscal years 1994 through 1997. For cost reporting periods beginning in fiscal years 1998 and thereafter, the update is set equal to the percentage increase in

the hospital market basket. A hospital whose operating costs during a cost reporting period beginning in fiscal year 1990 exceeded its target amount by 10 percent or more will be exempt from these reductions in all years, with partial reductions applied to hospitals near the 10 percent threshold. The Secretary is instructed not to consider the reductions in granting exceptions or adjustments to target amounts.

The conferees note that OBRA 90 required the Secretary to develop a proposal to modify the current payment methodology for hospitals that are excluded from the prospective payment system. The report was to be submitted to Congress by April 1, 1992. The conferees urge that the Secretary submit the report promptly.

2. Payments for Hospice Care (Sec. 13401 of the House bill)

Present Law

Payment rates for hospice services are updated each year by the projected increase in the hospital market basket.

House Bill

The hospital market basket used to update payment rates for hospice services for fiscal years 1994 and 1995 would be deemed to equal zero.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision, with an amendment. Update factors for hospice services are set equal to the percentage increase in the hospital market basket minus 2.0 percentage points in fiscal year 1994, market basket minus 1.5 percentage points in fiscal years 1995 and 1996, and market basket minus 0.5 percentage point in fiscal year 1997. For fiscal years 1998 and thereafter, the update is set equal to the percentage increase in the hospital market basket.

3. Skilled Nursing Facilities (Secs. 13402 and 13425 of the House bill; Secs. 7105 and 7104 of the Senate amendment)

(a) Cost Limits.–Payments for skilled nursing facility services are made on a reasonable cost basis, subject to per-diem cost limits. The limit is based on 112 percent of the mean per diem routine service costs for freestanding facilities. There is an add-on to the limit for hospital-based facilities equal to 50 percent of the difference between 112 percent of the mean per diem routine costs for free-standing facilities and 112 percent of the mean per diem costs for hospital-based facilities. The Secretary is required to make payment, regardless of the cost limits, for costs of a hospital-based facility ****1435*746** attributable to excess overhead cost allocated to the facility. Any skilled nursing facility may receive an exception to the cost limits based on case mix or circumstances beyond the control of the facility.

(b) Return on Equity.–Proprietary skilled nursing facilities (SNFs) receive, in addition to payments for the costs of providing services, a return on equity payment, which provides the investors in the facility a return on their investment equivalent to what they would have earned if they had invested the same amount in specified government securities. SNFs are the only providers still receiving Medicare return on equity payments.

(c) Wage Index.–Skilled nursing facilities are reimbursed on a reasonable cost basis, subject to per-diem limits. The labor-related portion of the limits are to be adjusted by an appropriate wage index. The Secretary currently uses a wage index based on wage data collected from hospitals. In its March 1, 1992, Report and Recommendations to the Congress, the Prospective Payment Assessment Commission recommended that the Secretary collect data on employee compensation and

paid hours of employment for nursing facilities for the purpose of implementing a nursing facility wage index to adjust the cost limits. The limits are to be updated every two years.

House Bill

(a) Cost Limits.–The Secretary would be prohibited from applying an update factor to the cost limits for skilled nursing facility cost reporting periods beginning in fiscal years 1994 and 1995.

(b) Return on Equity.–No provision.

(c) Wage Index.–The Secretary would be required to begin collecting the data necessary to compute a wage index based on wages specific to skilled nursing facilities within one year of enactment. The Prospective Payment Assessment Commission would be required to study and report by March 1, 1994, on the impact of applying routine per-diem cost limits on a regional basis.

Senate Amendment

(a) Cost Limits.–The cost limit would be lowered to 110 percent of the median per diem routine service costs for freestanding facilities. The add-on for hospital-based facilities would equal 50 percent of the difference between 110 percent of the median per diem routine costs for freestanding facilities and 110 percent of the median per diem routine costs for hospital-based facilities. The lower cost limits would be effective for cost reporting periods beginning on or after October 1, 1993. The other requirements would be effective upon the date of enactment.

(b) Return on Equity.–The payment to SNFs for return on equity capital would be eliminated, applicable to portions of cost reporting periods beginning on or after October 1, 1993.

(c) Wage Index.–Similar to House bill, except that the Commission report is due March 31, 1994.

****1436*747** Conference Agreement

(a) Cost Limits.–The conference agreement includes the House provision, with an amendment to require that there be no changes in skilled nursing facility cost limits (including no adjustments for changes in the wage index or applicable MSAs) for cost reporting periods beginning in fiscal years 1994 and 1995, or in prospective payment amounts for services rendered during such cost reporting periods. The Secretary is required, when granting or extending exceptions to cost limits, to limit any exception to the amount that would have been granted if there were no restriction on changes in cost limits. Additional payments for excess overhead costs allocated to hospital-based facilities are eliminated, effective for cost reporting periods beginning on or after October 1, 1993.

The conferees believe that Medicare costs for skilled nursing facilities can best be controlled through a prospective payment system. Such a payment system will encourage provider efficiency and simplify administrative requirements. Therefore, the conferees expect that the Secretary will complete development of a prospective payment system and present recommendations to Congress in time for implementation no later than October 1, 1995. The recommendations should also address whether the differential payment for hospital-based facilities should be maintained. The conferees understand that sufficient information on which to base a prospective payment system on case mix may not be available. However, the conferees expect the Secretary to develop an interim prospective payment system for inpatient routine service costs, using appropriate proxies to account for differences in patient resource requirements, with improved case mix indicators incorporated into the system over time.

(b) Return on Equity.–The conference agreement includes the Senate amendment. The conferees expect the Secretary to adjust prospective payment rates for low-volume skilled nursing facilities to reflect the elimination of return-on-equity payments as of that date.

Wage Index.–The conference agreement does not include the House provision or the Senate amendment. The conferees expect that the Secretary will begin to collect data on employee compensation and hours of employment specific to skilled nursing facilities, for potential use in development of a skilled nursing facility wage index, within one year of enactment.

4. Hospital Wage Index (Sec. 13411 of the House bill)

Present Law

A change in classification of hospitals from one wage area to another may not result in the reduction in the wage index for a county to an amount below the level of the rural wage index for a State. No similar protection applies in the case of an urban area with a wage index already below the rural wage index for a State, or in the case of an urban area located in a State without any rural areas. Certain hospitals in rural counties adjacent to one or more urban areas are treated as part of an urban area if they otherwise meet certain requirements with respect to commuting standards ****1437*748** used in designating Metropolitan Statistical Areas or New England County Metropolitan Areas as published in the Federal Register on January 3, 1980. In development of guidelines for reclassification of hospitals into different wage index areas, the Secretary is required to take into account occupational mix.

House Bill

A change in classification of hospitals from one area to another could not result in a reduction in the wage index for an urban area if the area has a wage index below the rural wage index for the State. A change in classification of hospitals could not result in a reduction in the wage index for an urban area if the area is the only urban area in a State with no rural areas. The Secretary would be instructed not to make retroactive revisions in standardized amounts to reflect the wage index changes. The January 3, 1980, requirements with respect to commuting standards would be replaced with the most recently available standards. Any hospital qualifying for treatment as an urban county under the 1980 standards, but not meeting the most recent standards would continue to qualify. The Secretary would be authorized, but not required, to take occupational mix into account in the development of guidelines for reclassification to the extent the Secretary determines is appropriate.

Effective on the date of enactment, except that the provision relating to urban areas with a wage index below the rural wage index for the State would be effective on October 1, 1991, the provision relating to commuting standards would be effective on October 1, 1993, and the provision relating to occupational mix would be effective as if included in the Omnibus Reconciliation Act of 1989 (OBRA 89).

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision, with amendments. The provision relating to commuting standards is eliminated. The provision relating to an urban area in a State with no rural areas is made effective on October 1, 1991. The agreement does not include the provision related to consideration of occupational mix.

The conferees note that in the proposed rule for FY 1994 changes to the hospital inpatient prospective payment systems that was published May 26, 1993, the Secretary indicated an intention to evaluate the “nearest neighbor” labor market areas recommended by the Prospective Payment Assessment Commission and other alternatives to the existing labor market area definition. The conferees reaffirm that sections 1886(d)(2)(H) and 1886(d)(3)(E) of the Social Security Act give the Secretary broad discretion to define hospital labor market areas. In the event new labor market areas are established that are not based on Metropolitan Statistical Areas, the conferees note that the hold harmless ****1438*749** protections provided under section 1886(d)(8)(C) would have no practical effect.

5. Hospital Outlier Payments (Sec. 13412 of House bill)

Present Law

The Secretary of Health and Human Services (the Secretary) is required to make additional payment for outlier cases, which are defined as those cases involving long stays or extraordinary costs as compared to other cases in the same DRG.

House Bill

The Secretary would be required to phase out payments for day outlier cases beginning in fiscal year 1995 and ending in fiscal year 1998. The proportion of outlier payments calculated using the day outlier methodology in fiscal year 1994 would be reduced by 25% for fiscal year 1995, 50% for fiscal year 1996, 75% for fiscal year 1997, and eliminated beginning in fiscal year 1998.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision, with an amendment to require that the payment threshold for cost outlier cases be set at the applicable DRG payment plus a fixed dollar amount. The Secretary is authorized to achieve reductions in the proportion of outlier payments attributable to day outliers by reducing payments for marginal costs of days of care exceeding the outlier threshold.

The conferees note that the Prospective Payment Assessment Commission has expressed concern that the Secretary's outlier policy penalizes hospitals that receive a large number of transfer cases. The conferees expect that the Commission will evaluate whether the changes in outlier policy required by this Act will be sufficient to reduce the risk of large losses on transfer cases for such hospitals and make recommendations regarding whether additional changes in payment methodology would be appropriate.

6. Essential Access Community Hospital Amendments (Sec. 13413 of the House bill)

(a) Under the Essential Access Community Hospital demonstration program up to 7 States may be designated by the Secretary to receive grants to develop rural health networks consisting of essential access community hospitals and rural primary care hospitals. Individual hospitals may be designated as essential access community hospitals (EACHs) and rural primary care hospitals (RPCHs). Authorization of appropriations for fiscal years 1990, 1991, and 1992 is $10 million a year for grants to States and $15 million a year for grants to hospitals. In order to receive designation by a State as a rural primary care hospital, a facility must meet certain criteria, including a requirement that inpatient stays not exceed 72 hours.

****1439*750** (b) The Secretary of Health and Human Services is required to make grants to up to seven States to participate in the EACH program.

(c) The Secretary may designate an urban hospital as an essential access community hospital if it meets the criteria for designation as a regional referral center.

(d) The Secretary may designate a hospital as an essential access community hospital if it is located in a State receiving an EACH program grant.

(e) Rural primary care hospitals are required to have written policies governing the provision of services, and have a physician, physician assistant, or nurse practitioner responsible for the execution of those policies.

(f) A rural primary care hospital may not provide more than 6 inpatient beds, meeting such conditions as the Secretary may establish. RPCHs are authorized to maintain “swing beds” as skilled nursing beds or to operate a distinct-part skilled nursing facility.

(g) Medicare inpatient hospital benefits are subject to the inpatient hospital deductible and to coinsurance after 60 days of hospitalization during a spell of illness.

(h) Payments for outpatient services in a rural primary care hospital prior to 1993 are determined either by a cost-based facility fee or an all-inclusive rate, as elected by the RPCH. The Secretary is required to develop and implement by January 1, 1993, a prospective payment system for outpatient services provided in an RPCH.

House Bill

(a) Authorization for appropriations would be continued at current levels ($10 million a year for grants to States and $15 million a year for grants to hospitals) through fiscal year 1995. The length of stay requirement for State designation of rural primary care hospitals would be modified to provide that no patient may be admitted unless the attending physician certifies that the patient may reasonably be expected to be discharged or transferred within 72 hours, and that the facility may not provide surgery or other services requiring general anesthesia (other than procedures approved for performance on an ambulatory basis) unless the attending physician certifies that the risk of transfer to another facility for the services outweighs the benefits. The Secretary would be authorized to terminate the designation of a rural primary care hospital whose average length of stay (not counting longer stays during periods of inclement weather or other emergencies) exceeds 72 hours. The General Accounting Office would report to the Congress, within 2 years after enactment, on the application and impact of the changes in length-of-stay requirements.

(b) The number of States eligible for grants under the EACH program would be increased from seven to nine.

(c) The Secretary would be authorized to designate an urban hospital as an essential access community hospital if the hospital otherwise meets the criteria for designation. However, urban hospitals would not be eligible for a change in Medicare payment as a result of the designation.

****1440*751** (d) A State receiving a grant under the EACH program could designate a facility in an adjoining State as an essential access community hospital or a rural primary care hospital if the facility is otherwise eligible for designation. The Secretary would be authorized to designate a facility as an essential access community hospital or a rural primary care hospital if the facility is not in a State receiving an EACH program grant and if the facility is a member of a rural health network of a State receiving a grant.

(e) The requirements for written policies and procedures and the supervision of those procedures in rural primary care hospitals would be amended to clarify that the requirements are similar to those for hospitals. Specifically, rural primary care hospitals would be required to appoint a physician, as defined in section 1861(r)(1) of the Social Security Act, to supervise the implementation of the policies.

(f) A rural primary care hospital that had a swing-bed agreement at the time of designation would be authorized to provide swing-bed services up to the hospital’s licensed acute care bed capacity at the time of conversion, minus the number of inpatient beds retained by the rural primary care hospital.

(g) The applicability of the inpatient hospital deductible and coinsurance to stays in rural primary care hospitals would be clarified.

(h) The Secretary would be required to implement a prospective payment system for outpatient RPCH services by January 1, 1996. The election of payment alternatives would continue until the Secretary implemented the new system. Payment for outpatient rural primary care hospital services would be made without regard to lesser-of-cost-or-charges limits. Minor drafting errors would be corrected.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

7. Rural Health Transition Grant Program (Sec. 13414 of the House bill)

Present Law

OBRA 87 instituted a program of grants to assist rural hospitals with fewer than 100 beds in developing and implementing projects to modify the type and extent of services they provide. Grants may be used to develop health systems with other providers, diversify services, recruit physicians, improve management systems, and provide instruction and consultation via telecommunications to physicians in manpower shortage areas. The program is authorized at $25 million per year for fiscal years 1990, 1991, and 1992.

****1441*752** House Bill

Appropriations for the rural health transition grant program would be authorized at $30 million a year for fiscal years 1993 through 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

8. Regional Referral Center Extension (Sec. 13415 of the House bill; sec. 7102 of the Senate amendment)

Present Law

OBRA 89 provided that hospitals classified as regional referral centers on September 30, 1989, would retain such status through cost reporting periods beginning before October 1, 1992.

House Bill

All hospitals classified as regional referral centers on September 30, 1992, would retain such status through September 30, 1994. The Secretary would be required to make a lump sum payment to these hospitals for the additional payments that would have been made had they not lost classification as regional referral centers. Hospitals to which this provision applies that lost regional referral center status as a result of a favorable reclassification decision by the Medicare Geographic Classification Review Board for fiscal years 1993 or 1994 would have the opportunity to decline the reclassification and retain referral center status.

Senate Amendment

Hospitals that were classified as regional referral centers as of September 30, 1992 would continue to receive the "other urban" standardized amount for discharges occurring before the earlier of January 1, 1995, or the date on which the hospital is reclassified by the Medicare Geographic Classification Review Board.

Similar provision with respect to lump sum payments, except that payments would not make up for any lost disproportionate share payments resulting from the loss of regional referral center status. Identical provision with respect to the opportunity to decline reclassification.

Conference Agreement

The conference agreement includes the House provision.

****1442*753** 9. Small Medicare-Dependent, Rural Hospital Payment Extension (Sec. 13416 of the House bill; sec. 7103 of the Senate amendment)

Present Law

OBRA 89 provides for special payment for rural hospitals qualifying as Medicare dependent hospitals (MDHs). In order to qualify for MDH status, a hospital must be located in a rural area, have no more than 100 beds, and have had at least 60 percent of its inpatient days or discharges attributed to Medicare patients during the cost reporting period beginning during fiscal year 1987. MDHs are eligible for payment under the same rules as sole community hospitals for cost reporting periods beginning on or after April 1, 1990, and ending before April 1, 1993. Beginning on October 1, 1994, payments to all hospitals in rural areas will be based on the same standardized amount as payment to hospitals in "other urban" areas (those with less than 1 million people).

House Bill

Special payments for small rural, Medicare dependent hospitals would be continued for discharges occurring through September 30, 1994, on a phase-down basis. For discharges occurring during cost reporting periods beginning on or after April 1, 1990, and before April 1, 1993, existing MDH payments would apply. For discharges occurring during any cost reporting period beginning on or after April 1, 1993, through September 30, 1994, an MDH would receive 50 percent of the difference between their payment under the existing MDH rules and the payment regularly provided under the prospective payment system. The Secretary would be required to make a lump sum payment to these hospitals for the additional payments that would have been made had they not lost classification as Medicare dependent hospitals. Hospitals that lost MDH status as a result of a favorable reclassification decision by the Medicare Geographic Classification Review Board for fiscal years 1993 or 1994 would be offered the opportunity to decline the reclassification and retain Medicare dependent hospital status.

Senate Amendment

Similar provision to House bill, except that the 50 percent payment would continue for portions of cost reporting periods occurring before January 1, 1995.

Conference Agreement

The conference agreement includes the House provision.

10. Extension of Regional Floor (Sec. 13417 of the House bill; sec. 7101 of the Senate Amendment)

Present Law

For discharges occurring beginning on or after April 1, 1988, and ending on September 30, 1993, payments to prospective payment system hospitals in census regions for which the regional ****1443*754** standardized amount is higher than the national standardized amount are equal to 15% of the regional amount and 85% of the national amount.

House Bill

The regional floor provision would be extended through fiscal year 1996.

Senate Amendment

The regional floor would be extended through December 31, 1993.

Conference Agreement

The conference agreement includes the House provision.

11. Rural Demonstration Extension (Sec. 13418 of the House bill)

Present Law

OBRA 90 gave the Secretary authority to waive provisions of Title XVIII as necessary in order to conduct any demonstration project of limited-service rural hospitals with respect to which the Secretary has entered into an agreement prior to enactment of OBRA 89.

House Bill

The Secretary would be required to continue any such demonstration projects at least through December 31, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision, with an amendment to extend the demonstration projects until at least July 1, 1997.

The conferees expect that the Secretary will make recommendations by January 1995 regarding legislative changes that are needed to make the limited-service rural hospital demonstration projects permanent. The recommendations should take into consideration the adequacy of the current payment system, staffing and service standards, and quality assurance procedures.

12. Hemophilia Pass-through Extension (Sec. 13419 of the House bill)

Present Law

Additional payments for the costs of administering blood clotting factor to Medicare beneficiaries with hemophilia admitted for hospital stays were applied to clotting factor furnished between June 19, 1990, and December 19, 1991.

***755** House Bill

****1444** Additional payments for hemophilia clotting factor would be extended for clotting factor furnished through September 30, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

13. State Hospital Payment Programs (Sec. 13420 of House bill)

Present Law

Under Section 1814(b) of the Social Security Act, the Secretary may provide that Medicare payments to hospitals in a State be made in accordance with a State hospital reimbursement system meeting certain standards. The State system must meet requirements pertaining to the rate of increase in hospital costs per admission for Medicare beneficiaries occurring under the State system relative to the national average.

House Bill

In the case of a State with a Medicare-approved payment system under section 1814(b), no provision of law would be construed as preventing the system from providing that payment for services covered under the State system be made on the basis of rates provided for under the system. The State program would continue to be required to meet the standards for Medicare-approved payment systems under section 1814.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

14. Psychology Services in Hospitals (Sec. 13421 of the House bill)

Present Law

Clinical psychologists are authorized to provide qualified psychologist services to Medicare beneficiaries. In order to

participate in Medicare, hospitals must require that all Medicare patients are under the care of a physician, defined to include doctors of medicine, osteopathy, dentists, podiatrists, chiropractors, and optometrists practicing within the scope of State law. Certain States authorize psychologists to supervise the care of inpatients receiving psychologist services.

****1445*756** House Bill

In a State in which such supervision is authorized by State law, the care of hospital inpatients receiving qualified psychologist services could be supervised by a clinical psychologist with respect to such services to the extent permitted by State law.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

15. Graduate Medical Education Payments in Hospital-Owned Community Health Centers (Sec. 13422 of the House bill)

Present Law

Additional payments to hospitals for the indirect costs of medical education are based on the ratio of interns and residents at the hospital to the number of beds in the hospital. Interns and residents training in a hospital outpatient department are included for purposes of determining the ratio.

House Bill

Services of an intern or resident in a community health center (as defined in the Public Health Service Act) that is wholly owned or controlled by a hospital would be counted for purposes of determining the hospital's intern and resident-to-bed ratio if the hospital incurs all or substantially all of the cost of such services.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

16. Treatment of Certain Military Facilities (Sec. 13423 of the House bill)

Present Law

Other than Indian Health Service hospitals, hospitals owned by, or under contract to, the Federal government are not eligible for reimbursement under Medicare. Uniformed services treatment facilities are private hospitals under contract to the Federal government and are not eligible for reimbursement under Medicare for services provided to individuals eligible for Department of Defense health programs. The Assistant Secretary of Defense for Health Affairs has been directed to prepare a

report on joint military/civilian health centers.

****1446*757** House Bill

The Secretary would be prohibited from taking action to recover certain amounts paid by Medicare to uniformed services treatment facilities in Boston, Baltimore, and Seattle for services that were provided between October 1, 1986, and December 31, 1989, to members of the uniformed services or their dependents who were also eligible for Medicare except to the extent that funds are made available for that purpose under the fiscal year 1993 Department of Defense Appropriations Act. The Secretary, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, would be required to conduct a study of the feasibility and desirability of establishing joint medical facilities among the Department of Defense, Department of Veterans Affairs, and other public and private entities and report to Congress by October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

17. Epilepsy DRG (Sec. 13424 of the House bill)

Present Law

The Secretary is required to establish and maintain classifications of inpatient hospital discharges by diagnosis related group (DRG) and a methodology for classifying specific hospital discharges within these groups.

House Bill

The Secretary would be required to (1) complete the appropriate analyses of Medicare inpatient claims data for patients with intractable epilepsy admitted to the hospital for a comprehensive medical evaluation including intensive neurodiagnostic monitoring and (2) determine the most appropriate mechanism to account for the resource requirements of these patients beginning with discharges occurring during fiscal year 1995. In carrying out these requirements, the Secretary would be required to consult with the ProPAC and national organizations that represent individuals with epilepsy or those who provide specialized medical services.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

****1447*758** 18. Hospice Information to Beneficiaries (Sec. 13426 of the House bill)

Present Law

Medicare beneficiaries who are certified as terminally ill by a physician may elect to receive hospice benefits in lieu of other Medicare covered services. Skilled nursing facilities (SNFs) are required to provide each resident at the time of admission with a written statement of rights. SNFs must also inform each resident of services available and of the related charges for services, including any charges not covered under Medicare or by the facility's basic per diem charge.

Hospitals are required to meet Medicare conditions of participation in order to receive reimbursement for treatment of Medicare beneficiaries. Conditions of participation for discharge planning in hospitals require an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

House Bill

Skilled nursing facilities would be required to inform beneficiaries of the hospice benefit under Medicare, if a Medicare-participating hospice is located in the geographic area of the SNF or it is common medical practice to refer patients to hospices out of the area. SNFs would be required to provide the information to all beneficiaries at the time of admission as part of the oral and written statement of rights.

Hospital conditions of participation with respect to discharge planning would be modified to require an evaluation of a patient's likely need for appropriate post-hospital services, including hospice services, and the availability of those services.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

19. Part A Premium (Sec. 13427 of the House bill)

Present Law

In general, individuals become entitled to benefits under Medicare Part A when they reach age 65 and are also eligible for monthly Social Security retirement or survivor benefits or railroad retirement benefits. Individuals ages 65 or over who are not entitled to benefits under Part A may enroll in the program if they pay a monthly premium. The monthly premium is based upon the actuarial value of benefits under Part A.

House Bill

The Part A premium would be reduced, on a phased-in basis, for individuals with credits for 30 or more quarters paid into the ****1448*759** Social Security system, and the spouses of such individuals. The Part A premium would be reduced by 25 percent in 1994, by 30 percent in 1995, by 35 percent in 1996, by 40 percent in 1997, and by 45 percent in 1998 and subsequent years. The reduction in Part A premium payments would also apply to the surviving spouse, or divorced spouse of an individual who had at least 30 quarters of coverage under the Social Security system.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

20. Periodic Updates to Salary Equivalency Guidelines (Sec. 13428 of the House bill)

Present Law

Skilled nursing facilities and other providers may provide physical, respiratory and other therapy services to patients by contracting with independent therapists or companies that employ such therapists. Medicare reimbursement is limited to no more than what Medicare would pay if the therapist was on salary as an employee of the provider. Salary equivalency guidelines, developed by HCFA to determine Medicare reimbursement for physical and rehabilitation therapy provided under such arrangements, are currently based upon 1982 data.

House Bill

The Secretary would be required to recalculate and issue updated salary equivalency guidelines for physical and respiratory therapy services, based upon data appropriate for services provided in nursing homes, using timely and accurate data. The updated guidelines should be issued by no later than December 31, 1993, effective for cost reporting periods beginning on or after July 1, 1993, and every three years thereafter.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

21. Extension of Application Deadline for Certain Reclassified Hospitals (Sec. 13429 of the House bill)

Present Law

Hospitals may apply to the Medicare Geographic Reclassification Review Board for a change in geographic classification under the prospective payment system. Hospitals requesting a change for ****1449*760** payments in a fiscal year must submit an application to the Board not later than the first day of the preceding fiscal year.

House Bill

Hospitals that have been reclassified from urban to rural as a result of revisions to the Metropolitan Statistical Area definitions issued by the Office of Management and Budget on December 28, 1992, may submit applications for reclassification in fiscal year 1994 to the Medicare Geographic Classification Review Board. Applications must be submitted not later than 60 days after enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

22. Clarification of DRG Window (Sec. 13430 of the House bill)

Present Law

Services provided by a hospital (or an entity wholly owned or operated by the hospital) to an inpatient of a hospital during the three days prior to admission are not separately reimbursed under part B of Medicare if they are diagnostic services or otherwise related to the admission.

House Bill

The DRG window provision would not apply to hospitals that are not paid on the basis of diagnosis related groups (DRGs). Other minor technical corrections would be made to Part A.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

23. Skilled Nursing Facilities (Sec. 7422 of Senate amendment)

Present Law

A skilled nursing facility may not require individuals to waive their rights to Medicare or Medicaid benefits or to require assurance that such individuals are not eligible for, or will not apply for, benefits under Medicare or Medicaid. A similar provision applicable to nursing facilities is in the Medicaid law.

****1450*761** House Bill

No provision.

Senate Amendment

Skilled nursing facilities would be prohibited from requiring individuals applying to reside in the facility, or family members of such individuals, to provide any financial information other than to identify the source of payment the individual intends to use.

Conference Agreement

The conference agreement does not include the Senate amendment.

SUBTITLE C–MEDICARE

AMENDMENTS RELATING TO PART B

1. Updates for Physician Services (Secs. 13431 and 5001 of House bill; sec. 7201 of Senate amendment)

Present Law

Under current law, payments for services covered under Part B are generally updated each year by an inflation index. Prior to 1984, physician fees were updated annually by the Medicare Economic Index (MEI). The MEI measures inflation in the cost of providing physician services. From 1984 through 1991, the MEI update was generally set in reconciliation legislation. The MEI is currently estimated to be 2.6 percent for 1994 and 2.7 percent for 1995.

Beginning in 1992, Medicare fees for physician services are updated annually by a default formula. The update is based on two things: (a) the MEI; and (b) a comparison of actual physician spending in a base period compared to an expenditure goal known as the Medicare Volume Performance Standard (MVPS). Separate goals are set for surgical and non-surgical services.

If the MVPS was exceeded in the base period, the update for services within the category is equal to the MEI reduced by the percentage by which the target was exceeded. If expenditures were less than the MVPS, the update is the MEI increased by the percentage by which expenditures in the category were below the target.

Under the default formula, the estimated 1994 increase would be 12.2% for surgical services and 6.6% for non-surgical services.

House Bill

W&M: The Medicare Economic Index (MEI) would be deemed to be zero for 1994 and 1995. Physician fees still would be adjusted by the percentage by which spending under the Medicare Volume Performance Standard system is above or below the goals established.

E&C: The default update otherwise applicable to all non-surgical services for calendar year 1994, except primary care services, ****1451*762** is reduced by 2 percentage points, and the update for surgical services is reduced by 3 percentage points.

Senate Amendment

The default updates would be reduced by 8.0 percentage points for surgical services, 4.4 percentage points for non-surgical services, except for primary care, which would receive the full update under current law for non-surgical services.

Conference Agreement

The conference agreement includes the Senate amendment with an amendment. The provision reduces the default update for the fee schedule conversion factor for 1994 and 1995. For 1994, the default update is reduced by 3.6 percentage points for surgical services. The default update is reduced by 2.6 percentage points for all other services (including anesthesia services) with the exception of primary care services which receive the full default update.

For 1995, the default update is reduced by 2.7 percentage points for surgical and all other services (including anesthesia services) with the exception of primary care services which receive the full default update.

2. Reduction in Performance Standard Rate of Increase and Increase in Maximum Reduction Permitted in Default Update and Creation of Primary Care Category (Secs. 5002 and 5003 of House bill; and sec. 7202 of Senate amendment)

Present Law

(a) Establishment of Primary Care Category.–The Secretary is required to establish separate Medicare Volume Performance Standards (MVPSs) for two categories of physicians' services. Currently, there are separate volume performance standards for surgical and non-surgical services.

(b) Reduction in Default MVPS and Updates.–The Secretary is required to establish a MVPS for each fiscal year for surgical services and non-surgical services. The rate of increase is determined by a formula that takes into account inflation, changes in program enrollment, historic average increases in the volume and intensity of services, and changes in law or regulations, reduced by a specified performance standard factor. For fiscal year 1994 the performance standard factor is 2 percentage points.

Under the default update formula, the annual MEI increase is reduced if actual expenditures in the base period exceeded the MVPS for that period. However, the update in 1994 and 1995 can be no lower than the MEI minus 2.5 percentage points; in subsequent years it can be no lower than the MEI minus 3 percentage points.

House Bill

(a) Establishment of Primary Care Category.–W&M: No provision.

****1452*763** E&C: Effective for Fiscal Year 1994, the Secretary would establish a separate category for primary care services (as defined in Section 1842(i)(4)) with respect to the application of a volume performance standard. The default update formula would be applied to the new primary care services category for calendar year 1996 and all succeeding years.

(b) Reduction in Default MVPS and Updates.–W&M: No provision.

E&C: The performance standard factor for fiscal year 1994 would be increased to 3 and one half percentage points, and to 4 percentage points for each subsequent fiscal year. In addition, the allowable reduction in the default update formula related to the Medicare Volume Performance Standard would be increased from 3 percentage points in calendar year 1994 to 5 percentage points in calendar year 1995 and any succeeding year.

Senate Amendment

(a) Establishment of Primary Care Category.–Identical to E&C provision.

(b) Reduction in Default MVPS and Updates.–Identical to E&C, except that the performance standard factor for primary care would be zero.

Conference Agreement

(a) Establishment of Primary Care Category.–The conference agreement includes the House E&C provision with an amendment relating to anesthesia services. The agreement specifies that for purposes of calculating the Medicare volume performance standards, anesthesia services are included in the surgical services category beginning in fiscal year 1994. This will affect calculation of the conversion factor update beginning with calendar year 1996. The anesthesia services moved into the category of surgical services are those that are paid on the basis of base and time units.

(b) Reduction in Default MVPS and Updates.–The conference agreement includes the House E&C provision.

3. Phased-in Reduction in Practice Expense Relative Value Units for Certain Services (Sec. 5004 of House bill; and sec. 7203 of Senate amendment)

Present Law

Under current law Medicare payments for physicians' services are based on three components: 1) a work component; 2) a practice expense component; and 3) a malpractice component. Relative values are determined for each component and combined into a single relative value for each service. While the relative values for the work component of physicians' services are based on resource costs, relative values for practice and malpractice expenses are based on historic charges.

House Bill

W&M: No provision.

****1453*764** E&C: The Secretary would phase-in reductions to the practice expense relative value units (RVUs) for certain services. Specifically, for a given service, the number of practice expense RVUs would be reduced if they exceed 110 percent of the number of work RVUs. Beginning in 1994, 25 percent of the difference between practice cost RVUs and work RVUs would be eliminated. Further differences would be eliminated in 25 percent increments over the succeeding two years. In no case would practice cost RVUs for any service be reduced below 110 percent of the work RVUs.

Reductions in practice cost RVUs would not be applied to services without a work component, to anesthesia and radiology services or to services provided in an office setting at least 75 percent of the time.

The Secretary would be required to develop a methodology for implementing in 1997 a resource-based system for determining practice expense RVUs. The Secretary would be required to submit a report to Congress on the methodology by June 30, 1996.

Senate Amendment

Similar to E&C provision except that anesthesiology and radiology services would not be exempt from the application of the rules for reducing RVUs.

Conference Agreement

The conference agreement includes the Senate amendment with an amendment to specify that the practice expense relative value units may not be reduced to a number less than 128 percent of the number of work relative value units. The agreement does not require the Secretary to develop a resource-based system for determining practice expense RVUs.

4. Limitation on Payments for Medically Directed CRNAs and for the Anesthesia Care Team (Secs. 13471 and 5005 of House bill; sec. 7204 of Senate amendment)

Present Law

A significant proportion of anesthesia services in the United States are provided by anesthesia care teams consisting of an anesthesiologist supervising two or more certified registered nurse anesthetists (CRNAs). When anesthesia services are provided by a team, Medicare payments to the supervising anesthesiologist are based on reduced base and time units. The law specifies that the base units are reduced by 10 percent for supervision of two concurrent procedures, 25 percent for supervision of three concurrent procedures, and forty percent for supervision of four concurrent procedures. When services are personally performed by an anesthesiologist, time units are measured in fifteen minute periods; for medically-directed services, time units are measured in 30 minute intervals. The law specifies that time units are to be counted based on actual

time rather than rounded to full time units.

Payments to the CRNA are based on a separate fee schedule with its own dollar conversion factor. Time units for medically-directed services are based on 30 minute intervals.

****1454*765** As a result of this payment policy, payments for a procedure to an anesthesia care team are significantly higher than payment would be to a single anesthesiologist. According to the Physician Payment Review Commission (PPRC), in most payment areas, payments to a team consisting of one anesthesiologist supervising two CRNAs are 20 percent to 30 percent higher than payments to a single anesthesiologist.

OBRA 90 set payment levels for medically directed CRNAs at 70 percent of the amount paid to physicians. These services are paid on the basis of a fee schedule which contains a dollar conversion factor. OBRA 90 specified the conversion factors through 1997 based on the amount physicians were estimated to be paid for these services. Since that time, however, the actual amounts paid to physicians for these services have been lowered as a result of refinements to physician payments. As a result, the dollar conversion factors specified in the law are greater than 70 percent.

House Bill

W&M: The conversion factor used to determine payments to medically-directed CRNAs would be frozen at $10.75, from 1993 through 1997. In subsequent years, the percentage update for these services would be the same as for physician anesthesia services.

E&C: For anesthesia services provided by anesthesia care teams on or after January 1, 1994, payments would be limited to 120 percent of the fee that would be made to a single anesthesiologist in the same locality. This anesthesia care team fee for a procedure would be equally divided between the supervising anesthesiologist and the CRNA. In each of the succeeding four calendar years the anesthesia care team payment would be reduced by 5 percent, so that in 1998, payments to the anesthesia care team would be limited to 100 percent of the fee for a single anesthesiologist in the same locality. The provision would also repeal the reduction in the number of base units paid to anesthesiologists medically directing CRNAs.

Senate Amendment

Identical to E&C provision.

Conference Agreement

The conference agreement includes the Senate amendment with an amendment. For services furnished on or after January 1, 1994, the methodology for determining base and time units is the same for services furnished by physicians, for physician medical direction of two, three or four CRNAs, or for services furnished by CRNAs (whether or not medically directed). The calculation is to be based on the methodology currently in effect for anesthesiology services furnished by physicians.

****1455*766** 5. Reinstating Separate Payment for the Interpretation of Electrocardiograms (EKGs) (Secs. 13441 and 5007 of House bill; sec. 7205 of Senate amendment)

Present Law

OBRA 90 eliminated separate payments for interpretation of EKGs performed or ordered to be performed as part of, or in conjunction with, a medical visit or consultation, effective January 1, 1992.

House Bill

W&M: The prohibition on separate payments for interpretation of EKGs would be repealed. Separate fee schedule payment amounts for interpreting EKGs in all settings would be established. The proposal provides for several adjustments to the fee schedule in order to comply with budget neutrality rules.

The Secretary would subtract the relative value units for EKG interpretation that were bundled into medical visits and consultation relative values. The Secretary would be required to reduce the relative value for all services (except anesthesia services) so that beginning in 1996 expenditures under the fee schedule would not exceed those which would have been made in the absence of this provision. For anesthesia services, the adjustment would be made to the conversion factor. Adjustments also would be made to the historical payment basis in the fee schedule to account for the fact that more EKG interpretations would be paid at the full fee schedule amount than medical visits and consultations during the transition.

E&C: Identical provision.

Senate Amendment

Identical to W&M provision.

Conference Agreement

The conference agreement includes the Senate amendment. The conferees are concerned about the impact of the restoration of separate payments for the interpretation of EKGs on payments for services provided in hospital emergency rooms. The conferees urge HCFA, when implementing this provision, to reexamine the issue of providing payment to emergency physicians for the interpretation of EKGs provided in emergency rooms.

6. Payments for New Physicians and Practitioners (Secs. 13432 and 5008 of House bill; sec. 7206 of Senate amendment)

Present Law

New physicians and practitioners receive reduced payments during their first four years of practice. These reductions were imposed on the first two years of practice by OBRA 87 and extended to the third and fourth years of practice in OBRA 90. Payments are 80 percent of the amount otherwise recognized during the first year ****1456*767** of practice, 85 percent during the second year, 90 percent during the third year, and 95 percent during the fourth year. These reductions apply to payments under the fee schedule, prevailing charges, or other fee schedule payment amounts.

House Bill

W&M: The reductions in payments to new physicians and practitioners would be repealed.

The Secretary would reduce the following values and amounts for 1994 (to be applied for that year and subsequent years) so that Part B expenditures would not exceed the amount of expenditures that would have been made in the absence of this provision. The specified values and amounts are: (i) the relative values for services (except for anesthesia services, where the reduction would be applied to the conversion factor); (ii) the historical payment portion of the 1994 transition payments; and (iii) the prevailing charge or fee schedule amounts to be applied for services of a health care practitioner (as that term was defined before enactment of this Act).

E&C: Identical provision.

Senate Amendment

Identical provision.

Conference Agreement

The conference agreement includes the Senate amendment.

7. Retaining Payment for Actual Anesthesia Time (Secs. 13443 and 5006 of House bill)

Present Law

Anesthesia services are paid on the basis of a fee schedule. One component of the fee schedule is actual time spent administering anesthesia. In the proposed rule implementing the RBRVS physician fee schedule, the Health Care Financing Administration announced its intention to eliminate the use of actual time and substitute average time. The final rule stated that actual time would continue to be used temporarily while other methods of accounting for time in the payment of anesthesia services were being analyzed.

House Bill

W&M: The Secretary could not change the methodology of calculating anesthesia time in the fee schedules for anesthesia services from the methodology that applied as of January 1, 1992.

E&C: Similar provision, except specifies that for services furnished on or after January 1, 1994, the Secretary may not modify the methodology in effect as of January 1, 1993.

Senate Amendment

No provision.

****1457*768** Conference Agreement

The conference agreement does not include the House provisions.

8. Geographic Adjustment Refinements (Secs. 13444 and 5009 of House bill)

Present Law

(a) Use of More Recent Data.–One of the components of the Medicare fee schedule for physicians' services is a geographic adjustment which is designed to measure local variations in the costs of practicing medicine. Separate geographic cost of practice indexes (GPCIs) have been developed for each of the three components of the relative value unit, namely a work GPCI, a practice expense GPCI, and a malpractice GPCI. A separate geographic adjustment is made for each component. The three adjusted components are added together to produce an indexed relative value for the locality. The Secretary is required to review the GPCI values at least every three years. HCFA has previously indicated that they intend to revise the GPCI by 1995. The current index is based in part on 1980 data from the Bureau of Census.

(b) Development of Criteria for Use in Determining Payment Localities.–Geographic adjustments for physician payments are based on geographic localities. In general, the current localities were defined when Medicare was initially established in 1965, and have not been significantly revised since then.

House Bill

(a) Use of More Recent Data.–W&M: The Secretary would review and revise the geographic practice cost index by January 1, 1995 using the most recent data available. The Secretary would consult with appropriate representatives of physicians in reviewing the adjustment factors and indices. The Secretary would report to the Congress on the construction of the index by April 1, 1994.

The Secretary would conduct a study and, within one year of enactment, report to the Congress on: (1) the data necessary to review and revise the GPCI indices; (2) any limitations on the availability of data necessary to review and revise the indices at least every 3 years; (3) ways to address such limitations, with attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years; and (4) the costs of developing more accurate and timely data sources.

E&C: Similar provision except does not require the April 1, 1994 report to Congress.

(b) Development of Criteria for Use in Determining Payment Localities.–W&M: The Physician Payment Review Commission would conduct a study to develop criteria that would be used for redefining the localities used within States for adjusting physician fees under the RB RVS. The Commission would include the results of the study in its 1994 annual report to the Congress.

E&C: No provision.

****1458*769** Senate Amendment

(a) Use of More Recent Data.–No provision.

(b) Development of Criteria for Use in Determining Payment Localities.–No provision.

Conference Agreement

(a) Use of More Recent Data.–The conference agreement does not include the House provision.

(b) Development of Criteria for Use in Determining Payment Localities.–The conference agreement does not include the House provision.

9. Extra-billing (Secs. 13445 and 5010 of House bill; sec. 7207 of Senate amendment)

Present Law

(a) Limitations on Beneficiary Liability.–OBRA 89 established limits on the amount above the Medicare approved payment amount nonparticipating physicians may charge Medicare beneficiaries. OBRA 89 permitted the Secretary to impose sanctions on physicians who knowingly and willfully bill above the limiting charge on a repeated basis. However, it did not specifically prohibit physicians from billing beneficiaries more than the limiting charge. OBRA 89 also did not require physicians to make refunds to beneficiaries when they billed above the limiting charge and did not absolve beneficiaries from liability for amounts billed above the Medicare limiting charge.

(b) Pre-Payment Screening of Claims.–Carriers are not currently required by law to screen unassigned claims submitted by nonparticipating physicians prior to payment in order to determine whether the amount billed exceeds the limiting charge.

(c) Information Regarding Limiting Charges.–There is currently no requirement that beneficiaries be given information on the Explanation of Medicare Benefits (EOMB) form if physicians have charged beneficiaries in excess of the limiting charge.

(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.–The five percent differential in payments to nonparticipating physicians and suppliers does not apply to nonphysician services furnished under

the Medicare physician fee schedule. These services generally consist of the technical components of services, such as services rendered by free-standing radiology centers or independent physiological laboratories.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners.–There is some ambiguity in current law regarding the application of mandatory assignment rules for certain nonphysician practitioners.

House Bill

(a) Limitations on Beneficiary Liability.–W&M: Nonparticipating physicians and nonparticipating suppliers would be prohibited from billing or collecting from any person an actual charge in excess of the Medicare limiting charge. No person would ****1459*770** be liable for payment of any amount billed in excess of the limiting charge. Physicians, suppliers and other persons who bill or collect amounts exceeding the limiting charge would be required to: (1) refund the full amount collected in excess of the limiting charge; (2) reduce the outstanding balance owed for other items and services furnished to the individual by the amount of the charge exceeding the limiting charge and refund any amount in excess of the outstanding balance; or (3) in the case of where the excess charges have not been collected by the physician, reduce the actual charge billed for the service to the amount approved by Medicare.

The physician would be required to refund or credit excess charges within 30 days after the date the physician, supplier, or other person is notified by the carrier of the violation.

A physician who (1) knowingly and willfully bills or collects amounts in excess of the limiting charge on a repeated basis; or (2) fails to comply with the refund requirements would be subject to sanctions in accordance with Section 1842(j) of the Social Security Act.

E&C: Identical provision.

(b) Pre-Payment Screening of Claims.–W&M: Carriers would be required to screen 100 percent of unassigned claims submitted by nonparticipating physicians prior to making payment to determine whether the amount billed exceeds the limiting charge. Carriers would be required to notify a physician within 30 days if the physician has billed in excess of the limiting charge.

E&C: Identical provision.

(c) Information Regarding Limiting Charges.–W&M: Carriers would be required to provide limiting charge information on the Explanation of Medicare Benefits form after the submission of an unassigned claim which exceeds the limiting charge, and to include on such forms information relating to the beneficiary's right to a refund of any excess amounts collected.

The Secretary would report to the Congress annually on the extent to which annual charges exceeded limiting charges, the number and types of services involved, and the average amount of excess charges.

E&C: Identical provision.

(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.–W&M: The five percent differential between payments to participating and nonparticipating physicians and suppliers and limiting charge restrictions would apply to: the technical components of nonphysician services paid on the basis of the physician fee schedule, services of nonparticipating suppliers or other persons who furnish a physician's service that is paid under the physician fee schedule, and services that would be paid under the fee schedule but have been excluded from the fee schedule by the Secretary.

E&C: Identical provision.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners.–W&M: Specifies that physicians' assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers and clinical psychologists could only bill for services on an assignment-related basis and that no person is liable for

amounts billed in violation****1460*771** of the assignment-related basis. The Secretary could impose sanctions under Section 1842(j) of the Social Security Act on a practitioner who knowingly and willfully bills in violation of this requirement.

E&C: Identical provision.

Senate Amendment

(a) Limitations on Beneficiary Liability.–Identical provision.

(b) Pre-Payment Screening of Claims.–Identical provision.

(c) Information Regarding Limiting Charges.–Identical provision.

(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.–Identical provision.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners.–Identical provision.

Conference Agreement

(a) Limitations on Beneficiary Liability.–The conference agreement does not include the House or Senate provisions.

(b) Pre-Payment Screening of Claims.–The conference agreement does not include the House or Senate provisions.

(c) Information Regarding Limiting Charges.–The conference agreement does not include the House or Senate provisions.

(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.–The conference agreement includes the House provision.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners.–The conference agreement does not include the House or Senate provisions.

10. Development of RB RVS for Pediatric Services (Secs. 13446 and 5011 of House bill)

Present Law

No provision.

During the development of the RB RVS by Harvard University, pediatric services were included in the initial study. These data were not fully refined by Harvard nor were they refined by the Secretary during further development of the RB RVS.

House Bill

W&M: The Secretary would fully develop and refine by July 1, 1994 the relative values for the full range of physicians' pediatric services. The Secretary would conduct a study of the relative values for pediatric and other physicians' services to determine whether there are significant variations in the resources used in providing similar services to different populations. In conducting the study, the Secretary would consult with appropriate organizations representing pediatricians and other physicians, and submit a report to the Congress by July 1, 1994.

E&C: Similar to W&M except that the Secretary is also directed to consult with physical and occupational therapists.

****1461*772** Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

11. Antigens Under RB RVS (Secs. 13447 and 5012 of House bill)

Present Law

In general, physician services are paid under the RB RVS. Antigens used in allergy immunotherapy currently are paid on a reasonable charge basis.

House Bill

W&M: Payments for antigens and related services would be paid under the RB RVS physician fee schedule, effective January 1, 1995.

E&C: Identical to W&M but would be effective on January 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House W&M provision with an amendment providing for a budget neutrality adjustment in 1995.

12. Claims Relating to Physician Services (Secs. 13448 and 5013 of House bill)

Present Law

The law does not specifically prohibit the imposition of carrier user fees.

OBRA 90 permitted physicians to submit a claim for a service provided by a second physician when the first physician was not available to provide the service. Such billing was permitted only in cases where the arrangement is temporary and reciprocal.

House Bill

W&M: The Secretary and carriers would be prohibited from imposing any fees related to the filing of claims for physicians' services, for claims errors or denials, for administrative appeals, for obtaining unique identifier numbers, or for responding to inquiries concerning the status of pending claims.

The Secretary would be permitted to recognize substitute billing arrangements between two physicians. In order to be

recognized, such substitute billing arrangements would be required either to be informal, reciprocal, coverage agreements or per diem or ****1462*773** other fee-for-time agreements. The duration of such agreements would be limited to 60 continuous days, and claims for services provided pursuant to such agreements would be required to include the unique identifying number of both physicians. These requirements would be effective for services provided under such arrangements in the first month beginning more than 60 days after the enactment of this Act.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

13. Miscellaneous Technical Corrections (Secs. 13449 and 5014 of House bill)

Present Law

(a) Overvalued Procedures.–OBRA 90 subjected all unsurveyed overvalued services to a 6.5 percent reduction unless the law specifically exempted them from the reduction. Unsurveyed services are those not included in earlier surveys conducted to determine relative values of physicians' services; these unsurveyed services were considered to be overvalued. The list of services specifically exempted from the 6.5 percent reduction contained certain errors.

(b) Radiology Services.–OBRA 90 reduced the locally defined conversion factors for radiology services paid on the basis of the radiology fee schedule. The maximum reduction was not to exceed 9.5 percent. However, OBRA 90 contained an error that would increase conversion factors in some localities.

(c) Anesthesia Services.–OBRA 87 established a fee schedule for anesthesia services based on a relative value guide for anesthesia services and local conversion factors. OBRA 90 reduced the local conversion factors. The maximum reduction was not to exceed 9.5 percent. However OBRA 90 contained an error that would increase the conversion factors in some localities.

(d) Assistants at Surgery.–OBRA 90 specified that payment to a physician serving as an assistant at surgery cannot exceed 16 percent of the payment made for the global surgical service.

(e) Technical Components of Diagnostic Services.–OBRA 90 capped the reasonable charge for technical components of specified diagnostic services at the national median charge for the service in all localities.

(f) Statewide Fee Schedules.–OBRA 90 required the Secretary to treat the States of Nebraska and Oklahoma as statewide payment localities if they met certain requirements specified in the law. Each member of the Congressional delegation from those States and organizations representing urban and rural physicians would have to agree to the statewide locality provision. This requirement ****1463*774** raised constitutional concerns relating to the separation of powers between the executive and legislative branches.

(g) Reciprocal Billing Arrangements.–OBRA 90 permitted physicians to submit a claim for a service provided by a second physician when the first physician was not available to provide the service. Such billing was permitted only in cases where the arrangement is temporary and reciprocal.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.–OBRA 90 required the Secretary to study the effects of aggregating physician claims and report to the Congress by December 31, 1992.

(i) Additional Technical Amendments.–The law requires the Secretary to report to Congress on modifying visit codes to reflect time. The law also authorizes bonus payments to carriers who increase the proportion of physicians in the locality who are participating physicians.

House Bill

(a) Overvalued Procedures.–W&M: Some procedures would be deleted from the list of exempted services and errors in the names of other services would be corrected. The procedures that would be deleted from the list of exempted services are: lobectomy; enterectomy; colectomy; cholecystectomy; and sacral laminectomy.

E&C: Identical provision.

(b) Radiology Services.–W&M: The conversion factors below the maximum reduction amount would not be permitted to be increased. The provision makes other technical changes to OBRA 90.

E&C: Identical provision.

(c) Anesthesia Services.–W&M: The conversion factors below the maximum reduction amount would not be permitted to increase. The provision makes other technical changes to OBRA 90.

E&C: Identical provision.

(d) Assistants at Surgery.–W&M: The application of the extra-billing limits to physicians serving as assistants at surgery would be clarified.

E&C: Identical provision.

(e) Technical Components of Diagnostic Services.–W&M: The limits on payment for the technical component of diagnostic services would not apply to services whose payments were reduced under the OBRA 89 overvalued procedure list.

E&C: Identical provision.

(f) Statewide Fee Schedules.–W&M: The OBRA 90 requirement for agreement from members of Congress would be eliminated, and Nebraska and Oklahoma would be statewide localities beginning in 1991.

E&C: Identical provision.

(g) Reciprocal Billing Arrangements.–W&M: OBRA 90 would be amended to clarify the services that may be covered under reciprocal billing. All physician services, including services incident to physician services, would be covered. The provision would also permit reciprocal billing arrangements that are both informal or reciprocal (as in current law) or involve per diem or other fee-for-time compensation.

E&C: No provision. (See Item 12.)

****1464*775** (h) Study of Aggregation Rule for Claims of Similar Physician Services.–W&M: The date that the study must be submitted to the Congress would be changed from December 31, 1992 to December 31, 1993.

A number of technical and drafting errors contained in OBRA 90 would be made through minor and conforming amendments.

E&C: Identical provision.

(i) Additional Technical Amendments–W&M: The provision would make additional technical changes.

E&C: Similar provision. In addition, the provision would delete the requirement for a report to Congress on modifying visit codes to reflect time; it would also delete the provision authorizing carrier bonus payments.

Senate Amendment

(a) Overvalued Procedures.–No provision.

(b) Radiology Services.–No provision.

(c) Anesthesia Services.–No provision.

(d) Assistants at Surgery.–No provision.

(e) Technical Components of Diagnostic Services.–No provision.

(f) Statewide Fee Schedules.–No provision.

(g) Reciprocal Billing Arrangements.–No provision.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.–No provision.

(i) Additional Technical Amendments.–No provision

Conference Agreement

(a) Overvalued Procedures.–The conference agreement does not include the House provision.

(b) Radiology Services.–The conference agreement does not include the House provision.

(c) Anesthesia Services.–The conference agreement does not include the House provision.

(d) Assistants at Surgery.–The conference agreement does not include the House provision.

(e) Technical Components of Diagnostic Services.–The conference agreement does not include the House provision.

(f) Statewide Fee Schedules.–The conference agreement does not include the House provision.

(g) Reciprocal Billing Arrangements.–The conference agreement does not include the House provision.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.–The conference agreement does not include the House provision.

(i) Additional Technical Amendments.–The conference agreement does not include the House provision.

****1465*776** 14. Extension of 10 Percent Reduction in Payments for Capital-Related Costs of Outpatient Hospital Services (Sec. 5021 of House bill; sec. 7221 of Senate amendment)

Present Law

Medicare pays the capital costs of hospitals allocated to outpatient departments on the basis of reasonable cost principles, subject to a 10 percent reduction through fiscal year 1995. Sole community hospitals and primary care hospitals are exempt

from these reductions.

House Bill

W&M: No provision.

E&C: The 10 percent reduction for such hospital outpatient capital payments would be extended through fiscal year 1998.

Senate Amendment

Identical to E&C provision.

Conference Agreement

The conference agreement includes the House provision.

15. Extension of Reduction in Payments for Cost Related Outpatient Hospital Services (Sec. 5022 of House bill; sec. 7222 of Senate amendment)

Present Law

Under current law, Medicare payments for hospital outpatient services made on a reasonable cost basis and the cost portion of outpatient services paid on the basis of a blended amount are both reduced by 5.8 percent through fiscal year 1995.

House Bill

W&M: No provision.

E&C: The bill extends the 5.8 percent reduction in such payments through fiscal year 1998.

Senate Amendment

Identical to E&C provision.

Conference Agreement

The conference agreement includes the Senate amendment.

16. Updates for Ambulatory Surgical Centers (Secs. 13433 and 5023 of House bill)

Present Law

Payments for services in ASCs do not have a statutory annual update. However, the Secretary has generally provided for an update equal to the CPI–U under the Secretary's general authority for determining reasonable costs and charges.

****1466*777** House Bill

W&M: Payments for services in ASCs would not be updated in 1994 and 1995.

E&C: The update to ambulatory surgery payments would be suspended for fiscal year 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House W&M provision freezing payments for FY's 1994 and 1995.

17. Designation of Certain Hospitals As Eye and Ear Hospitals (Secs. 13451 and 5024 of House bill)

Present Law

Hospitals designated as eye, or as eye and ear hospitals, receive a blended payment rate for ambulatory surgery for which 75 percent is based on the hospital's costs and 25 percent is based on the rate paid to freestanding Ambulatory Surgery Centers (ASCs). This special rule applies for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995. In general, the blended payment rate to hospitals for outpatient surgery is based 42 percent on costs and 58 percent on the ASC rate. To receive designation as an eye, or eye and ear hospital, a facility must specialize in these services, receive more than 30 percent of its revenue from outpatient services, and must have been an eye, or an eye and ear hospital, on October 1, 1987.

House Bill

W&M: The eligibility for designation as an eye, or as an eye and ear hospital, would be extended to hospitals that otherwise meet the criteria but, on October 1, 1987, operated as a physically separate, or distinct eye and ear unit of a general acute care hospital, which has sold or otherwise disposed of a substantial portion of its other acute care operations, effective for portions of cost-reporting periods beginning on or after January 1, 1994.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

****1467*778** 18. Payment Limits for Intraocular Lenses (IOLs) (Secs. 13452 and 5025 of House bill; sec. 7223(a) of Senate amendment)

Present Law

OBRA 90 established a payment limit of $200 for intraocular lenses inserted during 1991 and 1992.

House Bill

W&M: The $200 payment limit for IOLs would be extended for two years, through 1994.

The Secretary would conduct a study of the recent costs of IOLs provided to Medicare beneficiaries. Included in the study would be an examination of issues related to new technology lenses. The Secretary would submit a report on the study, including recommendations on the reasonable costs and charges for IOLs, within one year of the date of enactment.

E&C: Identical provision, except that it does not include the study.

Senate Amendment

The $200 payment limit would be maintained until December 31, 1993. The provision would establish payments for intraocular lenses inserted in an ambulatory surgery center during or subsequent to cataract surgery on or after January 1, 1994 and on or before December 31, 1998 at $150.

Conference Agreement

The conference agreement includes the Senate amendment.

19. Technical Amendments for Ambulatory Surgical Services (Secs. 13453 and 5026 of House bill; secs. 7223(b)(1), (b)(2), and (b)(3) of Senate amendment)

Present Law

(a) Payment Amounts.–Current law requires the Secretary to update ambulatory surgery center payment rates by July 1, 1987 and annually thereafter, if the Secretary determines that an update is appropriate.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.–OBRA 90 included a provision capping payments for IOLs at $200 in 1991 and 1992. As drafted, the statutory language could be interpreted as limiting payments for cataract surgery to $200. The OBRA 90 conferees also agreed to a provision providing for a process by which the fee for new technology intraocular lenses (IOLs) could be adjusted. Statutory language reflecting this agreement was inadvertently omitted from OBRA 90.

(c) Other Technical Amendments.–OBRA 90 included several technical errors relating to the calculation of the blend amounts for limiting payment in hospital outpatient departments and relating to payments for cataract surgery.

****1468*779** House Bill

(a) Payment Amounts.–W&M: The update for ambulatory surgery services would be established, beginning with fiscal year 1995, at the CPI–U for the twelve-month period ending with March of the preceding year. The Secretary would be required to conduct a survey, based on a representative sample of procedures and facilities, taken not later than January 1, 1994 and updated every five years thereafter, of the actual audited costs of ambulatory surgery facilities. The survey results would be used in establishing payment rates. The Secretary would be required to consult with appropriate trade and professional organizations in updating the list of procedures that can be performed in ambulatory surgery centers.

E&C: Similar provision, except that the survey would be taken not later than January 1, 1995, and that the initial update under this policy would apply to services provided in or after fiscal year 1996.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.–W&M: The Secretary would be required, within one year after the date of enactment, to develop and implement a process for reviewing reimbursement for new

technology intraocular lenses (IOLs). In order to be considered a new technology IOL, the device would have to be approved by the FDA. The Secretary would also be required to consider specific circumstances in determining whether to adjust the payment amount for new technology IOLs. The provision also would specify the administrative procedures for reviewing and approving new technology IOLs.

E&C: Identical provision.

(c) Other Technical Amendments.–W&M: Certain technical corrections would be made.

E&C: No provision.

Senate Amendment

(a) Payment Amounts.–Similar to E&C provision, except does not include requirement for the update.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.–Identical to W&M provision.

(c) Other Technical Amendments.–Identical to W&M provision.

Conference Agreement

(a) Payment Amounts.–The conference agreement does not include the House provision or the Senate amendment.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.–The conference agreement does not include the House provision or Senate amendment.

(c) Other Technical Amendments.–The conference agreement does not include the House provision or the Senate amendment.

****1469*780** 20. Payments for Laboratory Services (Secs. 13432(a) and 5061 of House bill; sec. 7262 of Senate amendment)

Present Law

(a) Update.–Medicare payments for clinical laboratory services are made on the basis of local fee schedules that are in place in payment areas designated by the Secretary. The fee schedules are adjusted annually by the increase or decrease in the CPI-U, except that for fiscal years 1991, 1992, and 1993 the update was limited to 2 percent.

(b) Lower Cap on Fee Schedules.–Each fee schedule is limited by a national cap which is currently equal to 88 percent of the median of all the fee schedules established for a particular test.

House Bill

(a) Update.–W&M: The consumer price index (CPI-U) would be deemed to be zero for the purposes of updating these fees in 1994 and 1995.

E&C: The 2 percent annual update policy would be extended through fiscal year 1998.

(b) Lower Cap on Fee Schedules.–W&M: No provision.

E&C: The national cap on the fee schedules for laboratory services would be reduced to 76 percent of the median of all the fee schedules for a particular test.

Senate Amendment

(a) Update.–The update to the clinical laboratory fee schedule would be eliminated from 1994 through 1998.

(b) Lower Cap on Fee Schedules.–Identical to E&C provision.

Conference Agreement

(a) Update.–The conference agreement includes the House W&M provision.

(b) Lower Cap on Fee Schedules.–The conference agreement follows the Senate amendment with an amendment to phase-in the reduction in the cap over a 3-year period. The cap is set at 84 percent of the median in 1994, 80 percent in 1995, and 76 percent in 1996 and thereafter.

21. Updates for Other Part B Items and Services (Sec. 13434 of House bill; Sec. 7261(d) of Senate Amendment)

Present Law

Part B services, other than physician services, laboratory services, durable medical equipment, and ASC services, are subject to payment screens or payment caps that are used to determine reasonable costs or reasonable charges. These are updated annually according to a variety of different rules.

House Bill

W&M: All payment screens, used to determine reasonable costs or reasonable charges for such services would not be updated in ****1470*781** 1994 and 1995. Services affected would include services in Federally Qualified Health Centers, and ambulance services.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

22. Payment for Durable Medical Equipment (Secs. 13432, 5031, and 5032 of the House bill; secs. 7231, 7232 and 7233 of the Senate amendment)

Present Law

(a) Update for DME.–Fees for durable medical equipment, orthotics and prosthetics, and enteral and parenteral services are updated annually by the CPI-U. The CPI-U is currently estimated to be 2.6 percent for 1994 and 1995.

(b) Use of national limits for prosthetics and orthotics.–Medicare currently pays for prosthetics and orthotics on a basis of a

fee schedule that has regional floors and ceilings on payments.

(c) Use median to set national limits.–Medicare currently pays for DME on the basis of a fee schedule that has national floors and ceilings. The floor is equal to 85 percent of the weighted average of local payment amounts and the ceiling is equal to 100 percent of the weighted average of local payment amounts. Medicare pays for prosthetics and orthotics on the basis of a fee schedule that has regional floors and ceiling, with the floor equal to 85 percent of the weighted average of local payment amounts and the ceiling equal to 120 percent of the weighted average of local payment amounts.

House Bill

(a) Update for DME.–W&M: Provision would set the update to zero for DME, orthotics and prosthetics, and enteral and parenteral services for 1994 and 1995.

E&C: Provision would eliminate the update for parenteral and enteral nutrients, supplies, and equipment for 1994.

(b) Use of national limits for prosthetics and orthotics.–W&M: No provision.

E&C: Provision would establish national payment limits, based on the median of local payment amounts, for orthotics and prosthetics.

(c) Use median to set national limits.–W&M: No provision.

E&C: Provision would base national payment limits for DME on median of local payment amounts.

Senate Amendment

(a) Update for DME.–No provision.

(b) Use of national limits for prosthetics and orthotics.–Identical to E&C provision.

****1471*782** (c) Use median to set national limits.–Identical to E&C provision.

Conference Agreement

(a) Update for DME.–The conference agreement follows the House provisions with amendments to eliminate updates for orthotics and prosthetics and parenteral and enteral nutrients, supplies, and equipment for FY 1994 and FY 1995.

(b) Use of national limits for prosthetics and orthotics.–The conference agreement does not include the House E&C provision or the Senate amendment.

(c) Use of median to set national limits.–The conference agreement includes the House provision with an amendment to base national payment limits for DME on the median of local payment amounts. The provision regarding application of the median limits to prosthetics and orthotics is not included.

23. Durable Medical Equipment (Secs. 13461, and 5034 of the House bill)

Present Law

(a) Certification of Suppliers.–There are no statutory standards that suppliers of durable medical equipment (DME), prosthetic devices, prosthetics and orthotics, surgical dressings, splints, casts, and other devices for fractures and dislocations, home dialysis supplies, and immunosuppressive drugs must meet in order to supply items to Medicare beneficiaries.

(b) Prohibition Against Multiple Billing Numbers.–No provision.

(c) Standardized Certificates of Medical Necessity.–There are no provisions relating to standardized medical necessity certificates.

(d) Distribution of Certificates of Medical Necessity.–OBRA 90 prohibited suppliers of durable medical equipment from distributing, for commercial purposes, completed or partially completed certificates of medical necessity to physicians or Medicare beneficiaries.

(e) Uniform National Coverage and Utilization Review Requirements.–There are no provisions relating to uniform coverage or utilization review criteria for DME. HCFA is currently in the process of developing uniform coverage and utilization review policies for 100 items.

(f) Studies.–

(i) Use of covered items by disabled beneficiaries.–No provision.

(ii) Variations in quality of equipment.–No provision.

House Bill

(a) Certification of Suppliers.–W&M: Suppliers of medical equipment and supplies (durable medical equipment, prosthetic devices, orthotics and prosthetics, surgical dressings and such other items as the Secretary may determine and home dialysis supplies and equipment and immunosuppressive drugs) will not be reimbursed ****1472*783** for these items unless they have a Medicare supplier number. A supplier may not obtain a supplier number for equipment and supplies furnished on or after October 1, 1993, and before December 31, 1994, unless the supplier meets uniform national standards prescribed by the Secretary. By January 1, 1995, the Secretary would revise the standards. The standards would require suppliers to (1) comply with all applicable State and Federal licensure and regulatory requirements; (2) maintain a physical facility and inventory on an appropriate site; (3) have proof of appropriate liability insurance; (4) meet other requirements established by the Secretary. In addition, the requirement for suppliers to obtain a supplier number does not apply to medical equipment and supplies furnished as an incident to a physician's service. The Secretary is prohibited from delegating the responsibility to determine whether the supplier meets the standards necessary to obtain a supplier number.

E&C: Identical to W&M provision, with the exception that application begins one year later.

(b) Prohibition Against Multiple Billing Numbers.–W&M: The Secretary would be prohibited from issuing more than one billing number to any supplier, unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

E&C: Identical to W&M provision.

(c) Standardized Certificates of Medical Necessity.–W&M: The Secretary would be required to develop by October 1, 1993, one or more standardized certificates of medical necessity for medical equipment and supplies if a certificate of medical necessity is required by the Secretary.

E&C: Identical to W&M provision, with the exception that requirement applies one year later.

(d) Distribution of Certificates of Medical Necessity.–W&M: The OBRA 90 provision prohibiting suppliers of medical equipment and supplies from distributing completed or partially completed certificates of medical necessity would be modified. Beginning October 1, 1993, suppliers of potentially overused and abused items would be prohibited from distributing completed or partially completed certificates of medical necessity. Suppliers of items which are not potentially overused and abused would be permitted to complete information identifying beneficiaries and suppliers, a description of the item, a product code identifying the item, and any other information required by the Secretary. If a supplier provides any of

the above information on a certificate of medical necessity, the supplier would be required to include the fee schedule amount and the supplier's charge prior to distribution to the physician for completion. Suppliers who violate the provisions would be subject to a civil money penalty in an amount not to exceed $1,000 for each certificate of medical necessity so distributed.

E&C: Identical to W&M provision, with the exception that provisions apply one year later.

(e) Uniform National Coverage and Utilization Review Requirements.–W&M: Not later than January 1, 1995, the Secretary would, in consultation with representatives of DME suppliers, beneficiaries, and medical specialty organizations, develop and establish ****1473*784** uniform national coverage and utilization review criteria for 200 items of medical equipment and supplies. The criteria would be published as instructions to carriers and intermediaries, and no further publication, including Federal Register publication, would be required.

The Secretary would select an item for development of national coverage and utilization review criteria if: (1) the item is frequently rented or purchased by beneficiaries; (2) the item is frequently subject to a determination that it is not medically necessary; or (3) coverage or utilization review criteria applied to the item is not consistent among carriers. The Secretary would be required annually to review and determine whether items not on the list should be subject to uniform national coverage and utilization review criteria and to subject them to these criteria if necessary. The Secretary would also be required to submit a report to the Congress by July 1, 1995, analyzing the impact of these uniform criteria on the utilization of items subject to the criteria by Medicare beneficiaries.

E&C: Identical to W&M provision, with the exception that application begins one year later and the report is due July 1, 1996.

(f) Studies.–

(i) Use of covered items by disabled beneficiaries.

W&M: The Secretary would study and report to the Congress by May 1, 1994 on the effects of the methodology for determining payments for durable medical equipment items and supplies on the ability of persons entitled to disability benefits to obtain equipment, including customized items.

E&C: Identical to W&M provision, with the exception that the report is due one year after enactment.

(ii) Variations in quality of equipment.

W&M: The Secretary would study and report to the Congress by July 1, 1994, describing prosthetic devices or orthotics and prosthetics that do not require individualized or custom fitting and adjustment and report an appropriate method for determining the amount of payment for such items under the program that do not require individualized or custom fitting and adjustment.

E&C: Identical to W&M, with the exception that the report is due one year after enactment.

Senate Amendment

(a) Certification of Suppliers.–No provision.

(b) Prohibition Against Multiple Billing Numbers.–No provision.

(c) Standardized Certificates of Medical Necessity.–No provision.

(d) Distribution of Certificates of Medical Necessity.–No provision.

(e) Uniform National Coverage and Utilization Review Requirements.–No provision.

(f) Studies.–

(i) Use of covered items by disabled beneficiaries.–No provision.

(ii) Variations in quality of equipment.–No provision.

****1474*785** Conference Agreement

(a) Certification of Suppliers.–The conference agreement does not include the House provision.

(b) Prohibition Against Multiple Billing Numbers.–The conference agreement does not include the House provision.

(c) Standardized Certificates of Medical Necessity.–The conference agreement does not include the House provision.

(d) Distribution of Certificates of Medical Necessity.–The conference agreement does not include the House provision.

(e) Uniform National Coverage and Utilization Review Requirements.–The conference agreement does not include the House provision.

(f) Studies.–

(i) Use of covered items by disabled beneficiaries.–The conference agreement does not include the House provision.

(ii) Variations in quality of equipment.–The conference agreement does not include the House provision.

24. Prohibition Against Carrier Forum Shopping (Secs. 13462 and 5035 of the House bill)

Present Law

There are no prohibitions against carrier forum shopping in current DME law. HCFA is currently establishing four regional carriers to process all claims for beneficiaries residing within their areas.

House Bill

W&M: The Secretary would be authorized to designate in a regulation one carrier for one or more entire regions to process all claims within the region for covered durable medical equipment, prosthetic devices, and orthotics and prosthetics. Suppliers would be required to submit claims to the carrier having jurisdiction over the geographic area that includes the permanent residence of the patient to whom the item is furnished.

E&C: Identical to W&M provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

25. Restrictions on Certain Marketing and Sales Activity (Secs. 13463 and 5036 of the House bill)

Present Law

No provision.

****1475*786** House Bill

W&M: Suppliers would be prohibited from making unsolicited telephone contacts with Medicare beneficiaries, unless the individual gives permission to the supplier, or the supplier has furnished the individual with a covered item within the preceding 15 months. Medicare would not pay for items provided subsequent to a prohibited telephone contact. The Secretary would be required to exclude from programs under the Social Security Act suppliers who knowingly make prohibited telephone contacts to such an extent that the supplier's conduct establishes a pattern of contacts in violation of the prohibition. Beneficiaries would not be liable for the cost of items provided as a result of prohibited telephone contacts, and the supplier would be required to refund any amounts collected on a timely basis or be subject to certain sanctions.

E&C: Identical to W&M provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

26. Anti-kickback Clarification (Sec. 13464 and 5037 of the House bill)

Present Law

Current law exempts employees in bona-fide employment relationships from penalties assessed for knowingly and willfully soliciting or receiving remuneration (including kickbacks, bribes, or rebates) or offering or paying remuneration as an incentive for Medicare business.

House Bill

W&M: The exemption from anti-kickback penalties for employees in bona-fide employment relationships with providers of Medicare-covered services and supplies would not include the tasks of transmitting assignment rights of Medicare beneficiaries to suppliers of covered items, or performing warehousing or stock inventory functions.

E&C: Identical to W&M provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

****1476*787** 27. Limitations on Beneficiary Liability for Non-covered Services (Secs. 13465 and 5038 of the House bill)

Present Law

No provision.

House Bill

W&M: Effective October 1, 1993, Medicare beneficiaries would not be financially liable for covered items furnished by a supplier on an unassigned basis if: (1) the supplier is excluded from Medicare participation; (2) Medicare has denied payment for the item in advance; or (3) the supplier does not meet Medicare standards for suppliers of medical equipment and supplies.

E&C: Similar to W&M provision, with the exception that it also applies to items furnished on an assigned basis and is effective one year later.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

28. Adjustments for Inherent Reasonableness (Secs. 13466 and 5039 of the House bill)

Present Law

The Secretary is permitted to increase or decrease the Medicare DME fee schedules in cases where the payment amount is grossly excessive or grossly deficient and not inherently reasonable. Such adjustment must reflect costs in the base year of the fee schedules.

House Bill

W&M: The Secretary would determine whether the payment amounts for decubitus care mattresses, transcutaneous electrical nerve stimulators (TENS), and any other items considered appropriate by the Secretary are inherently reasonable and would adjust payments for these items if the amounts are not inherently reasonable. Adjustments for these items would be based on the prices and costs applicable at the time the item is furnished.

E&C: Identical to W&M provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

****1477*788** 29. Treatment of Nebulizers and Aspirators (Secs. 13467 and 5033 of the House bill; sec. 7232 of Senate amendment)

Present Law

There are five categories of items and supplies in the DME fee schedule. Aspirators, nebulizers, ventilators, and IPPB machines are in a category referred to as items requiring frequent and substantial servicing. This category is intended to include items which require frequent servicing in order to avoid imminent danger to a beneficiary's health.

House Bill

W&M: Aspirators and nebulizers would be removed from the category of DME items requiring frequent and substantial servicing. Disposable supplies used in conjunction with aspirators and nebulizers would be placed in the category of inexpensive and other routinely purchased equipment.

E&C: Identical to W&M provision.

Senate Amendment

Similar to W&M provision but would also remove ventilators and IPPB from the category of DME items requiring frequent and substantial servicing.

Conference Agreement

The conference agreement follows the Senate amendment with an amendment to specify that the frequent servicing category will include IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices. Separate payment will be made for accessories used with nebulizers, aspirators or excluded ventilators as inexpensive or routinely purchased items.

30. Payment for Ostomy Supplies and Other Supplies (Secs. 13468, 5031(b), 5040 and 5041 of the House bill; secs. 7233 and 7234 of Senate amendment)

Present Law

Ostomy supplies, tracheostomy supplies, urologicals, surgical and other medical supplies are included in the prosthetics and orthotics fee schedule, which is subject to regional payment limits.

The DME fee schedule specifies reductions in payments for transcutaneous electrical nerve stimulators (TENS).

House Bill

W&M: Ostomy supplies, tracheostomy supplies and urologicals would be subject to national payment limits. Payment for surgical dressings would be made in a lump sum in an amount equal to eighty percent of the lesser of the actual charge for the item or the national payment limit (computed based on local payment amounts using average reasonable charges for the twelve month period ending ****1478*789** December 31, 1992, increased by the covered item update for 1993 and 1994.

These provisions would not apply to surgical dressings furnished incident to a physician's professional service or furnished by a home health agency.

The DME fee schedule amount for transcutaneous electrical nerve stimulation (TENS) devices would be reduced by an additional thirty percent.

E&C: Identical to W&M provision.

Senate Amendment

Similar to W&M provision, except does not include a separate provision for ostomy supplies, tracheostomy supplies, and urologicals. (Note: the bill establishes elsewhere national payment limits for prosthetics and orthotics.)

Conference Agreement

The conference agreement includes the House provision.

31. DME Miscellaneous and Technical Corrections (Secs. 13469 and 5042 of the House bill)

Present Law

(a) Updates to Payment Amounts.–OBRA 90 contains a drafting error regarding the update to the durable medical equipment fee schedule for 1991 and 1992.

(b) Potentially Overused Items and Advance Determinations of Coverage.–OBRA 90 included two provisions regarding special carrier review of potentially overutilized items and advance determinations of coverage for certain items. These two provisions were combined in drafting so that they do not properly reflect the conference agreement.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.–OBRA 90 provided for a system of upper and lower limits on DME fees. The OBRA 90 conferees agreed to a study of regional variations in durable medical equipment supplier costs which was not included in the statutory language.

(d) Oxygen Retesting.–OBRA 90 included a provision requiring periodic retesting of beneficiaries receiving oxygen if their initial blood gas reading value was at or above a partial value of 55.

House Bill

(a) Updates to Payment Amounts.–W&M: The OBRA 90 error would be corrected by specifying that the 1991 and 1992 update is the CPI-U minus one percentage point.

E&C: Identical to W&M provision.

(b) Potentially Overused Items and Advance Determinations of Coverage.–W&M: OBRA 90 would be modified with respect to treatment of potentially overused items. The Secretary would be able to add items to the list of potentially overused items if they are marketed directly to beneficiaries, if offers to waive coinsurance are made, if items have been subject to consistent patterns of overutilization, or if a high proportion of claims for an item are denied ****1479*790** based on absence of medical necessity. Payment for items on this list would not be made unless the carrier has subjected the claim to special scrutiny or has determined in advance whether an item is medically necessary and covered by Medicare. Carriers would also be required to make advance coverage decisions for customized items and for specified covered items requiring a physician's written order.

E&C: Identical to W&M provision.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.–W&M: The Secretary would be required to collect data on supplier costs for DME and analyze them to determine costs attributable to service and product components and the extent to which they vary by type of equipment and geographic region. The HCFA administrator would be required to submit a report and recommendations for a geographic cost adjustment index for DME supplies and an analysis of the impact of such an index on Medicare payments. The Comptroller General would be required to submit a report analyzing on a geographic basis the supplier costs of durable medical equipment under the Medicare program.

E&C: Identical to W&M provision.

(d) Oxygen Retesting.–W&M: The OBRA 90 language regarding the arterial blood gas values would be amended to require retesting when a beneficiary's initial value is at or above 56.

In addition, the proposal includes certain technical corrections to Sections 4152 and 4153 of OBRA 90.

E&C: Identical to W&M provision.

Senate Amendment

(a) Updates to Payment Amount.–No provision.

(b) Potentially Overused Items and Advance Determinations of Coverage.–No provision.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.–No provision.

(d) Oxygen Retesting.–No provision.

Conference Agreement

(a) Updates to Payment Amounts.–The conference agreement does not include the House provision.

(b) Potentially Overused items and Advance Determinations of Coverage.–The conference agreement does not include the House provision.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.–The conference agreement does not include the House provision.

(d) Oxygen Retesting.–The conference agreement does not include the House provision.

32. Extension of Alzheimer's Demonstration Projects (Secs. 13472 and 5064 of House bill)

Present Law

OBRA 86 authorized $40 million to conduct up to 10 Alzheimer's disease demonstration projects to provide comprehensive ****1480*791** services to Medicare beneficiaries with Alzheimer's disease. The demonstrations were originally authorized for three years, but were extended an additional year in OBRA 90.

House Bill

W&M: The Alzheimer's disease demonstration projects would be extended for an additional year.

E&C: Identical provision, except increases expenditures to $60 million instead of $58 million for extension of demonstration.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House W&M provision.

33. Oral Cancer Drugs (Secs. 13473 and 5065 of House bill)

Present Law

(a) Coverage of Self-Administered Drugs.–Under current law, Medicare coverage for outpatient prescription drugs (with exceptions for immunosuppressive drugs and erythropoietin) is limited to drugs which are not to be self-administered. Drugs taken orally are not covered.

(b) Coverage of Off-Label Uses of Anti-cancer Drugs.–No provision.

(c) Study.–No provision.

House Bill

(a) Coverage of Self-Administered Drugs.–W&M: Medicare coverage would be extended to include oral cancer drugs if they are the same chemical entity as anti-cancer drugs covered by Medicare when administered intravenously, effective January 1, 1994.

E&C: Identical provision.

(b) Coverage of Off-label Uses of Anti-cancer Drugs.–W&M: Medicare would cover drugs or biologicals used in an anti-cancer chemotherapeutic regimen for a medically accepted indication. Coverage would be limited to the Food and Drug Administration (FDA) approved drugs but not necessarily limited to the uses approved by the FDA as described on the label.

Carriers would determine, based upon guidance by the Secretary, that the use is medically accepted taking into account (1) the inclusion of such drugs in one of the three specified major medical compendia, or (2) supportive clinical research regarding the off-label use of such drugs that appears in peer-reviewed medical literature. The Secretary would specify the medical journals which would be appropriate for consideration by the carriers in making these coverage decisions.

E&C: No provision.

(c) Study.–W&M: The Secretary would be required to study the costs of patient care for Medicare beneficiaries enrolled in clinical trials of new cancer therapies (where the protocol for the trial ****1481*792** has been approved by the National Cancer Institute or meets similar scientific and ethical standards, including approval by an Institutional Review Board). The Secretary would be required to report on the study within two years and include recommendations as to coverage under Medicare of such beneficiaries.

E&C: No provision.

Senate Amendment

(a) Coverage of Self-Administered Drugs.–No provision.

(b) Coverage of Off-label Uses of Anti-cancer Drugs.–No provision.

(c) Study.–No provision.

Conference Agreement

(a) Coverage of Self-Administered Drugs.–The conference agreement includes the House provision.

(b) Coverage of Off-label Uses of Anti-cancer Drugs.–The conference agreement includes the House provision with an amendment providing that coverage would be extended to other uses of anti-cancer drugs if such use is supported by one or more citations in one of three specified medical compendia and other authoritative compendia identified by the Secretary, unless the Secretary has determined that the use is not medically appropriate or the use is identified as not indicated in one or more such compendia.

(c) Study.–The conference agreement does not include the House provision.

34. Part B Premium Penalty (Sec. 13474 of House bill)

Present Law

(a) Part B Premium Penalty for Late Enrollment.–Individuals who enroll in Medicare Part B after the applicable enrollment period are subject to an increased premium for late enrollment. The monthly premiums are increased by ten percent for every twelve months of late enrollment. In general, the premium increase is calculated based upon the number of months of delayed enrollment beyond the initial enrollment period. In the case of individuals who delay enrollment because they have primary coverage under an employer group health plan, months of enrollment in the employer group health plan are not included for purposes of calculating the increased premium.

(b) Part B Premium Payments by States.–States are permitted to pay premiums on behalf of individuals who enroll in Part B.

House Bill

(a) Part B Premium Penalty for Late Enrollment.–W&M: The Part B premium penalty for delayed enrollment would be capped at 25 percent for Federal employees who meet the following conditions. First, at the time of the initial enrollment period, the individual delayed enrollment because he or she was enrolled in a group health plan that provided items or services covered under Part B. Second, the individual was enrolled in a group health plan that ****1482*793** stopped providing coverage of such services subsequent to the individual's initial enrollment period. This provision would apply to premiums for months beginning January 1, 1992.

E&C: No provision.

(b) Part B Premium Payments by States.–W&M: The Secretary would be authorized to enter into agreements with States for purposes of allowing States to make premium payments for penalties associated with late enrollment under Part B. States would be permitted to make quarterly payments on a lump-sum basis, effective upon enactment. Individuals covered under the agreement would not be subject to a delayed enrollment penalty.

E&C: No provision.

Senate Amendment

(a) Part B Premium Penalty for Late Enrollment.–No provision.

(b) Part B Premium Payments by States.–No provision.

Conference Agreement

(a) Part B Premium Penalty for Late Enrollment.–The conference agreement does not include the House provision.

(b) Part B Premium Payments by States.–The conference agreement does not include the House W&M provision.

35. Coverage of Speech-Language Pathologists and Audiologists (Sec. 13475 of House bill)

Present Law

The services of speech therapists and audiologists are covered under certain limited circumstances. In addition, speech therapy is covered under the home health benefit. The law does not include a specific definition of these services or providers.

House Bill

W&M: The term “speech pathologist” would be changed to “speech-language pathologist” where it appears, except that this amendment would not change the definition of services covered in any setting. A statutory definition of speech-language pathologists and audiologists would be established, consistent with current coverage guidelines.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

****1483*794** 36. Municipal Health Service Demonstration Projects (Secs. 13476 and 5066 of House bill)

Present Law

OBRA 89 extended existing waivers for the four municipal health service demonstration projects through December 31, 1993, and provided for a study of the waiver program with respect to the quality of health care and beneficiary costs.

House Bill

W&M: The waivers for the four municipal health service demonstration projects would be extended through December 31, 1997. In conducting the study mandated under OBRA 89, HCFA would be required to include consideration of costs to Medicaid and other payers, access to care, outcomes, beneficiary satisfaction, and utilization differences among the different

populations being served by the centers.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision. The conferees intend that the Department (HCFA) assess its current process of examining and paying claims for Municipal Health Services Program Demonstration services and alter the process where necessary to make it more accurate and efficient.

37. Treatment of Certain Indian Health Programs and Facilities as Federally Qualified Health Centers (Secs. 13477 and 5067 of House bill)

Present Law

Medicare provides payments to services provided in certain qualified health centers, known as Federally Qualified Health Centers (FQHC).

House Bill

W&M: The current definition of Federally Qualified Health Centers would be revised, for services furnished on or after January 1, 1994, to include outpatient programs and facilities operated by Indian tribes under the Indian Self-Determination Act.

E&C: Identical provision, except that it is effective as if included in OBRA 90.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House E&C provision.

****1484*795** 38. Treatment of Inpatients and Provision of Diagnostic and Therapeutic X-ray Services by Rural Health Clinics and Federally Qualified Health Centers (Sec. 5062 of House bill)

Present Law

Under current law, Rural Health Clinic (RHC) and Federally Qualified Health Center (FQHC) services are a covered Medicare benefit. RHCs and FQHCs that provide physician and other covered outpatient services to Medicare beneficiaries are paid on the basis of an inclusive rate.

House Bill

W&M: No provision.

E&C: The provision clarifies that RHCs and FQHCs are not limited to providing services solely to outpatients. Physician services provided to Medicare patients of a RHC or a FQHC would be covered (and paid for through the all-inclusive rate) when such patients are inpatients in a covered medical facility. In addition, diagnostic and therapeutic X-ray services would be covered as qualified RHC and FQHC services.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

39. Application of Mammography Certification Requirements (Sec. 5063 of House bill)

Present Law

In 1992, the Congress enacted the Mammography Quality Standards Act which established a certification program for mammography facilities under Section 354 of the Public Health Service Act.

House Bill

W&M: No provision.

E&C: Any mammography facility providing covered screening or diagnostic mammograms to Medicare beneficiaries would be required to hold a certificate (or provisional certificate) issued in accordance with the provisions of the Public Health Service Act.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

****1485*796** 40. Clarification of Coverage of Certified Nurse-midwife Services Performed Outside the Maternity Cycle (Sec. 5069 of House bill)

Present Law

OBRA 1987 provided for direct reimbursement of certified nurse midwives under both Medicare and Medicaid. The statutory definition of certified nurse midwifery services has been erroneously interpreted under regulations promulgated by the Secretary to limit coverage to services provided within the maternity cycle.

House Bill

W&M: No provision.

E&C: The statutory definition of nurse midwifery services would be amended by deleting any reference to the maternity cycle.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

41. Increase in, and Study of, Annual Cap on Amount of Medicare Payment for Outpatient Physical Therapy and Occupational Therapy Services (Sec. 5069A of House bill)

Present Law

Under current law, covered outpatient physical and occupational therapy services provided by independently practicing physical and occupational therapists are limited on an annual basis to $750.

House Bill

W&M: No provision.

E&C: The bill increases the annual limit on these outpatient therapy services to $900, effective for services provided on or after January 1, 1994. The Physician Payment Review Commission would be required to conduct a study of the appropriateness of continuing an annual limitation on outpatient therapy services and report on the study by January 1, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision with an amendment to delete the study requirement.

****1486*797** 42. Other Technical Amendments Relating to Part B of the Medicare Program (Secs. 13478 and 5070 of House bill)

Present Law

(a) Revision of Information on Part B Claims.–Each Part B claim for which the entity submitting the claim knows or has reason to believe that there has been a referral by a physician must include the name and provider number of the referring

physician and must indicate whether the referring physician is an investor in the entity.

(b) Consultation for Social Workers.–OBRA 90 provided for direct reimbursement for the services of clinical psychologists and clinical social workers. The Secretary was required to develop criteria for psychologists' services under which psychologists would be required to consult with a patient's attending physician.

(c) Reports on Hospital Outpatient Payment.–OBRA 87 required the Prospective Payment Assessment Commission (ProPAC) to conduct a study of Medicare payment for hospital outpatient services. Part of the study was to be submitted to the Congress by July 1, 1990 and part by March 1, 1991. Section 1135(d)(6) of the Social Security Act also requires the Secretary to report to the Congress on the development of a prospective method for ambulatory surgery services.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.–Payment for outpatient radiology and diagnostic services is limited to a blend of the hospital's costs and physician fee schedule that would apply if the procedure were performed in a physician's office.

(e) Payments to Nurse Practitioners in Rural Areas.–OBRA 90 provided for direct reimbursement of nurse practitioners and clinical nurse specialists in rural areas. While current law excludes the services of physician assistants, nurse midwives, certified registered nurse anesthetists, and psychologists from the definition of inpatient hospital care, payments for nurse practitioners and clinical nurse specialists were not included in this provision.

(f) Other Technical and Conforming Amendments.–Elderly or disabled employees and their spouses who are covered by employer health plans are not required to enroll in the same enrollment period applicable to others. However, they cannot enroll while enrolled in an employer group health plan. Coverage for such individuals begins generally on the first day of the month in which the individual is no longer enrolled in an employer group health plan. The OBRA 90 conferees intended to modify this provision, but statutory language to that effect was omitted from the law.

House Bill

(a) Revision of Information on Part B Claims.–W&M: The claim form would be required to include the unique physician identification number (UPIN), and the requirement that claims indicate whether the referring physician is an investor in the entity would be repealed.

E&C: Identical provision.

****1487*798** (b) Consultation for Social Workers.–W&M: Clinical social workers would be required to consult with a patient's attending physician in the same manner as clinical psychologists.

E&C: Identical provision.

(c) Reports on Hospital Outpatient Payment.–W&M: The requirement for the preparation of reports contained in Section 6137 of OBRA 89 and Section 1135(d)(6) of the Social Security Act would be repealed.

E&C: Identical provision.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.–W&M: Outpatient payment limits would apply to diagnostic services. The physician component of the limit would be based on the resource based relative value scale.

E&C: Identical provision.

(e) Payments to Nurse Practitioners in Rural Areas.–W&M: The services of nurse practitioners and clinical nurse specialists would be added to the list of services excluded from the definition of inpatient hospital services.

E&C: Identical provision.

(f) Other Technical and Conforming Amendments.–W&M: The special enrollment period would be modified to allow individuals who have employer group health coverage to enroll in Part B at any time they are enrolled in the group health plan, rather than after they leave the plan. If an individual enrolls in Part B while enrolled in the group health plan or in the first month after leaving the plan, Medicare coverage would begin on the first day of the month in which the individual enrolled (or, at the option of the individual) on the first day of any of the following three months).

Various technical and conforming amendments to Sections 4154 through 4164 of OBRA 90 would be made.

E&C: Identical provision, except does not include technical amendment on certified registered nurse anesthetists.

Senate Amendment

(a) Revision of Information on Part B Claims.–No provision.

(b) Consultation for Social Workers.–No provision.

(c) Reports on Hospital Outpatient Payment.–No provision.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.–No provision.

(e) Payments to Nurse Practitioners in Rural Areas.–No provision.

(f) Other Technical and Conforming Amendments.–No provision.

Conference Agreement

(a) Revision of Information on Part B Claims.–The conference agreement does not include the House provision.

(b) Consultation of Social Workers.–The conference agreement does not include the House provision.

(c) Reports on Hospital Outpatient Payments.–The conference agreement does not include the House provision.

****1488*799** (d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.–The conference agreement does not include the House provision.

(e) Payments to Nurse Practitioners in Rural Areas.–The conference agreement does not include the House provision.

(f) Other Technical and Conforming Amendments.–The conference agreement does not include the House provision.

CHAPTER 3

AMENDMENTS RELATING TO PARTS A AND B AND OTHER HEALTH AMENDMENTS

1. Direct Medical Education (Secs. 13501, 13551 and 5072 of House bill; sec. 7301 of Senate amendment)

Present Law

(a) Updating Base Year Amounts.–Payments to hospitals for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by

the consumer price index.

(b) Adjustment in GME Base-year Costs for FICA Taxes.–Payments for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by the consumer price index. The base year is defined as a hospital's cost reporting period beginning during FY 1984. The law provides for no adjustments to the base year amount.

Prior to enactment of OBRA 90, some teaching institutions were not required to pay either FICA taxes, or to make other retirement contributions for residents. Section 11332(b) of OBRA 90 required these institutions to begin making such payments. However, their base-year costs do not reflect such payments, and the Secretary is prohibited from adjusting their base year costs to reflect the new requirements for such payments.

(c) Adjustments for Certain Family Residency Programs.–Payments for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by the consumer price index. The base year is defined as a hospital's cost reporting period beginning during FY 1984. The law provides for no adjustments to the base year amount. In the case of a hospital that did not have an approved medical residency training program or was not participating in the Medicare program during the base year, the Secretary shall provide for an FTE resident amount as the Secretary determines to be appropriate based on approved FTE resident amounts for comparable programs.

(d) Preventive Care Residencies.–Medicare payments for the direct costs of medical education are based on the recognized costs during a resident's so-called "initial period" of residency. This period is defined as the period necessary to be board eligible plus one year, but in no case more than five years. Up to two years of a geriatric residency or fellowship are treated as part of the initial residency ****1489*800** period, but the time spent in the geriatric program is not counted toward the limitation on the initial residency period.

(e) Different Weighting Factors for Primary Care and Non-Primary Care Residency Programs.–Full time residents in their initial residency period count as 1.0 FTE. Residents beyond their initial residency period count as 0.5 FTE.

(f) Initial Residency Period.–Medicare payments for the direct costs of medical education are based on the recognized costs during a resident's so-called "initial period" of residency. This period is defined as the period necessary to be board eligible plus one year, but in no case more than five years. Up to two years of a geriatric residency or fellowship are treated as part of the initial residency period, but the time spent in the geriatric program is not counted toward the limitation on the initial residency period.

(g) Report.–No provision.

(h) Foreign Medical Graduates.–A graduate of a foreign medical school is not counted unless the resident has passed parts I and II of the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS).

House Bill

(a) Updating Base Year Amounts.–W&M: Per-resident amounts would not be updated for cost reporting periods beginning during fiscal years 1994 and 1995.

E&C: No provision.

(b) Adjustment in GME Base-year Costs for FICA Taxes.–W&M: In the case of a hospital that did not pay FICA taxes or make other specified retirement contributions for residents in the base year and that must now pay such taxes or contributions as a result of section 11332(b) of OBRA 1990, the Secretary shall redetermine the FTE resident amount to reflect the amount that would be allowed if the hospital had made such payments during the base year.

The provision would apply to cost reporting periods beginning on or after October 1, 1992.

E&C: No provision.

(c) Adjustments for Certain Family Residency Programs.–In the case of a facility whose only medical residency program in the cost reporting period that began in fiscal year 1984 was in family and community medicine, received Federal, State or local funding, and had a base year per resident amount of $10,000 or less, the Secretary would be required, in computing FTE resident amount in the base year, to estimate the costs that would have been allowed as reasonable if the program had not received such government assistance, other than such assistance under Medicare or Medicaid programs. The Secretary would also reduce the payment amount so determined by the amount equal to the proportion of such program payments during the base period by Medicare. This would apply to cost reporting periods beginning on or after October 1, 1990.

E&C: No provision.

(d) Preventive Care Residencies.–For cost reporting periods beginning on or after October 1, 1993, for the purpose of determining whether a resident is in an initial residency period for payment purposes, a resident in a preventive care residency or fellowship ****1490*801** program would be treated in the same way as a geriatric resident or fellow; that is, a period of up to two years of such training would be treated as part of the initial residency period and would not count towards the limitation on such period.

E&C: No provision.

(e) Different Weighting Factors for Primary Care and Non-Primary Care Residency Programs.–W&M: No provision.

E&C: The Secretary would be directed to conduct a study of the methodology used to determine payments to hospitals for the costs of graduate medical education programs, including an analysis of the causes of the variation among such hospital per resident costs, including the extent of support for such programs from non-hospital sources. The report, which shall include any recommendations for modifications to current payment policy, would be due to the Congress one year after the date of enactment of this provision.

(f) Initial Residency Period.–No provision.

(g) Report.–No provision.

(h) Foreign Medical Graduates.–W&M: No provision.

E&C: No provision.

Senate Amendment

(a) Updating Base Year Amounts.–No provision.

(b) Adjustment in GME Base-year Costs for FICA Taxes.–No provision.

(c) Adjustments for Certain Family Residency Programs.–No provision.

(d) Preventive Care Residencies.–Similar provision.

(e) Different Weighting Factors for Primary Care and Non-Primary Care Residency Programs.–Effective for residents entering a primary care or non-primary care specialty training program (including a sub-specialty training program) on or after September 1, 1993, a full-time resident in the initial residency period of a primary care residency program would be counted as 1.1 FTE; a full-time resident in the initial residency period of a non-primary care residency program would be counted as 0.7 FTE. If completion of a primary care training program is a prerequisite for board eligibility in a non-primary care specialty or sub-specialty, a resident would count as 1.1 FTE for the time spent in the primary care residency program. A full-time resident in training beyond the initial residency period would continue to count as 0.5 FTE.

Primary care residency programs would be defined as residency programs in family medicine, general internal medicine, general pediatrics, preventive care, geriatric care and osteopathic general practice.

(f) Initial Residency Period.–Effective July 1, 1995, the "initial residency period" would be defined as the minimum number of years required for board eligibility.

(g) Report.–The Secretary would be required to submit by July 31, 1994, a report concerning 1) the causes for the variation in the per resident amounts, 2) whether provisions should be made for adjustments in the per resident amounts to recognize substantial changes in operating a residency program since the base year, and 3) any changes that should be made in graduate medical education ****1491*802** payments that would promote residency training in non-hospital ambulatory sites.

(h) Foreign Medical Graduates.–Effective as if included in COBRA 85, a foreign medical graduate would be counted if the resident has passed parts I and II of the FMGEMS or a successor test recognized by the Secretary.

Conference Agreement

(a) Updating Base Year Amounts.–The conference agreement includes the House provision, with an amendment exempting primary care residents and residents in obstetrics and gynecology from the elimination of the update to the per resident payment amount. The term "primary care resident" is defined as a resident enrolled in a training program in family medicine, general internal medicine, general pediatrics, geriatric medicine, preventive medicine, or osteopathic general practice.

(b) Adjustment in GME Base-year Costs for FICA Taxes.–The conference agreement includes the House provision.

(c) Adjustments for Certain Family Residency Programs.–The conference agreement includes the House provision, with an amendment changing the effective date to October 1, 1992. The conferees intend that hospitals with residency programs meeting the stated conditions receive the adjustment whether the hospital or residents received Federal or State payments directly, or indirectly through a university.

(d) Preventive Care Residencies.–The conference agreement includes the House provision.

(e) Different Weighting Factors for Primary Care and Non-Primary Care Residency Programs.–The conference agreement does not include the Senate amendment.

(f) Initial Residency Period.–The conference agreement includes the Senate amendment, with an amendment making the effective date of the provision July 1, 1995.

(g) Report.–The conference agreement does not include the Senate amendment.

(h) Foreign Medical Graduates.–The conference agreement does not include the Senate amendment.

2. Home Health Services (Secs. 13502 and 5071 of House bill; sec . 7302 of Senate amendment)

Present Law

Home health services are reimbursed on a reasonable cost basis, subject to aggregate cost limits which are updated annually. The Omnibus Budget Reconciliation Act of 1987 (OBRA 87) limited payment for home health agency costs to 112 percent of the mean labor-related and non labor per visit costs for freestanding HHAs. For hospital-based HHAs, the Secretary is required to make appropriate adjustments in the limits for administrative and general costs. A home health care agency may receive an exception to the cost limits based on the special care needs of patients or circumstances beyond its control.

****1492*803** House Bill

W&M: Effective upon the date of enactment, cost limits applicable to home health services would not be updated for cost reporting periods beginning during fiscal years 1994 and 1995.

E&C: The provision would repeal the requirement for the special adjustment for the administrative costs of hospital-based home health agencies effective for cost reporting periods beginning after fiscal year 1993.

Senate Amendment

Effective for cost reporting periods beginning on or after October 1, 1993, the cost limit would be lowered to 110 percent of the median labor-related and non labor per visit costs for all home health agencies. The add-on for hospital-based home health agencies would be eliminated.

Conference Agreement

The conference agreement follows the House provisions with an amendment to prohibit the Secretary from making any changes in home health services cost limits (including no adjustments for changes in the wage index or applicable MSAs) for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. The Secretary is required, when granting or extending exceptions to cost limits, to limit any exception to the amount that would have been granted if there were no restriction on changes in the cost limits. Additional payments for administrative and general costs of hospital-based home health agencies are eliminated for cost reporting periods beginning on or after October 1, 1993.

3. Secondary Payer Provisions (Secs. 13511–13514 and 5073 of House bill; sec. 7302 of Senate amendment)

Present Law

(a) Extension of Transfer of Data.–OBRA 89 authorized the establishment of a database to identify working beneficiaries and their spouses to improve identification of cases in which Medicare is secondary to other third party payers. The data match links Internal Revenue Service (IRS) tax records with data from the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA). OBRA 90 extended through September 30, 1995 the requirements established in OBRA 90 pertaining to identification of secondary payer situations.

(b) Extension of Medicare Secondary Payer for Disabled Beneficiaries.–Medicare is secondary payer to certain group health plans, offered by employers of 100 or more, covering disabled beneficiaries. The authority for this provision expires September 30, 1995.

(c) Extension of 18-Month Rule for ESRD Beneficiaries.–Medicare is secondary payer to certain employer group health plans covering beneficiaries with end stage renal disease (ESRD) beneficiaries during the first 18 months of a beneficiary's entitlement to Medicare on the basis of ESRD. The authority for this provision expires September 30, 1995.

****1493*804** (d) Medicare Secondary Payer Reforms.–

(1) Improved Identification and Enforcement of Medicare Secondary Payer Situations.–The Department of HHS identifies Medicare secondary payer cases in the following ways: beneficiary questionnaires; provider identification of third party coverage when services are provided; Medicare contractor screening and data collection and exchange; and data transfers with other Federal and State agencies including the Internal Revenue Service and the Social Security Administration.

The Secretary is authorized to develop standards, criteria, procedures and reporting requirements to evaluate the performance of organizations facilitating Medicare payments to providers of services. Primary payers are required to make payments for any item or service for which Medicare is secondary payer when they receive notice that payments are due. The Secretary is authorized to charge interest on late recoveries under the Medicare Secondary Payer program.

(2) Application to Members of Religious Orders.–Medicare secondary payer provisions do not apply to certain members of

religious orders for items and services furnished on or after October 1, 1989.

(3) Uniform Rules for Size of Employer.–Under current law, different rules apply to employer size and type of eligibility for Medicare. For the working aged, secondary payer rules apply to employers with 20 or more employees. For the disabled, secondary payer rules apply to employers with 100 or more employees. For beneficiaries with end stage renal disease, secondary payer rules apply to all employers, regardless of the number of employees.

(4) Permanent Application to Disabled Active Individuals.–Under current law, Medicare is secondary payer to a large group health plan providing benefits to a disabled active individual, which is defined as an individual who (1) is eligible for Medicare on the basis of disability; and (2) continues to be treated as an employee by an employer, on the basis of commonly accepted indicators of employee status, even though the individual is not currently working. This provision expires October 1, 1995.

House Bill

(a) Extension of Transfer of Data.–W&M: The authorization for requirements pertaining to the IRS/SSA/HCFA data match would be extended through September 30, 1998.

E&C: The requirement for employers to respond to carriers would be extended through September 30, 1998.

(b) Extension of Medicare Secondary Payer for Disabled Beneficiaries.–W&M: The Medicare secondary payer requirements for disabled beneficiaries would be extended for three additional years through September 30, 1998.

E&C: Similar to W&M provision.

(c) Extension of 18-Month Rule for ESRD Beneficiaries.–W&M: The Medicare secondary payer requirements for beneficiaries with end stage renal disease (ESRD) would be extended for three additional years through September 30, 1998.

E&C: Similar to W&M provision.

****1494*805** (d) Medicare Secondary Payer Reforms.–

(1) Improved Identification and Enforcement of Medicare Secondary Payer Situations.–W&M: The Administrator of HCFA would be required to mail questionnaires to individuals, before such individuals become entitled to benefits under Part A or enroll in Part B, to determine whether the individual is covered under a primary plan. In addition, the provision would clarify that payments would not be denied for covered services solely on the grounds that a beneficiary's questionnaire fails to note the existence of other health plan coverage.

Providers and suppliers would be required to complete information on claim forms regarding potential coverage under other plans.

Civil monetary penalties would be established for an entity that knowingly, willfully and repeatedly fails to complete a claim form with accurate information.

Contractors would be required to submit a report to the Secretary annually regarding steps taken to recover mistaken payments. The Secretary would be required to evaluate the performance of contractors in identifying cases in which Medicare is secondary payer.

The provision would clarify the Secretary's authority to charge interest if payment is not received within 60 days after notice is given.

The definition of a non complying plan would be clarified to include a plan that refuses to refund amounts to HCFA demanded through the Medicare secondary payer provisions.

E&C: Similar provisions.

(2) Application to Members of Religious Orders.–W&M: The provision, effective as if included in OBRA 89 would clarify that the Medicare secondary payer provisions do not apply to secondary payer situations identified after October 1, 1989 for services provided prior to such date to members of religious orders who are considered "deemed employees" because of an election of Social Security coverage.

E&C: Identical Provision.

(3) Uniform Rules for Size of Employer.–W&M: For purposes of determining the application of Medicare secondary payer provisions to employer group health plans, aggregation rules as defined in the Internal Revenue Code would be used to determine size of employer.

E&C: The provision would expand the Medicare secondary payer provisions to apply to employers with 20 or more employees. Employers, multiemployers, or multiple employer group health plans of 20 or more would be required to comply with secondary payer rules for all Medicare beneficiaries.

(4) Permanent Application to Disabled Active Individuals.–W&M: No provision.

E&C: The provision for the disabled would be modified to tie directly to employment status consistent with the provision that applies to aged beneficiaries. The provision would be made permanent.

****1495*806** Senate Amendment

(a) Extension of Transfer of Data.–Similar to W&M provision.

(b) Extension of Medicare Secondary Payer for Disabled Beneficiaries.–Identical to W&M provision.

(c) Extension of 18-Month Rule for ESRD Beneficiaries.–The provision would extend the requirement that Medicare be secondary payer to specified group health plans for beneficiaries who are entitled to Medicare solely on the basis of end stage renal disease for 24 months until September 30, 1998. This would apply with respect to items and services furnished after the third calendar month beginning after enactment.

(d) Medicare Secondary Payer Reform.–

(1) Improved Identification and Enforcement of Medicare Secondary Payer Situations.–No provision.

(2) Application to Members of Religious Orders.–Identical to W&M provision.

(3) Uniform Rules for Size of Employer.–Similar to the W&M provision concerning use of aggregation rules to determine size of employer. Similar to the E&C provision concerning uniform application of Medicare secondary payer provisions to employers with 20 or more employees.

(4) Permanent Application to Disabled Active Individuals.–Identical to E&C provision.

Conference Agreement

(a) Extension of Transfer of Data.–The conference agreement includes the House provision.

(b) Extension of Medicare Secondary Payer for Disabled Beneficiaries.–The conference agreement includes the Senate amendment.

(c) Extension of 18-Month Rule for ESRD Beneficiaries.–The conference agreement includes the House provision.

(d) Medicare Secondary Payer Reform.–

(1) Improved Identification and Enforcement of Medicare Secondary Payer Situations.–The conference agreement does not include the House provision.

(2) Application to Members of Religious Orders.–The conference agreement includes the Senate amendment.

(3) Uniform Rules for Size of Employer.–The conference agreement includes the Senate amendment to clarify employer aggregation rules, with an amendment to maintain current law thresholds applied to employers with respect to disabled and ESRD beneficiaries.

(4) Permanent Application to Disabled Active Individuals.–The conference agreement includes the House provision clarifying the definition of active employee for disabled beneficiaries to conform with the definition for working aged beneficiaries. A disabled beneficiary would be considered an active employee if covered under an employer plan by virtue of the individuals current employment status.

****1496*807** 4. Expansion of Medicare Ban on Self-referrals (Secs. 13521 and 5031 of the House bill; sec. 7451 of Senate amendment)

Present Law

Physicians (or immediate family members of such physicians) with a financial relationship with clinical laboratories are prohibited from referring Medicare patients to those entities.

House Bill

W&M: The Medicare ban would apply to all payers for designated health services. No payment could be made under Medicare, another Federal health care program or a State health care program for which a claim was presented in violation of the ban. No individual, third party payer, or other entity would be liable for payment of a claim for designated services in violation of the ban. Sanctions provisions would be extended to all payers.

E&C: The provision would apply Medicare rules to Medicaid.

Senate Amendment

Similar to E&C provision.

Conference Agreement

The conference agreement includes the House E&C provision.

5. Extension of Self-referral Ban to Additional Services (Secs. 13522 and 5074(a) of the House bill; sec. 7304(a) of the Senate amendment)

Present Law

Physicians (or immediate family members of such physicians) with a financial relationship with clinical laboratories are prohibited from referring Medicare patients to those entities.

House Bill

W&M: The provision expands current law to cover the following designated health services: (1) physical and occupational therapy services; (2) radiology services (including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services); (3) radiation therapy services; (4) durable medical equipment; (5) parenteral and enteral nutrition equipment and supplies; (6) prosthetic devices and orthotics and prosthetics; (7) outpatient prescription drugs; (8) home infusion therapy services; (9) home dialysis; (10) home health services; (11) ambulance services; (12) inpatient and outpatient hospital services; (13) comprehensive outpatient rehabilitation facility services; (14) contact lenses; (15) eyeglasses; and (16) hearing aids.

E&C: The provision expands current law to cover the following designated health services: (1) physical or occupational therapy services; (2) radiology or other diagnostic services; (3) radiation therapy services; (4) the furnishing of durable medical equipment; (5) the furnishing of parenteral and enteral nutritional nutrients, ****1497*808** supplies, and equipment; (6) home health services; and (7) home infusion therapy services.

Senate Amendment

The provision would expand the prohibition on referring patients to services in which a physician has an ownership or investment interest to include the following services: (1) physical or occupational therapy; (2) radiology or other diagnostic services; (3) radiation therapy; (4) the furnishing of durable medical equipment; (5) the furnishing of parenteral and enteral nutrition equipment or supplies; (6) the furnishing of prosthetics, orthotics, and prosthetic devices; and (7) home health services.

Conference Agreement

The conference agreement includes the House E&C provision with an amendment. Under the agreement, the following services are included as designated health services: (1) clinical laboratory services; (2) physical therapy services; (3) occupational therapy services; (4) radiology or other diagnostic services; (5) radiation therapy services; (6) durable medical equipment; (7) parenteral and enteral nutrients, equipment, and supplies; (8) prosthetics, orthotics, and prosthetic devices; (9) home health services; (10) outpatient prescription drugs; and (11) inpatient and outpatient hospital services.

6. Exceptions For Both Ownership and Compensation Arrangements (Secs. 13523 and 5074(b) and (e) of the House bill; sec. 7304(b) and (e) of Senate amendment)

Present Law

(a) In-office Ancillary Services.–There are a series of general exceptions to both the ownership and compensation provisions, including: (1) physicians' services provided by or under the personal supervision of a physician or another physician in the same group practice; and (2) in-office ancillary services. In-office ancillary services are defined as services furnished by the physician himself, another physician in the same group practice, or employees of the physician or the physician's group practice.

To be exempted from the referral ban, the services must be provided in a building in which the physician or other member of the group practice provides services unrelated to laboratory services, or in a central building set up by the group to perform ancillary services for its members. The services must be billed by the physician performing or supervising the services or by that physician's group, or by an entity owned by the physician or the physician's group practice. In addition, the ownership or compensation interests in such in-office ancillary services must meet other requirements that the Secretary may impose by regulation as needed to protect against patient fraud and abuse.

(b) Rural Provider Exception.–In addition to the general exceptions, the law includes specific exceptions from just the

ownership prohibitions and specific exceptions from just the compensation provisions. The law includes an exception under the ownership ****1498*809** prohibition for rural providers. Proposed implementing regulations contain provisions directed at preventing possible abuses of this exception.

(c) Shared Facility Laboratory Services.–Current law does not contain an exception for shared laboratory facilities.

House Bill

(a) In-Office Ancillary Services.–W&M: The exception for in-office ancillary services would apply to all designated health services other than durable medical equipment, parenteral and enteral nutrition equipment and supplies and ambulance services. Ancillary services provided by a group practice with multiple office locations would be exempted from the prohibition on referrals.

E&C: Similar to W&M except that the in-office ancillary exception would apply to all designated health services. In addition, the provision would delete the employment requirement from the in-office ancillary exception and add a direct supervision requirement.

(b) Rural Provider Exception.–W&M: Ownership and compensation arrangements relating to the provision of services in rural areas (as defined for purposes of Medicare's hospital prospective payment system) would be exempt from the ban on referrals if substantially all of the services furnished by the entity are furnished to individuals who reside in such a rural area.

E&C: Similar to W&M provision except requires all of the services provided to Medicare beneficiaries are provided to those in rural areas.

(c) Shared Facility Laboratory Services.–W&M: No provision.

E&C: The provision adds an exception for shared facility laboratory services that are furnished: (i) personally by the referring physician who is a shared facility physician, by an individual supervised by such physician, or by another shared facility physician and employed under the arrangement; (ii) by a shared facility in a building which the referring physician furnishes services unrelated to shared lab services; and (iii) to a patient of a shared facility physician. The services must be billed by the referring physician or by an entity wholly owned by the physician. The exception only applies if the facility and the arrangement were in effect as of June 26, 1992. The GAO would be required to study such arrangements and report to Congress by January 1, 1995.

Senate Amendment

(a) In-office Ancillary Services.–Similar to W&M, except that the provision would delete the employment requirement from the in-office ancillary exception and add a direct supervision requirement.

(b) Rural Provider Exception.–Similar to W&M, except does not specify that entity must be in the rural area.

(c) Shared Facility Laboratory Services.–No provision.

Conference Agreement

(a) In-office Ancillary Services.–The conference agreement includes the Senate amendment with an amendment. The provision would apply to all designated health services except durable medical ****1499*810** equipment (excluding infusion pumps) and parenteral and enteral nutrients, equipment, and supplies.

The conference agreement includes an exception for clinical laboratory services provided by a group practice with multiple office locations. For all other designated health services the exception for group practices applies only if the services are provided in a centralized location. The conferees expect that the Secretary will publish regulations specifying such other

terms and conditions under which group practices may qualify for a group practice exception to the general prohibition on referrals to an entity with which the referring physician has a financial relationship.

The conferees intend that the requirement for direct supervision by a physician would be met if the lab is in a physician's office which is personally supervised by a lab director, or a physician, even if the physician is not always on site.

The conference agreement modifies the existing general exception for prepaid plans by including federally qualified health maintenance organizations (as defined in section 1310(d) of the Public Health Service Act) in the list of entities meeting the definition.

(b) Rural Provider Exception.–The conference agreement includes the Senate provision with an amendment. The provision modifies the current ownership or investment exception to apply to designated health services furnished in a rural area (as defined for purposes of PPS) by an entity if substantially all the designated health services furnished by such entity are furnished to individuals residing in the rural area.

(c) Shared Facility Laboratory Services.–The conference agreement does not include the House E&C provision.

7. Exceptions Related only to Ownership or Investment (Secs. 13524 and 5074(h) of the House bill; sec. 7304(g) of Senate amendment)

Present Law

There is a specific exception for ownership in publicly-traded securities which are listed for trading on the New York Stock Exchange or American Stock Exchange or operated by the National Association of Securities Dealers. This exception applies only if a corporation had total assets exceeding $100 million at the end of the corporation's most recent fiscal year.

House Bill

W&M: The current standard for asset determination under the publicly-traded securities exception would be modified to require that a corporation have stockholder equity in excess of $100 million.

E&C: The current standard for asset determination under the publicly-traded securities exception would be modified to require that a corporation have stockholder equity in excess of $75 million.

Senate Amendment

Similar to E&C provision.

****1500*811** Conference Agreement

The conference agreement includes the House E&C provision with an amendment. Under the agreement, ownership of investment securities which may be purchased on terms generally available to the public is not considered to be an ownership or investment interest, provided the following conditions are met. The securities are: (i) listed on the New York Stock Exchange, the American Stock Exchange, or regional exchange in which quotations are published on a daily basis, or (ii) foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or (iii) traded under an automated inter-dealer quotation system operated by the National Association of Securities Dealers. Further, the securities must be in a corporation that had at the end of the most recent fiscal year, or on average during the three previous fiscal years, stockholder equity exceeding $75 million. The exception also applies to ownership of shares in a regulated investment company provided the company has assets meeting similar requirements.

8. Exceptions Related only to Compensation Arrangements (Secs. 13525 and 5074(c) and (d) of the House bill; sec. 7304(c) of Senate amendment)

Present Law

(a) Rental of Office Space.–The law includes specific exceptions for the rental of office space. There must be a written agreement, signed by the parties, for the rental or lease of the space which: (1) specifies the space covered by the agreement; (2) provides for a term of rental or lease of at least one year; (3) provides for payment on a periodic basis of an amount consistent with fair market value; (4) provides for an amount of aggregate payments that does not vary directly or indirectly based on the volume or value of any referrals between the parties; and, (5) would be considered to be commercially reasonable even if no referrals were made between the two parties.

(b) Rental of Equipment.–There is no exception for the rental of equipment.

(c) Employment Arrangements with Hospitals.–There is a specific exception for employment arrangements between hospitals and physicians.

(d) Personal Service Arrangements.–There are a series of exceptions for other service arrangements, including: (1) services as a medical director; (2) services to an individual receiving hospice care; (3) services furnished to a nonprofit blood center; and (4) administrative services.

(e) Services Under Arrangements.–Some group practices operate full-service laboratories and contract with hospitals and other providers to furnish clinical laboratory services to hospital and other provider patients "under arrangements" with such entities. Medicare requires that the hospital or other provider bill for such services. These "under arrangements" services are not protected under the general exception for in-office ancillary services.

****1501*812** (f) Physician Recruitment.–There is a specific exception in the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate.

(g) Isolated Transactions.–There is a specific exception in the case of an isolated financial transaction, such as a one-time sale of property.

(h) Payments by a Physician.–No provision.

House Bill

(a) Rental of Office Space.–W&M: The exception for the rental of office space would be clarified to apply for the use of premises if: (i) the lease is set out in writing, signed by the parties and specifies the premises covered by the lease; (ii) the aggregate space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purpose of the rental and is used exclusively by the lessee when being used by the lessee; (iii) the term of the lease is at least one year; (iv) the aggregate rental charges are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the two parties; (v) the lease would be commercially reasonable even if no referrals were made between the parties; (vi) the lease covers all of the premises leased between the parties for the period of the lease; and, (vii) the compensation arrangement meets such other requirements as the Secretary may impose to protect against program or patient abuse.

E&C: Identical to W&M provision, except deletes the word aggregate in subparagraph (iv) and deletes "does not exceed that which" in paragraph (ii).

(b) Rental of Equipment.–W&M: An exception for the leasing of equipment would be added. The requirements for the lease of equipment are the same as those applicable to the lease of premises, except that items (ii), (iv) and (vi) above relate to the equipment rented or leased (rather than the aggregate space or premises).

E&C: Identical to W&M provision except deletes the word aggregate in subparagraph (iv) and deletes "does not exceed that which" in paragraph (ii).

(c) Employment Arrangements with Hospitals.–W&M: The exception for employment and service arrangements with hospitals would be broadened to include any amounts paid by any employer (including providers other than hospitals) to a physician (or immediate family member) with a bona fide employment relationship for the provision of services. The provision would also modify the standards to allow a physician to be paid shares of overall profits or a productivity bonus based on services performed personally by the physician or family member, if the amount of the remuneration is not determined in a manner that takes into account directly the volume or value of any referrals by a referring physician. The standards for the exception relating to employment and service arrangements between physicians and hospitals under current law also would apply to this broader provision.

E&C: Identical to W&M provision.

****1502*813** (d) Personal Service Arrangements.–W&M: The provision would replace the current language with an exception for payments from an entity under a personal service arrangement if: (i) the arrangement is set out in writing, specifies the services covered by the arrangement, and is signed by the parties; (ii) the arrangement covers all of the services to be provided by the physician or family member to the entity; (iii) the term of the arrangement is for not less than one year; (iv) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement; (v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value and is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referral or business generated between the parties; (vi) the services performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law; and (vii) the arrangement meets such other requirements as the Secretary may impose to protect against program or patient abuse.

E&C: Identical to W&M provision except that the provision (i) retains the current law exception for "other service arrangements," (ii) eliminates the reference to physician or family member in item (ii), and (iii) eliminates reference to directly or indirectly in item (v). In addition, the provision provides an exception for payments for pathology services of a group practice.

(e) Services Under Arrangements.–W&M: An exception would be provided for health services provided by a group practice billed in the name of a hospital if the arrangement is pursuant to the provision of inpatient hospital services and if the arrangement began prior to December 19, 1989, and meets standards similar to those provided for payments for health services of a group practice.

E&C: Similar to W&M provision, except amends definition of group practice rather than adding a new exception.

(f) Physician Recruitment.–W&M: The standards in the current exception relating to physician recruitment would be expanded to include the requirement that the arrangement be set out in writing and signed by the parties, and that it specify the benefits provided by the hospital, the terms under which the benefits are to be provided, and the obligations of the parties.

E&C: No provision.

(g) Isolated Transaction.–W&M: The exception would be clarified to refer to a one-time financial transaction, such as a one-time sale of property or practice.

E&C: No provision.

(h) Payments by a Physician.–W&M: An exception would be provided for payments by a physician to an entity as compensation for an item or service, if the item or service is furnished at a price that is consistent with the fair market value.

An exception would be provided for payments by a physician to a clinical laboratory in exchange for the provision of clinical laboratory services.

E&C: Identical to W&M provision.

****1503*814** Senate Amendment

(a) Rental of Office Space.–Identical to E&C provision except deletes the word aggregate in subparagraph (ii). In addition, the provision adds the following language to subparagraph (ii) "except that the lessee may make payments for the use of space consisting of common areas, if such payments do not exceed the lessee's pro rata share of expenses for such space, based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas."

(b) Rental of Equipment.–Identical to E&C provision.

(c) Employment Arrangements with Hospitals.–Similar to W&M provision, except: (i) refers to employment relationship; and (ii) revises exception to only allow payment of a productivity bonus based on services performed personally by the physician or immediate family member of the physician.

(d) Personal Service Arrangements.–Similar to E&C provision except does not include exception for pathology services of a group practice.

(e) Services Under Arrangements.–Identical to W&M provision.

(f) Physician Recruitment.–No provision.

(g) Isolated Transaction.–No provision.

(h) Payments by a Physician.–Identical to W&M provision, except specifies that clinical lab tests are diagnostic.

Conference Agreement

(a) Rental of Office Space.–The conference agreement includes the Senate amendment with an amendment striking item (vi) and modifying item (ii) to add the phrase "does not exceed that which" to the reasonable and necessary limitation.

(b) Rental of Equipment.–The conference agreement includes the Senate amendment with an amendment striking item (vi) and modifying item (ii) to add the phrase "does not exceed that which" to the reasonable and necessary limitation.

The conferees intend that charges for space and equipment leases may be based on daily, monthly, or other time-based rates, or rates based on units of service furnished, so long as the amount of the time-based or units of service rates does not fluctuate during the contract period based on the volume or value of referrals between the parties to the lease or arrangement.

(c) Employment Arrangements with Hospitals.–The conference agreement includes the Senate amendment.

(d) Personal Service Arrangements.–The conference agreement includes the Senate amendment with an amendment. It (1) does not retain the current law exception for other service arrangements; and (2) does not strike reference to physician or family member in item ii.

The conferees intend that this exception would apply to payments made by a non-profit Medical Foundation under a contract with physicians to provide health care services and which conducts medical research. The requirement that the compensation be paid in advance is not intended to prohibit arrangements where entities ****1504*815** pay physicians on a per service basis, as long as other requirements are satisfied.

The conference agreement adds an exception for physician incentive plans. A physician incentive plan is defined as a compensation arrangement between an entity and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the entity. To be eligible for an

exception, the compensation may be determined in a manner (through a capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties provided the plan meets specified requirements. No specific payment may be made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided to an enrollee of the entity. If the plan places the physician or physician group at substantial financial risk (as determined by the Secretary using rules developed for Medicare risk sharing contracts) it must comply with any requirements the Secretary may impose pursuant to that section. Further, the organization must provide the Secretary, on request, with access to descriptive information regarding the plan in order to permit the Secretary to determine whether the plan is in compliance with the requirements.

(e) Services Under Arrangements.–The conference agreement includes the House W&M provision with clarifying language specifying that with respect to designated health services provided under the arrangement, substantially all of such services furnished to patients of the hospital are furnished by the group under the arrangement.

(f) Physician Recruitment.–The conference agreement does not include the House W&M provision.

(g) Isolated Transactions.–The conference agreement includes the House W&M provision with an amendment. Under the provision, the current exception would be clarified to refer to a one-time sale of a practice as well as property.

(h) Payments by a Physician.–The conference agreement includes the House provision.

9. Civil Money Penalties (Sec. 13526 of the House bill)

Present Law

The law provides for civil monetary penalties and exclusion from the Medicare program for any person that presents or causes to be presented a bill or claim for a service in violation of the self-referral ban.

House Bill

W&M: The provision would clarify that a physician who makes a prohibited referral would also be subject to a civil monetary penalty.

E&C: No provision.

****1505*816** Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House W&M provision.

10. Requirements for Group Practices (Secs. 13527 and 5074(d) of the House bill; sec. 7304(d) of Senate amendment)

Present Law

(a) Definition of a Group Practice.–The law contains a definition of group practice for purposes of the self-referral provision. Under this definition, a group practice is defined as a group of two or more physicians legally organized as partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association in which: (1)

each physician group member furnishes substantially the full range of his or her services through the joint use of office space, facilities, equipment, and personnel; (2) substantially all of the services of the physician group members are furnished through the group and billed in the name of the group, with billing receipts treated as receipts of the group; (3) the practice cost expenses and income generated by group members are distributed in accordance with predetermined methodologies; and (4) any additional standards established by the Secretary are met.

The definition of group practice does not specifically address the issue of part-time or independent contractor arrangements. Many group practices, particularly those in smaller communities, arrange for specialists, usually from other communities, to provide services for the group on a part-time basis, usually as independent contractors. Many of these specialists are either already members of another group practice, have their own practice, or have similar contractual arrangements with several group practices.

(b) Faculty Practice Plans.–Faculty practice plans operated by a hospital fall under the definition of group practice only for those services provided within the faculty practice plan.

House Bill

(a) Definition of a Group Practice.–W&M: The current standards used to define a group practice would be expanded. No physician who is a member of the group may receive compensation based on the volume or value of referrals by the physician except that: (i) a physician can be paid shares of overall profits of the group as long as the share is not determined in any manner which is directly related to the volume or value of referrals by that physician; and (ii) a physician can be paid a productivity bonus based on services personally performed or personally supervised by a physician or by another physician in the group so long as the bonus is not determined in any manner which is directly related to the volume or value of referrals by that physician. The group may have no less than, on average, five physicians for each office location, except ****1506*817** where there is only a single office for the entire group practice. Members of the group would be required to personally conduct no less than 75 percent of the physician-patient encounters of the group practice.

For purposes of the standard, the term “office location” would be defined as an office where physician services are offered to patients. However, locations consisting solely of diagnostic facilities, nursing homes, treatment facilities (such as physical or occupational therapy centers), or administrative services affiliated with the group practice would not be included in the definition of office location. Any office location which is physically located immediately adjacent to another office location shall be treated as the same office location. Offices located in a rural area (outside MSAs) are not included as an office location as long as at least 85 percent of the physician services at those locations are provided to individuals who reside in such rural areas.

Groups would also be required to bill under a billing number assigned to the group.

E&C: The provision includes a billing provision similar to W&M provision.

(b) Faculty Practice Plans.–W&M: The definition of a faculty practice plan would be expanded to include faculty of an institution of higher learning or a medical school.

E&C: Identical to W&M provision.

Senate Amendment

(a) Definition of Group Practice.–Similar to W&M provision except: (i) clarifies that compensation received cannot be based directly or indirectly on the volume or value of referrals; and (ii) provides that groups of less than fifteen physicians would be allowed to have up to three office locations.

(b) Faculty Practice Plans.–Identical to W&M provision.

Conference Agreement

(a) Definition of Group Practice.–

The conference agreement includes the House W&M provision except that the agreement does not specify the number of physicians for each office location nor define office location.

(b) Faculty Practice Plans.–The conference agreement includes the House W&M provision.

11. Preemption of State Law (Secs. 13528 of the House bill)

Present Law

No provision.

House Bill

W&M: The provision would provide that the Federal law would not preempt State laws that were more restrictive.

E&C: No provision.

****1507*818** Senate Amendment

No provision.

Conference Agreement

The conference provision does not include the House W&M provision. The Conferees intend that Federal law not preempt State laws that are more restrictive.

12. Miscellaneous Provisions (Secs. 13529 and 5074 (c) and (g) of the House bill; sec. 7304(f) of Senate amendment)

Present Law

(a) Financial Relationship Specified.–A financial relationship is defined as including an ownership or investment interest in the entity or a compensation arrangement between the physician (or immediate family member) and the entity.

(b) Minor Remuneration.–The term "compensation arrangement" is defined as any arrangement involving any remuneration between a physician (or immediate family member) and an entity. The term remuneration includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(c) Referring Physician.–A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, if such services are furnished by (or under the supervision of) such pathologist pursuant to a consultation requested by another physician does not constitute a "referral."

House Bill

(a) Financial Relationship Specified.–W&M: The definition of financial relationship would be modified to include explicitly that an interest in an entity (i.e., holding company) that holds an investment or ownership interest in another entity is a

financial relationship for purposes of the referral prohibition.

E&C: No provision.

(b) Minor Remuneration.–W&M: An exception would be provided for certain minor remuneration, including: (i) the forgiveness of amounts for inaccurate or mistakenly performed tests or procedures, correction of minor billing errors; or (ii) the provision of items, devices, or supplies used solely to collect, transport, process, or store specimens or to communicate test results.

E&C: Similar to W&M provision, except strikes current law definition of remuneration.

(c) Referring Physician.–W&M: The provision would clarify that a request by a radiologist for diagnostic radiology services and a radiation oncologist for radiation therapy would not constitute a "referral" by a "referring physician."

E&C: Identical to W&M provision.

Senate Amendment

(a) Financial Relationship Specified.–No provision.

(b) Minor Remuneration.–Identical to W&M provision.

(c) Referring Physician.–Identical to W&M provision.

****1508*819** Conference Agreement

(a) Financial Relationship Specified.–The conference agreement includes the House W&M provision.

(b) Minor Remuneration.–The conference agreement includes the House W&M provision with an amendment. Included within the definition of remuneration are payments made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee-for-service basis, for the furnishing of health services by that physician to an individual covered by a policy with the insurer or self-insured plan. In order to meet the definition, the following conditions must be met. The services may not be furnished and the payment may not be made pursuant to a contract or other arrangement between the insurer or the plan and the physician. The payment is made to the physician on behalf of the covered individual and would otherwise be made directly to the individual. The amount of the payment must be set in advance, not exceed fair market value, and not be determined in a manner that takes into account directly or indirectly the volume or value of any referrals. Further, the payment must meet such other requirements as the Secretary may impose by regulation to protect against patient or program abuse.

(c) Referring Physician.–The conference agreement includes the Senate amendment.

13. Effective Dates (Secs. 13530 and 5074(j) of the House bill; sec. 7304(i) of Senate amendment)

Present Law

No provision.

House Bill

W&M: The provisions would generally apply to referrals made on or after January 1, 1992, except expansions to additional services and additional payers would apply to referrals made on or after December 31, 1994. The following provisions apply

to referrals made on or after December 31, 1994: (a) Section 13523(b) rural provider exception; (b) Section 13524(a) relating to publicly traded securities; (c) Section 13525(a) relating to the exception for office rental; (d) Section 13525(c)(1) relating to exception for personal services arrangements; (e) Section 13525(d) relating to physician recruitment; (f) Section 13526 relating to civil money penalty; (g) Section 13527 relating to requirement for group practices (other than that relating to faculty practice plans), (h) Section 12528 relating to nonpreemption; and (i) Section 13529(a) relating to indirect financial relationships.

E&C:. Subsection (a) of section 5074 (extension to designated health services) would be effective December 31, 1994. All other subsections other than subsection (a) would be effective January 1, 1992. Section 5131 (Medicaid) applies to items and services furnished on or after October 1, 1993.

****1509*820** Senate Amendment

The provision would apply to referrals made on or after January 1, 1992, except that extension to additional designated health services would apply to physician referrals made after December 31, 1994. Extension to Medicaid (Section 7451) would be effective October 1, 1993.

Conference Agreement

The conference agreement includes the House W&M provision with an amendment. Under the agreement, the self-referral provisions apply to referrals for clinical lab services made on or after January 1, 1992. The provisions apply to referrals for other designated health services made on or after December 31, 1994. The provisions relating to physician incentive plans and additional requirements for group practice plans do not apply to referrals made before December 31, 1994. The following new subsections of Section 1877 do not apply to referrals made before December 31, 1994 (but the previous law continues to apply): (a)(2) – indirect financial relationship; (b)(2)(B)–billing numbers; (c) – publicly traded securities; (d)(2) – rural provider exception; and (e)(1)(A) exception for office rental.

14. Immunosuppressive Drug Therapy (Sec. 13552 of House bill)

Present Law

Medicare currently pays for immunosuppressive drug therapy for Medicare beneficiaries who have received organ transplants for one year following the date of the transplant procedure.

House Bill

W&M: Medicare coverage of immunosuppressive drug therapy would be extended as follows. Effective January 1, 1994, coverage would be extended to an 18-month period. Effective January 1, 1995, coverage would be extended to a 24-month period. Effective January 1, 1996, coverage would be extended to a 30-month period. Effective January 1, 1998, coverage would be extended to a 36-month period.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision with an amendment to delay the phase-in of extended coverage. Effective January 1, 1995, coverage will be extended to an 18-month period. Effective January 1, 1996, coverage will be extended to a 24-month period. Effective January 1, 1997, coverage will be extended to a 30-month period. Effective January 1, 1998, coverage will be extended to a 36-month period.

****1510*821** 15. Reduction in Payments for Erythropoietin (Sec. 13553 and 5075 of House bill; sec. 7305 of Senate bill)

Present Law

Medicare is the principal purchaser of erythropoietin (EPO), an anti-anemia drug given to end-stage renal disease (ESRD) beneficiaries with a specified level of anemia. Payment for the drug is made as an add-on to the composite rate paid to facilities for dialysis treatment. Payments to facilities are made in increments of 1,000 unit doses, rounded to the nearest 100 units, with a maximum payment of $11 per 1,000 units.

For ESRD beneficiaries who are not treated through dialysis facilities, payment is made to physicians for drug costs in a variety of ways.

House Bill

W&M: Effective for services furnished on or after January 1, 1994, Medicare payments for EPO would be reduced by $1.00 per 1,000 units. The provision would not alter payments for EPO provided in a physician's office.

E&C: Identical provision.

Senate Amendment

Identical provision.

Conference Agreement

The conference agreement includes the Senate amendment with an amendment to permit all dialysis patients to self-administer EPO.

16. Qualified Medicare Beneficiary Outreach (Secs. 13554 and 5078 of House bill)

Present Law

The Medicare Catastrophic Coverage Act of 1988 required States to pay Medicare premiums, deductibles and coinsurance for "Qualified Medicare Beneficiaries" (QMBs). QMBs are those Medicare beneficiaries whose family incomes are below 100 percent of the Federal poverty level and whose assets are no more than twice the amount allowed under SSI.

OBRA 90 accelerated the phase-in schedule for QMB coverage, and required States to pay premiums for QMBs with incomes up to 110 percent of poverty by January 1, 1993, and to 120 percent of poverty by January 1, 1995. Less than half of eligible beneficiaries are currently participating in the QMB program.

House Bill

W&M: The Secretary would be required to establish and implement a method for obtaining information from newly eligible Medicare beneficiaries that may be used to determine eligibility for benefits under the QMB program.

E&C: Identical provision.

****1511*822** Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

17. Extension of Social Health Maintenance Organization Demonstrations (SHMOs) (Secs. 13555 and 5079 of House bill)

Present Law

The Deficit Reduction Act of 1984 required the Secretary to grant three-year waivers for demonstrations of social health maintenance organizations (SHMOs). These demonstrations provide integrated health and long-term care services on a prepaid capitated basis. OBRA 87 required the Secretary to extend the waivers for SHMOs through September 30, 1992. OBRA 90 extended the waivers through December 31, 1995 and required the Secretary to add up to four additional sites. It also authorized $3.5 million for technical assistance and evaluation.

House Bill

W&M: The SHMO demonstrations would be extended for an additional 2 years, and the Secretary could not impose a limit of less than 12,000 beneficiaries per site. In addition, one of the SHMO demonstration sites would be permitted to enroll Medicare end-stage renal disease (ESRD) beneficiaries.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

18. Hospice Notification to Home Health Beneficiaries (Secs. 13559 and 5081 of House bill)

Present Law

Medicare beneficiaries who are certified as terminally ill by a physician may elect to receive hospice benefits in lieu of other Medicare covered services. Home health agencies are required to meet Medicare conditions of participation in order to receive reimbursement for treatment of Medicare beneficiaries.

House Bill

W&M: Home health agencies would be required to inform beneficiaries of the hospice benefit under Medicare, if a Medicare participating hospice is located in the geographic area or it is common medical practice to refer patients to hospices out of the area. ****1512*823** As a condition of participation in Medicare, home health agencies would be required to provide the information in advance of the patient's coming under care of the agency. This provision would apply to services furnished on or after the first day of the first month beginning more than one year after the date of enactment.

E&C: Identical provision

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

19. Interest Payments (Secs. 13557 and 5068 of the House bill)

Present Law

The Social Security Act requires the payment of interest if payment is not made within 24 days of receipt of a clean claim for payment, and within 17 days in the case of a clean claim from a participating physician.

House Bill

W&M: Interest payments would be made on clean claims if payment is not made within 30 days of receipt for fiscal year 1993.

E&C: The provision would provide for a maximum of 27 calendar days for the payment of clean paper claims and prohibits any interest payment for claims during any period for which no payment may be issued, mailed or otherwise transmitted.

Senate Amendment

No provision.

Conference Agreement

The conference agreement establishes new standards for payment of Medicare claims. Effective with claims received on or after October 1, 1993, no payment shall be made for claims submitted electronically within 13 days after receipt, and for all other claims within 26 days after receipt. Contractors would be required to pay 95 percent of clean claims within 30 calendar days for claims received in the 12-month period beginning October 1, 1993, and any succeeding 12-month period. Interest payments would be made on clean claims if payment is not made within 30 days of receipt.

20. Peer Review Organizations (Secs. 13558 and 5080 of House bill)

Present Law

(a) Peer Review Organizations.–OBRA 90 required Peer Review Organizations (PROs) to provide notice to State licensing

entities when a physician is found to have furnished services in violation ****1513*824** of Section 1154(a) of the Social Security Act. This subsection includes requirements that PROs review the quality of medical care and determine whether certain services are covered by Medicare. As drafted, OBRA 90 requires PROs to notify State boards in the case of a variety of administrative findings, as well as in the case of a problem regarding quality of care.

(b) Repeal of PRO Precertification Requirement.–Under current law, PROs are required to precertify selected surgical procedures.

House Bill

(a) Peer Review Organizations.–W&M: The requirement that PROs notify State boards regarding administrative matters would be eliminated, but PROs would continue to be required to notify them in cases of unnecessary or poor quality care. In addition, drafting errors in OBRA 90 would be corrected.

E&C: Identical provision.

(b) Repeal of PRO precertification requirement.–W&M: The requirement that PROs precertify selected surgical procedures would be repealed.

E&C: Identical provision.

Senate Amendment

(a) Peer Review Organizations.–No provision.

(b) Repeal of PRO precertification requirement.–No provision.

Conference Agreement

(a) Peer Review Organizations.–The conference agreement does not include the House provision.

(b) Repeal of PRO precertification requirement.–The conference agreement does not include the House provision.

21. Health Maintenance Organizations (Secs. 13559 and 5082 of House bill)

Present Law

OBRA 90 required the Secretary to submit a provision to the Congress by January 1, 1992, providing for a more accurate method for HMOs paid on a risk basis. The Secretary was required to publish a proposed rule by March 1, 1992. The Comptroller General was required to review and report to the Congress by May 1, 1992, on recommendations to modify the proposed methodology. OBRA 90 also contained a number of minor and technical drafting errors.

House Bill

W&M: The Secretary would be required to revise the payment methodology for HMOs for contract years beginning with 1994 to take into account variation in costs associated with beneficiaries for whom Medicare is the secondary payer. The Secretary would be further required to submit a proposal to the Congress by October 1, 1993, that provides for revisions to the payment methodology for contract years beginning with 1995. In proposing the revisions, the ****1514*825** Secretary would be required to consider (1) the difference in costs associated with beneficiaries with different health status and (2) the effects of using alternative geographic classifications. The Comptroller General would be required to report to the Congress

on the proposed revisions no later than three months after the Secretary's proposal was submitted. The provision also includes technical corrections to OBRA 90.

E&C: Similar provision, except that the Secretary's proposal for revisions in the payment methodology would be due January 1, 1995, and would apply for contract years beginning with 1996.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include either House provision.

22. Medicare Administration Budget Process (Sec. 13560 of House bill)

Present Law

The Balanced Budget and Emergency Deficit Control Act of 1985 provides for certain adjustments to the discretionary spending limits provided in the Act. There are no adjustments relating to the discretionary spending under the Medicare program.

House Bill

W&M: The Balanced Budget and Emergency Deficit Control Act of 1985 would be amended to provide that to the extent that appropriations are enacted that provide budget authority above a base level of spending in fiscal year 1992 of $1.526 billion, the appropriate discretionary spending limits would be adjusted to accommodate additional budget authority in fiscal years 1994 and 1995. The adjustments would be cumulative and would equal $198 million in fiscal year 1994, and $220 million in fiscal year 1995.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

23. Medicare Hospital Agreements with Organ Procurement Organizations (Sec. 5076 of the House bill)

Present Law

Current law provides for Medicare payment of organ procurement costs incurred by designated organ procurement organizations (OPOs). OPOs are required to have agreements with hospitals ****1515*826** to facilitate the identification of organ donors and to retrieve donated organs. Hospitals are required to notify OPOs of any potential organ donors.

House Bill

W&M: No provision.

E&C: The provision would require hospitals to enter into agreements with the OPO designated by the Secretary for the geographic area in which the hospital is located.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

24. Extension of Waiver for Watts Health Foundation (Sec. 5077 of the House bill)

Present Law

The Watts Health Foundation has a waiver under Medicare from the requirement that no more than half of its enrollees can be Medicare or Medicaid beneficiaries. This waiver expires December 31, 1994.

House Bill

W&M: No provision.

E&C: The provision would extend for two years the waiver under the Medicare program for the Watts Health Foundation.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

25. Other Provisions Relating to Parts A and B of the Medicare Program (Secs. 13561 and 5083 of the House bill)

Present Law

(a) Survey and Certification Requirements.–The Secretary is prohibited from imposing user fees on facilities for determining compliance with any requirement of Medicare. Current law could be interpreted to mean that user fees imposed pursuant to the Clinical Laboratory Improvement Act (CLIA) are prohibited. In addition, there are minor drafting errors regarding the survey and certification process.

(b) Other Technical Amendments.–No provision.

****1516*827** House Bill

(a) Survey and Certification Requirements.–W&M: The provision would clarify that user fees imposed under the Clinical Laboratory Improvement Act are not subject to the general ban on user fees.

Minor and technical errors relating to a home dialysis demonstration program authorized under OBRA 90 and Medicare secondary payer requirements in OBRA 90 would be corrected.

E&C: Identical provisions.

(b) Other Technical Amendments.–A number of minor technical amendments relating to Parts A and B of the Medicare program would be made. In addition, the provision would correct minor and technical errors in Sections 4201 through 4207 of OBRA 90.

E&C: Identical provisions.

Senate Amendment

(a) Survey and Certification Requirements.–No provision.

(b) Other Technical Amendments.–No provision.

Conference Agreement

(a) Survey and Certification Requirements.–The conference agreement does not include the House provision.

(b) Other Technical Amendments.–The conference agreement does not include the House provision.

26. Standards for Medicare Supplemental Insurance Policies (Secs. 13571 and 5091 of the House bill)

Present Law

(a) Preventing Duplication.–The OBRA 90 amendments strengthen prohibitions against the sale of duplicative coverage to Medicare beneficiaries. The sale of a Medigap policy to an individual already covered under a Medigap policy is prohibited, as is, in general, the sale of a Medigap policy to a Medicaid beneficiary. Insurers are required to obtain written information from applicants regarding existing health insurance coverage.

The language also appears to prohibit the sale of any health benefits that duplicate any health coverage (including Medicare) to which a Medicare beneficiary is entitled.

(b) Loss Ratios and Refund of Premiums.–The OBRA 90 amendments increased the minimum loss ratio standard for individual Medigap insurance policies from 60 percent to 65 percent. The standard is 75 percent for group policies. Policy issuers are required to provide a refund or credit against future premiums if needed to meet the loss ratio requirements.

(c) Pre-existing Condition Limitations.–The OBRA 90 amendments prohibit medical underwriting and certain other practices with respect to Medicare supplemental insurance policies for which an individual age 65 or older applies during the six month period beginning with the first month during which the individual is first enrolled for benefits under part B.

****1517*828** (d) Other Miscellaneous and Technical Corrections.–The conference report to accompany OBRA 90 states the intent of the conferees that the National Association of Insurance Commissioners, in promulgating changes to the Model Medigap Regulations to conform with Federal requirements, would delete from section 12(C) all that follows “unless”, which is an exception to limitations on certain sales commissions. The OBRA 90 amendments also include a number of minor and

technical drafting errors.

House Bill

(a) Preventing Duplication.–W&M: This provision would continue the current law prohibition on the sale of duplicative health insurance policies subject to the conditions described in the following paragraph. The provision would clarify that it is unlawful to sell or issue to an individual entitled to benefits under Part A or enrolled under Part B: (i) a health insurance policy with knowledge that such policy duplicates health benefits to which such an individual is otherwise entitled under Medicare or Medicaid; (ii) a Medigap policy with knowledge that the individual is entitled to benefits under another Medigap policy; and, (iii) a health insurance policy, other than a Medigap policy, with knowledge that such policy duplicates health benefits to which the individual is otherwise entitled.

Penalties would not apply, however, to the sale or issuance of a policy or plan that duplicates health benefits under Medicare or Medicaid or a policy or plan that duplicates health benefits to which the individual is otherwise entitled if, under the policy or plan, all benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual. In addition, for the penalty to be waived in the case of the sale or issuance of a policy or plan that duplicates benefits under Medicare or Medicaid, the application for the policy must include a statement, prominently displayed, disclosing the extent to which benefits payable under the policy or plan duplicate Medicare benefits.

Policies that would be subject to the disclosure requirement include, but are not limited to: specific disease policies, hospital confinement indemnity policies, long term care policies, policies that provide fixed indemnity benefits for nursing home care, nursing services in the home or for home care, and policies that provide fixed indemnity benefits for any medical or surgical service or treatment.

The new provisions pertaining to non-duplication would not alter in any way the current law prohibition on the sale of a Medigap policy to a Medicaid beneficiary.

E&C: Identical provision.

(b) Loss Ratios and Refund of Premiums.–W&M: The provision would clarify that the OBRA 90 loss ratio standard would apply to policies sold or renewed after the effective date of the provision. With respect to a refund or credit for policies issued prior to the effective date of the provision, the calculation would be based on aggregate benefits provided and premiums collected for all policies issued by an insurer in a state and based only on aggregate benefits provided and premiums collected under the policies after ****1518*829** the effective date. Other minor and technical drafting errors would be corrected.

E&C: Identical provision.

(c) Pre-existing Condition Limitations.–W&M: The provision would clarify the intent of OBRA ‘90 that, in the case of individuals enrolled in part B prior to age 65, Medigap insurers are required to offer coverage, regardless of medical history, for a six-month period when the individual reaches age 65. The provision would also clarify that insurers are prohibited from discriminating in the price of policies for such an individual, based upon the medical or health status of the policyholder.

E&C: Identical provision.

(d) Other Miscellaneous and Technical Corrections.–The effective dates for various provisions would be modified. Other minor and technical drafting errors would be corrected.

E&C: Identical provision.

Senate Amendment

(a) Preventing Duplication.–No provision.

(b) Loss Ratios and Refund of Premiums.–No provision.

(c) Pre-existing Condition Limitations.–No provision.

(d) Other Miscellaneous and Technical Corrections.–No provision.

Conference Agreement

(a) Preventing Duplication.–The conference agreement does not include the House provision.

(b) Loss Ratios and Refund of Premiums.–The conference agreement does not include the House provision.

(c) Pre-existing Condition Limitations.–The conference agreement does not include the House provision.

(d) Other Miscellaneous and Technical Corrections.–The conference agreement does not include the House provision.

CHAPTER 4

AMENDMENTS RELATING TO THE PART B PREMIUM

1. Part B Premium (Secs. 13481 and 5051 of the House bill; sec. 7251 of the Senate amendment)

Present Law

From 1984 through 1990 the Part B premium was set to cover 25 percent of program costs for aged beneficiaries. The remaining 75 percent was covered by general revenues. OBRA 90 established the monthly Part B premium in statute through 1995 to cover 25 percent of program costs as follows: $29.90 in 1991, $31.80 in 1992, $36.60 in 1993, $41.10 in 1994 and $46.10 in 1995. In 1996, the method for calculating the premium will revert to the formula used prior to 1984, so that the Part B premium increases will be limited by the percentage by which cash benefits were increased in the previous year under the COLA provisions of the Social Security program.

****1519*830** A special provision applies to low-income persons who have their premiums deducted from their Social Security checks. If the Social Security COLA is less than the premium increase, the premium increase otherwise applicable is reduced to prevent a reduction in the individual's Social Security check.

House Bill

W&M: The Part B premium would cover 25 percent of program costs in 1996 and 1997. In subsequent years, the Part B premium would increase by the percentage by which cash benefits are increased under the COLA provisions of the Social Security program.

E&C: Identical provision.

Senate Amendment

Similar provision, except extends the 25 percent policy for three years–1996–1998.

Conference Agreement

The conference agreement includes the Senate amendment.

CHAPTER 5

MEDICARE AND MEDICAID COVERAGE DATA BANK

Present Law

No Medicare and Medicaid Coverage Data Bank exists under present law. OBRA 89 authorized the establishment of a database to identify working Medicare beneficiaries and their spouses to improve identification of cases in which Medicare is secondary payer to other third party payers.

House Bill

W&M: No provision.

E&C: The House bill directs the Secretary of Health and Human Services to establish and operate a Health Coverage Clearinghouse for the purpose of identifying indemnity insurers, service benefit plans, group health plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA), health maintenance organizations, and other third parties that may be liable for payment for services provided to Medicaid, Medicare, or Indian Health Service beneficiaries (or individuals receiving services funded under the Maternal and Child Health Block Grant). The House bill directs the Administrator of the Health Care Financing Administration and State agencies to request information from the clearinghouse concerning the employment and group health coverage of a beneficiary, the beneficiary's spouse, or, if the beneficiary is a dependent child, the beneficiary's parents. The House bill requires IRS and the Social Security Administration to provide taxpayer identity information on these individuals. The House bill sets forth procedures under which programs may obtain this information from the clearinghouse as well as procedures for the maintenance of a data bank by the clearinghouse. The House bill also directs employers to provide information relating to coverage of individuals ****1520*831** under the employer's group health plan to the clearinghouse and provides a civil monetary penalty for willful and repeated failure to comply. The provision is effective on April 1, 1995. Employers are not required to provide information to the clearinghouse after September 30, 1998.

Senate Amendment

Section 7904 of the Senate amendment directs the Secretary of Health and Human Services to establish and operate a clearinghouse to increase information available to Medicare and Medicaid on thid-party health insurance coverage available to program beneficiaries. Section 7904 of the Senate amendment requires employers to include limited health insurance information on each Form W-2 given to an employee, as well as on each copy that is provided to the IRS. The Senate amendment specifically requires employers to indicate on each Form W-2 whether an employee obtained (or could have obtained) coverage under a group health plan offered by the employer, as well as the type of plan coverage (single or family) that was chosen by the employee (if any.) These requirements are made a part of the Internal Revenue Code.

The clearinghouse is given access to the following information from every Form W-2 that is filed with the IRS: the name and taxpayer identification number of every employee; the name, address, and employer identification number of every employee's employer; and the health plan information described above. In addition, the IRS is required (upon request) to disclose to the clearinghouse a taxpayer's filing status and identify information as to whether the taxpayer was married for a specified year, and, if so, the name and taxpayer identification number of the spouse.

This information is available to appropriate Federal program administrators through the clearinghouse. The clearinghouse is to maintain a data bank that matches the tax return information with the lists of health program beneficiaries. The clearinghouse also is authorized to assist these programs in collecting amounts due from insurers and is to maintain information obtained through computer matches and contacts with employers. Employers who fail to provide information on

health insurance coverage are subject to civil monetary penalties. The provision is effective April 1, 1995.

Section 12101 of the Senate amendment is generally the same as the House bill, except that the beneficiaries affected differ and the list of agencies eligible to receive the information is expanded.

Conference Agreement

The conference agreement establishes a Medicare and Medicaid Coverage Data Bank within the Department of Health and Human Services. The Secretary is required to establish the Data Bank for the purposes of identifying and collecting from third parties responsible for payment of health care items and services furnished to Medicare beneficiaries, and assisting in the collection of, or collecting, amounts due from liable third parties to reimburse costs incurred by any State plan under the Medicaid program.

Employers are required to report certain information to the Data Bank concerning employee health coverage on an annual ****1521*832** basis for years beginning with calendar year 1994 and ending in calendar year 1997. The information, reported will include: the name and taxpayer identification number (TIN) of the electing individual; the type of group health plan coverage (single or family) elected; the name, address, and identifying number of the group health plan elected by the employee; the name and TIN of each other individual (e.g., spouses and dependents) covered under the group health plan; the period during which such coverage is elected; and the name, address, and TIN of the employer.

All employers required to file a Form W-2, with employees that elect coverage under a group health plan, will report health coverage information to the Data Bank at the same time as the filing of Form W-2 required under section 6051(d) of the Internal Revenue Code of 1986. The first filing will occur on February 28, 1995. The conferees expect the Secretary to minimize the burden of this reporting requirement and coordinate, to the maximum extent possible, with the format and filing procedures established for the Form W-2.

The Data Bank will maintain health insurance information on individuals covered under employer group health plans, as required under this section, as well as certain information to verify the employment status of Medicare beneficiaries and their spouses pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986. The Secretary is authorized to disclose information provided to the Data Bank by employers to State Medicaid agencies, employers, and group health plans solely for carrying out the purposes of the Data Bank. Information that the Data Bank receives pursuant to section 6103(l)(12) can only be disclosed in the manner provided in section 6103.

The Secretary is required to maintain a system of safeguards against unauthorized disclosure of Data Bank information that are similar to those provided under sections 6103(a) and (p) of the Internal Revenue Code of 1986 regarding the confidentiality and recordkeeping procedures required with respect to tax return information, including penalties as prescribed under Section 7213(a) of such Code. The conferees intend that in establishing such procedures, the Secretary is authorized to require any party receiving Data Bank information to agree to ensure the confidentiality of this information.

Employers failing to report the required information to the Data Bank generally will be subject to penalties similar to those imposed under the Internal Revenue Code for failure to supply information returns. Such penalties may be abated if the failure to file is due to reasonable cause; penalties may be increased if the failure is willful.

The Secretary is authorized, at the request of the administrator of any State agency administering the Medicaid program, to collect or assist in the collection of amounts due from liable third parties to reimburse costs incurred by such program or plan for health care items or services. States are required to request and use information from the Data Bank, when cost effective, and to pay the required fee for the provision of information. The fee for providing collection services may be computed as a percentage of ****1522*833** the amount collected and may be retained by the Secretary from the total amount collected.

SUBCHAPTER B

MEDICAID PROVISIONS

Part I–Services

Personal Care Services (Section 13601).–Repeals current law mandate for coverage of personal care services. Allows States to cover personal care services furnished outside the home, effective October 1, 1994.

Drug Rebate Program Modifications (Section 13602).–Permits States to operate prescription drug formularies meeting certain requirements. Removes current law prohibition on the imposition of prior authorization controls with respect to new drugs during the first 6 months following FDA approval. Repeals the weighted average manufacturer price (WAMP) inflation formula for calculating the additional rebate under current law. Effective October 1, 1993. The conference agreement does not contain a specific administrative or judicial appeal requirement. The conferees intend to preserve any appeal rights that are available to beneficiaries and providers (including drug manufacturers) under State and Federal law.

Optional Coverage of TB-Related Services (Section 13603).–Allows States to cover prescribed drugs, directly observed therapy, and other ambulatory services for low-income individuals infected with tuberculosis. Effective January 1, 1994. The House bill would have provided coverage for persons who "test positively" for TB infection. Because of concern about both false positive and false negative test results, the Conferees modified the House provision to include all low-income persons who are "infected with" TB rather than relying on these test results. The conferees have further specified that TB-related services include confirmatory tests for the infection. The conferees are aware that traditional TB tests and diagnostic methods are of questionable value, particularly among persons with low immune function. Because of the seriousness of the emerging TB epidemic, the conferees intend that eligibility be interpreted as broadly as possible in this area in order to allow the maximum number of TB-infected persons to receive services.

Bona Fide Emergency Services for Undocumented Aliens (Section 13604).–Clarifies that emergency services for which Federal Medicaid matching funds are available with respect to illegal aliens under current law do not include care and services related to organ transplant procedures. Effective for services furnished on or after date of enactment.

Coverage of Nurse Midwife Services (Section 13605).–Expands the scope of nurse midwife services required under current law to include services that midwives are authorized to perform under State law that are outside the maternity cycle. Effective October 1, 1993.

Treatment of Certain Clinics as FOHCs (Section 13606).–Designates entities treated as comprehensive Federally funded health centers as of January 1, 1990, as Federally qualified health centers for purposes of Medicaid. Effective July 1, 1993.

****1523*834** Part II–Eligibility

Transfers of Assets; Treatment of Certain Trusts (Section 13611).–Provides for a delay in Medicaid eligibility for institutionalized individuals (or their spouses) who dispose of assets for less than fair market value on or after a specified look-back date (36 months prior to either the date of application for benefits or the date of institutionalization, whichever is later). The number of months of delay in eligibility is equal to the total, cumulative uncompensated value of all assets transferred or after the look-back date, divided by the average monthly cost to a private patient of nursing facilities in the State. The period of delay begins with the first month during which the assets were disposed of. Penalties are not applied to transfers to spouses, transfers to minor or disabled children, or transfers to trusts solely for the benefit of disabled individuals under 65. Effective with respect to assets disposed of on or after enactment.

Sets forth rules under which funds and other assets of an individual placed in trust by or on behalf of an individual (or the individual's spouse) are treated, for purposes of Medicaid eligibility, as resources available to the individual, and under which payments from the trust are to be considered assets disposed of by the individual. Specifies that, for purposes of applying transfer of assets prohibitions, the look-back period with respect to trusts in 60 months. Provides exceptions for trusts containing the assets of a disabled individual under 65, specified income trusts in certain States, and "pooled" trusts for disabled individuals. Requires States to establish procedures for waiving the application of these rules in cases of undue hardship. Effective with respect to trusts established on or after the date of enactment.

The Conference agreement does not include section 7422(c) of the Senate amendment relating to financial screening by nursing facilities. The conferees have been informed that a point of order could be raised in the Senate, under the so-called

"Byrd rule" (section 313 of the Congressional Budget Act of 1974) to the substance of this provision if included in the conference agreement. In order to avoid such a possible point of order, and because the conferees believe that the provision does nothing more than restate authority the Secretary has under current law, the provision has not been included. This provision would have made explicit a prohibition on discrimination in admission to nursing facilities through the use of financial screening. The conferees believe that the existing provisions of titles XVIII and XIX gives broad authority to the Secretary to implement such a prohibition to the degree necessary to protect applicants' rights to receive freely, or apply for, Medicare and Medicaid benefits. Absent some limit on financial screening, the purpose of the existing statutory protections would be circumvented because nursing homes could effectively condition admission on financial information which indicates whether and when individuals are likely to receive or apply for Medicare or Medicaid benefits. Since this practice clearly violates these existing statutory rights, the Secretary may restrict financial screening in order to properly administer the existing statutory provisions assuring those rights.

Medicaid Estate Recoveries (Section 13612).–Requires States to recover the costs of nursing facility and other long-term care ****1524*835** services furnished to Medicaid beneficiaries from the estate of such beneficiaries. Further requires States to establish hardship procedures for waiver of recovery in cases where undue hardship procedures for waiver of recovery in cases where undue hardship would result. At the option of the State, the estate against such recovery is sought may include any real or personal property or other assets in which the beneficiary had any legal title or interest at the time of death, including the home. Different estate recovery provisions apply to certain individuals who purchase specified long-term care insurance policies in designated States. Effective October 1, 1993.

Part III–Payments

Assuring Proper Payments to Disproportionate Share Hospitals (Section 13621).–Prohibits designation of a hospital as a disproportionate share hospital for purposes of Medicaid reimbursement unless the hospital has a Medicaid inpatient utilization rate of at least one percent. Limits disproportionate share hospital (DSH) payment adjustments to no more than the costs of providing inpatient and outpatient services to Medicaid and uninsured patients, less payments received from Medicaid (other than DSH payment adjustments) and uninsured patients. Applies to public hospitals in State fiscal years beginning in 1994. Provides for transition rules for high-volume public DSH hospitals (meeting a high volume test or with a Medicaid inpatient utilization rate of one standard deviation above the mean for the State) during the State fiscal year beginning in 1994. During this transition year, a hospital may receive DSH payments in an amount up to 200 percent of costs of providing services to Medicaid and uninsured patients (net of non-DSH Medicaid revenues), so long as the Governor certifies to the Secretary that the payments in excess of 100 percent of the costs are used for health services. Applies to private hospitals in State fiscal years beginning in 1995, subject to such modifications in the manner in which the payment limitations are applied as the Secretary considers appropriate.

Liability of Third Parties to pay for care and services (Section 13622).–Requires States to enact laws prohibiting insurers (including group health plans under ERISA, service benefit plans, and HMOs) from taking Medicaid status into account in enrollment or payment for benefits, and to enact laws giving the State rights to payments by liable third parties. Effective October 1, 1993.

Medicaid Child Support Enforcement Improvements (section 13623).–Requires States to have in effect specified laws to ensure the compliance of insurers and employers in carrying out a court or administrative order for medical child support. Effective April 1, 1994.

Application of Medicare Rules Limiting Certain Physician Referrals (Section 13624).–Applies the Medicare rules regarding limitations on physician ownership and referrals (set forth in section 13562) to the Medicaid program. Effective December 1994.

State Medicaid Fraud Control (section 13625).–Requires States to operate effective Medicaid fraud control units, meeting requirements established by the Secretary, unless the State demonstrates that effective operation of a unit would not be cost-effective ****1525*836** and that, in the absence of a unit, beneficiaries will be protected from abuse and neglect. Effective January 1, 1995.

Part V–Miscellaneous

Increased Federal Payments to Puerto Rico and Other Territories (Section 13641).–Provides for increases in current law limits on Federal matching payments for Medicaid programs in Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa. Effective in fiscal year 1994. In subsequent years, the new limits are adjusted for inflation.

Extension of Moratorium on Treatment of Certain Facilities as Institutions for Mental Diseases (Section 13642).–Extends through December 31, 1995, the classification of certain facilities as institutions for mental diseases (IMDs) for purposes of Medicaid reimbursement. Effective upon enactment.

Extension of Certain Demonstration Projects (section 13643).–Extends funding periods for demonstration projects authorized under OBRA 89 concerning low-income pregnant women, and projects authorized under OBRA 90 concerning low-income families, and makes funds designated for these demonstrations available until expended. Applies spousal impoverishment eligibility rules to the On Lok waiver demonstration program. Effective upon enactment.

Extension of Period of Applicability of Enrollment Mix Requirement to Certain Health Maintenance Organizations Providing Services Under Dayton Area Health Plan (section 13644).–Extends through January 31, 1995, the current waiver of the enrollment mix requirement with respect to the Dayton Area Health Plan. Effective upon enactment.

CHILD WELFARE SERVICES, FOSTER CARE AND ADOPTION ASSISTANCE

1. Funding for Family Preservation and Family Support Services (including Services to Foster and Adoptive Families) (Sec. 13211 of House bill)

Present Law

The child welfare services program under title IV–B of the Social Security Act authorizes 75 percent Federal matching grants to States for child welfare services. These funds may be used: (1) to protect and promote the welfare of children; (2) to prevent or remedy, or assist in the solution of problems that may result in, the neglect, abuse, exploitation or delinquency of children; (3) to prevent the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (4) to restore children to their families by the provision of services to the child and the family; (5) to place children in adoptive homes if restoration is not possible or appropriate; and (6) to assure adequate foster care when children cannot return home or be placed for adoption.

The authorization level for the title IV–B program is $325 million per fiscal year. Funds are distributed to the States and outlying areas on the basis of their under-age-21 population and per ****1526*837** capita income. The Secretary may, where appropriate, make payments directly to an Indian tribal organization. For fiscal year 1993, appropriations for the program total $295 million.

Title IV–B does not include a specific reserve for services designed to strengthen and preserve families, although States have the flexibility to use their title IV–B child welfare services funds for such services.

House Bill

(a) Authorization of appropriations.–The House bill would amend title IV–B to establish capped entitlement funding for grants to States to provide family preservation and family support services. The authorization level for the capped entitlement would equal $60 million for fiscal year 1994; $135 million for fiscal year 1995; $240 million for fiscal Year 1996; $360 million for fiscal year 1997; and $600 million for fiscal year 1998. Funds allotted for a fiscal year would have to be expended in the fiscal year or in the succeeding fiscal year.

(b) Use of funds.–States would use the funds to develop and establish, or to expand, and to operate a program of family

preservation services and community-based family support services.

The term "family support services" means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including foster, adoptive and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development, including:

(i) services designed to improve parenting skills;

(ii) respite care of children to provide temporary relief for parents and other caregivers;

(iii) structured activities involving parents and children to strengthen the parent-child relationship;

(iv) drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(v) information and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education and literacy programs, and counseling and mentoring services; and

(vi) early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

The term "family preservation services" means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including:

(i) service programs designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption, with a legal guardian, or, where appropriate with respect to a child, in some other planned, permanent living arrangement;

(ii) preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families;

****1527*838** (iii) service programs designed to provide follow-up care to families to whom a child has been returned following a foster care placement;

(iv) respite care of children to provide temporary relief for parents and other caregivers (such as foster parents); and

(v) services designed to improve parenting skills.

(c) Allotment of funds.–One percent of the amount appropriated would be reserved for expenditure by the Secretary for evaluation, research, training, and technical assistance.

For a four-year period beginning with fiscal year 1995, specific amounts would be reserved for grants for assessments of State courts (see item 3 below).

One percent would be reserved for allotment to tribal organizations of Indian tribes that have submitted a plan (which need not meet any State plan requirement specified below that the Secretary determines is inappropriate with respect to the tribe) and whose allotment would be greater than $10,000. Tribal allotments would be made based on the number of children in the tribe relative to the number of children in all tribes with approved plans, as determined by the Secretary on the basis of the most current and reliable information available.

The allotment to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands and American Samoa would be determined according to the formula in effect under present law. Remaining funds would be distributed to States according to a formula, based on the State's share of children in all States receiving food stamp benefits.

(d) Matching Rate.–States would be entitled to payments equal to their allotments, for use in paying not more than 75 percent of the costs of activities under the approved State plan. The remaining 25 percent of costs must be paid with funds from non-Federal sources.

(e) State plan requirements.–To be eligible to receive its share of entitlement funds for a fiscal year, a State must have an approved plan, developed jointly by the Secretary and the State agency, after consultation with appropriate public and nonprofit private agencies and community-based organizations. For fiscal year 1994, however, a State that has not completed development of its plan may receive up to $1 million for plan development, plus any remaining portion of its allotment to provide services to children and families, so long as it has submitted an appropriate application to the Secretary. The State would have to expend its allotment for fiscal year 1994 in fiscal year 1994.

The State plan must:

(i) provide that the State child welfare agency will administer or supervise the administration of the program;

(ii) set forth (and periodically update) program goals for each five-year period under the plan, and the methods to be used in measuring progress toward the goals; contain commitments to perform interim and final progress reviews and, on the basis of the final review, to prepare a final report and to develop goals for the next five-year perod;

****1528*839** (iii) provide for coordination, to the extent feasible and appropriate, with other Federal or Federally-assisted programs serving the same populations;

(iv) provide assurances that not less than 90 percent of expenditures will be used for services for children and families, and that significant portions of the 90 percent will be expended for family preservation services and for community-based family support services;

(v) provide that by the beginning of the sixth fiscal year during which the plan is in effect, programs under the plan will be available on a statewide basis, to the extent feasible and appropriate;

(vi) provide assurances that the State will annually prepare a description of the service programs to be made available in the following fiscal year, the populations that will be served, and the geographic areas in the State in which the services will be available. The description must be furnished to the Secretary, and made available to the public, when the initial plan is submitted and, in succeeding fiscal years, by the end of the third quarter of the preceding fiscal year;

(vii) provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient administration of the plan;

(viii) provide assurances that Federal funds provided under this amendment will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the same purposes, and that the State will furnish reports as required demonstrating the State's compliance with this provision; and

(ix) provide that the State will furnish reports and participate in evaluations as required by the Secretary.

Effective Date

October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified as follows: (1) the authorization level for the capped entitlement equals $60 million for fiscal year 1994, $150 million for fiscal year 1995, $225 million for fiscal year 1996, $240 million for fiscal year 1997, and $255 million for fiscal year 1998; (2) reserves $2 million for fiscal year 1994, and $6 million for each of fiscal years 1995 through 1998, for evaluation, research, training and technical assistance, including the evaluation of State programs regardless of whether federally assisted; (3) clarifies that the new entitlement funds may be expended only for programs of community-based family support and family preservation services; (4) clarifies that the Secretary would not have to approve an unawardable plan of an Indian tribe; (5) clarifies that, for fiscal year 1994, funds for plan development must come from the State's allotment; (6) excludes the State plan requirement regarding statewideness; (7) would allow ****1529*840** States to spend the fiscal year 1994 allotment by the end of fiscal year 1995; and (8) includes several technical amendments.

In addition, under the conference agreement, the definition of "family support services" excludes the illustrative list of activities that may be undertaken. However, the conferees intend that the term "family support services" include the following community-based services:

(1) services, including in-home visits, parent support groups, and other programs, designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;

(2) respite care of children to provide temporary relief for parents and other caregivers;

(3) structured activities involving parents and children to strengthen the parent-child relationship;

(4) drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(5) information and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education and literacy programs, and counseling and mentoring services; and

(6) early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

2. Evaluations; Reports (Sec. 13211 of House bill)

Present Law

Section 426 of title IV–B authorizes funds for research, training and demonstration projects, including grants to: (a) public and non-profit institutions of higher learning and child welfare agencies for research or demonstration projects in the field of child welfare that are of regional or national significance and for special projects to demonstrate new methods that will advance child welfare; (b) State and local child welfare agencies for research to encourage experimental and special types of child welfare services; and (c) institutions of higher learning to train personnel for work in the child welfare field.

House Bill

The provision would require the Secretary to evaluate the effectiveness of the family support and family preservation services authorized by the amendment in accordance with criteria developed by the Secretary. In developing the criteria, the Secretary must consult with appropriate parties, such as State child welfare agencies, persons administering child and family services programs for private, nonprofit organizations with an interest in child welfare, and other persons with recognized expertise in the evaluation of child and family services programs or related programs. The Secretary would have to coordinate these evaluations, to the extent feasible, with evaluations by the States of the effectiveness of their ****1530*841** programs. The Secretary would have to report evaluation findings to the Congress by December 31, 1997.

Effective Date

October 1, 1993

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified to clarify that the Secretary may evaluate family support and family preservation programs that are not funded under title IV–B, and to exclude the statutory requirement that the Secretary issue a single report on the evaluations.

The conferees intend that the Secretary will provide the Committee on Ways and Means and the Committee on Finance with interim evaluation findings by December 31, 1996, and final findings by December 31, 1997.

3. Grants to State Courts to Assess and Improve Handling of Proceedings Related to Foster Care and Adoption (Sec. 13212 of House bill)

Present Law

No provision.

House Bill

Of amounts reserved (as described in item 1(c) above) a sum of $5 million for fiscal year 1995, and $10 million for each of fiscal years 1996 through 1998, would be used for a four-year program of grants to the highest State courts involved in proceedings relating to foster care and adoption. The grants would enable the courts to conduct assessments of the role, responsibilities and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the courts) to determine the advisability or appropriateness of foster care placement, to determine whether to terminate parental rights, and to legally recognize the adoption of a child; and to implement changes deemed necessary by the assessments.

The assessments would have to identify the requirements imposed on State courts, with respect to these proceedings, addressing separately:

(a) rules, standards and criteria imposed under State laws (including laws implementing parts B and E of title IV, laws relating to child abuse and neglect, or any other laws on related matters) applicable to decisions concerning the placement of a child, the parent-child relationship, or other matters of child welfare, including determinations: (i) whether to remove a child from or return a child to its home, (ii) whether to place a child in foster care or to continue a foster care placement, (iii) whether to terminate parental rights, (iv) whether to place a child for adoption or in another permanent ****1531*842** arrangement, and (v) whether to set aside or to make final an adoption, and;

(b) procedures and rules, imposed by law or adopted voluntarily by the court system, addressing matters such as choice between administrative and judicial proceedings; timetables for proceedings; procedural safeguards for parents, guardians, and children; and general rules for conduct of the proceeding.

The assessments would also have to: (i) evaluate the performance of the court system in implementing these requirements by assessing the extent of conformity of State court rules and practices with the recommendations of national organizations concerned with the permanent placement of children; (ii) assess the extent to which particular requirements imposed on State

courts facilitate or impede achievement of title IV–B and IV–E program goals, or impose significant burdens on the courts; and (iii) make specific recommendations for improvement (including recommendations for changes in State or Federal laws, regulations or policies; changes in procedures and practices of the courts or of State child welfare and foster care agencies; additional education or training of court or agency personnel; collection and dissemination of additional data or information; or increases in manpower, reductions in numbers of case reviews, or other changes needed to enable the courts to manage their caseloads).

In order to be eligible for a grant, a highest State court must submit to the Secretary an application containing a timetable, budget and methodology for conducting the assessment; certification by the State child welfare agency and foster care citizen review board (if any) that they had an opportunity for review and comment; assurances that grant funds not needed for the assessment will be used to implement recommended changes, and that grant funds will not supplant other State or local funds used for similar purposes; a commitment to furnish to the Secretary interim and final reports; and such other information as the Secretary requires.

Each court with an approved application would be allotted an amount, for each of fiscal years 1995 through 1998, equal to the sum of: (1) $75,000 for fiscal year 1995, and $85,000 for each of the three succeeding fiscal years, plus (2) a share of the remaining funds reserved for this purpose based on the State's share of individuals under age 21.

Courts could use grant funds without providing local matching in fiscal year 1995, but would have to provide 25 percent State or local matching of grant funds for the three remaining years.

Effective Date

Upon enactment.

Senate Amendment

No provision.

****1532*843** Conference Agreement

The conference agreement follows the House bill regarding the reserve amount for grants to State courts, the allotment of funds to courts with approved applications, and the use of grant funds.

Under the conference agreement, the grants would enable courts to: (1) conduct assessments, in accordance with requirements published by the Secretary, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings that: (a) implement parts B and E of title IV; (b) determine the advisability or appropriateness of foster care placement; (c) determine whether to terminate parental rights; (d) determine whether to approve the adoption or other permanent placement of a child; and (2) implement changes deemed necessary as a result of the assessments.

In order to be eligible for a grant, a court must submit an application to the Secretary at such time, in such form and including such information and commitments as the Secretary requires.

The conferees intend that each assessment:

(1) identify the requirements imposed on State courts with respect to the proceedings listed above, addressing separately: (a) rules, standards, and criteria imposed pursuant to State laws implementing parts B and E of title IV of the Social Security Act and State laws designed to achieve safe, timely, and permanent placements for abused and neglected children, to be applied in the court proceedings; and (b) rules and procedures, established by or under State law or adopted by the State court system on its own initiative, with respect to the conduct of the proceedings, that address matters such as: (i) whether a proceeding should be judicial or administrative, (ii) timetables for proceedings, (iii) procedural safeguards of the rights of parents (including foster and adoptive parents), guardians, and children, such as provisions for legal representation of parents and

children and for guardians ad litem; and (iv) provisions concerning the admissibility of evidence and the opportunity to present witnesses;

(2) evaluate the performance of the State courts in implementing the requirements identified under paragraph (1) by assessing: (a) the extent to which particular practices or procedures have been successful in facilitating compliance with such requirements; (b) the frequency of failures to comply with any such requirements, and patterns with respect to the circumstances of and factors contributing to the failures; (c) the frequency and severity of judicial delays; (d) whether there are limitations in available court time inhibiting the presentation of evidence and the making of arguments; (e) the extent to which parties and attorneys actually call witnesses, introduce evidence, and make pertinent legal arguments in connection with the requirements of parts B and E of title IV of the Social Security Act; (f) the extent to which caseload size and resource limitations affect judicial performance in relation to issues identified in (b), (c), (d), and (e); and (g) how often parents and children have legal representation and the adequacy of such representation;

(3) determine the extent to which the rules and practices identified under paragraph (1) or (2) are in accord with the recommended ****1533*844** standards of national organizations concerned with the permanent placement of foster children;

(4) determine, from the standpoint of the State courts, the extent to which particular requirements under paragraph (1): (a) are facilitating or impeding achievement of the purposes of parts B and E, including the goal of appropriate permanent placement for each child, and (b) are imposing significant administrative burdens on the State court system; and

(5) make specific recommendations for improvement, based on the conclusions reached as a result of activities described in paragraphs (1) through (4), including recommendations for: (a) changes in State and Federal laws, regulations or policies; (b) changes in procedures and practices of the State courts or of the State agencies administering foster care, adoption, child welfare and child protective services programs; (c) additional education or training of State court judges, or of personnel of the judicial system or of the State agencies described in (b); (d) improvements in the selection, compensation, and training of court-appointed legal representatives of parents and children; (e) collection or dissemination of additional data or information for purposes of increasing the understanding of personnel of State courts and State agencies of matters relating to case review proceedings in general, or to specific case review proceedings; and (f) increases in manpower, improvements in judicial caseflow management, reductions in the number of case reviews, or other changes needed to enable the State courts to better manage their caseloads with respect to case review proceedings.

The conferees intend that the application contain: (a) a timetable for conducting and completing the assessment; (b) a budget for the assessment; (c) a description of the methods to be used to select State courts for inclusion in, and to conduct, the assessment; (d) certifications that the head of the State agency administering the State program under part E, and the State foster care citizen review board or State organization of review boards (if any), have had an opportunity to review and comment on a draft of the application before its submission, and a copy of such comments; (e) a description of the process to be used by the court to consult with the entities referred to in (d) in conducting the assessment; (f) a commitment that, to the extent funds provided are not necessary to complete the assessment, the court will use the funds to implement, to the extent feasible, recommendations made under (5) above; (g) a commitment that funds will not be used to supplant State or local funds which would otherwise be used for similar purposes; (h) a commitment to furnish the Secretary an interim report following the end of the second year of assessment activities and a final report following the completion of the assessment; and (i) any other information the Secretary may require.

4. Protections for Foster Children (Sec. 13213 of House bill)

Present Law

In order to receive its share of the title IV–B allocation in excess of $141 million, each State is required under section 427(a) of title IV–B to conduct an inventory of children in foster care; and to implement and operate, to the satisfaction of the Secretary, a ****1534*845** tracking system for children in foster care, a case review system for children in foster care, and a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship.

Further, under section 427(b), if the appropriations for the title IV–B program equal $325 million for two consecutive years, a State does not receive its title IV–B allotment in excess of its share of the 1979 funding level unless it has met all the section 427 requirements outlined above, and in addition, has implemented a preplacement preventive services program designed to help children remain with their families. Finally, States that have elected to provide Federally-supplemented foster care payments for voluntarily-placed foster children are required to implement all section 427 protections, including the preplacement preventive services program.

House Bill

Beginning for fiscal year 1995, the provision would repeal section 427 of title IV–B and require that the State plan for basic title IV–B funds provide for the foster care protections currently outlined in section 427.

In addition, within 12 months after enactment, States would be required to review State laws and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including laws and procedures providing for legal representation of such children), and, within 24 months after enactment, to enact and implement such laws and procedures as the State determines necessary to enable permanent decisions to be made expeditiously regarding the placement of such children.

Also, funds withheld or recovered from a State based on its failure to comply substantially with these protections could not be reallotted among other States.

Statutory language is included stating that the amendments shall not be construed to permit any State to interrupt the provision of the foster care protections described in section 427 (as in effect on the effective date of the amendments).

Effective Date

October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

****1535*846** 5. State Plan Requirement Regarding the Indian Child Welfare Act (Sec. 13214 of House bill)

Present Law

The Indian Child Welfare Act (P.L. 95–608) includes a number of State requirements relating to the foster care or adoptive placement, or termination of parental rights, of Indian children. There is currently no statutory link between the Indian Child Welfare Act and the child welfare services programs under the Social Security Act.

House Bill

A State plan for title IV–B must contain a description, developed after consultation with tribal organizations in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act.

Effective Date

October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

6. Child Welfare Traineeships (Sec. 13215 of House bill)

Present Law

Title IV–B authorizes such sums as may be necessary to enable the Secretary to make grants to public or private nonprofit institutions of higher education for training personnel for work in the field of child welfare.

House Bill

The Secretary could award grants to institutions of higher learning for child welfare traineeships with stipends only where the grant application provides assurances that:

(a) students given stipends would have to agree to participate in training at a child welfare agency and either to serve in a public or private child welfare agency for a period equal to the period of training, or to repay the cost (or an appropriately pro-rated part) of the stipend, plus interest and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary). Exceptions to repayment may be prescribed by the Secretary in regulations;

(b) the institution would enter into agreements with child welfare agencies for on-site training of stipend recipients, accept applications from individuals already employed in the field of child welfare services, and track, for a period of three years after completion of a course of study, the employment record of each former student.

****1536*847** Effective Date

Would apply to grants awarded on or after April 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

7. Changes to Reimbursement Policy under Title IV–E (Sec. 13216–13217 of House bill)

Present Law

(a) Dissolved adoptions.–Under title IV–E, the Federal government reimburses States for foster care maintenance payments made on behalf of children from AFDC-eligible families. A child on whose behalf title IV–E adoption assistance payments are made (and whose adoption has been legally finalized by a judicial decree of adoption), but whose adoption is subsequently set aside by the court and who returns to foster care, is often not eligible for title IV–E foster care maintenance and adoption assistance payments, because the income or resources of the adoptive family have made the child ineligible.

(b) Time frame for hearing on voluntary placements.–

No payment may be made under title IV–E to reimburse a State for foster care maintenance payments in the case of any child who was removed from the home as a result of a voluntary placement agreement and has remained in the placement for more than 180 days, unless there has been a judicial determination within the first 180 days of the placement to the effect that the placement is in the best interests of the child.

House Bill

(a) Dissolved adoptions.–The provision would permit States to make foster care maintenance payments under title IV–E on behalf of a child: (i) with respect to whom such payments were previously made, (ii) whose adoption has been set aside by a court, (iii) who meets certain eligibility requirements under title IV–E (i.e., the child was removed from the home pursuant to a voluntary placement agreement or judicial determination; the child is under the responsibility of the State; and the child has been placed into foster care as a result of a voluntary placement agreement or judicial determination; and (iv) does not meet specified AFDC eligibility requirements, but would meet the requirements if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible, and the adoption were treated as having never occurred.

(b) Time frame for hearing on voluntary placements.–If a judicial determination is made after the first 180 days of placement, permits Federal reimbursement for foster care maintenance payments ****1537*848** beginning 180 days after the date that such judicial determination is finally made.

Effective Date

(a) The provision would apply to payments in fiscal years beginning on or after October 1, 1995.

(b) The provision would apply to foster care maintenance payments made in fiscal year 1996 and thereafter, on behalf of children placed in foster care on or after October 1, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provisions in the House bill.

8. Study of Reasonable Efforts (Sec. 13218 of House bill)

Present Law

In order for a State to be eligible for title IV–E funding, the State plan must specify that, in each case, reasonable efforts will

be made prior to the placement of a child in foster care to prevent the need for foster care and make it possible for the child to return home (sec. 471(a)(15)). The statute also provides that for each child entering foster care after October 1, 1983, a judicial determination must be made that there were reasonable efforts to prevent placement in foster care (sec. 472(a)(1)).

House Bill

The provision would require the Secretary to conduct a study of the ways in which States implement the "reasonable efforts" requirement of sec. 471(a)(15). The Secretary's study would have to give particular attention to:

(a) a State's standards used to determine what steps to take, and whether and for how long to continue efforts–(1) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home; and (2) to return a child home rather than seek some other planned, permanent placement; and

(b) the responses of the courts to the State actions described in (a) above, including whether such responses facilitate or impede State agencies' achievement of the objectives of the reasonable efforts requirement.

The Secretary would have to submit a report to Congress within 18 months of enactment, with such recommendations as the Secretary finds appropriate, based on the results of the study. The report must describe State practices found effective in achieving the objectives of the reasonable efforts requirement, and if appropriate, must set forth model standards for consideration by the States.

****1538*849** Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

The conferees strongly urge the Secretary to conduct a study of State implementation of the reasonable efforts requirements, as outlined in the House bill, and to submit a report to Congress within 18 months of enactment with recommendations. In addition, the conferees urge the Secretary to convene an advisory group to provide recommendations to the Secretary on the implementation of the "reasonable efforts" requirements. The advisory group should include representatives of the following types of organizations and agencies: (1) private, nonprofit organizations with an interest in child welfare; (2) agencies of States and their political subdivisions responsible for child protective services, foster care services, or adoption services; and (3) judicial bodies of States and their political subdivisions responsible for adjudicating issues of family law.

9. Enhanced Match for Automated Data Systems (Sec. 13219 of House bill)

Present Law

Section 479 of title IV–E provides for the implementation of a foster care and adoption data collection system. The data collection system is required to provide national information with respect to foster and adoptive children.

House Bill

Would provide for 90 percent matching of State expenditures for planning, design, development or installation of statewide mechanized data collection and information retrieval systems (including 90 percent of the full amount of expenditures for hardware components). To qualify for matching, systems would have to comply with regulations concerning collection of data relating to adoption and foster care; to the extent practicable, be compatible with other State data collection systems relating to child neglect and abuse and to eligibility for AFDC; and be determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs under title IV–E and title IV–B.

Would provide 50 percent matching of State expenditures for operation of the systems. Expenditures for the systems would be considered administrative expenditures under the State's title IV–E plan, regardless of whether the systems are used in part to collect data on children ineligible for title IV–E benefits.

****1539*850** Effective Date

The 90 percent match would be in effect for fiscal years 1994 through 1996; the rate would be 50 percent thereafter.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified to provide for a 75 percent enhanced matching rate, rather than a 90 percent rate.

10. Periodic Reevaluation of Foster Care Maintenance Payments (Sec. 13220 of House bill)

Present Law

Each State establishes its own foster care maintenance payment levels. Under current title IV–E law, as part of the State plan requirements, States must review periodically their foster care maintenance and adoption assistance payments.

House Bill

The bill amends title IV–E to require that States review their foster care maintenance payment and adoption assistance levels at least every three years to assure their continuing appropriateness, and report the results of the review to the Secretary and the public in such form and manner as the Secretary may by regulation require.

At a minimum, the report must include: (i) a statement of the manner in which the foster care maintenance payment level is determined, including information on how the payment level compares to the actual cost of foster care; (ii) information regarding the basic payment level and whether this level includes an amount to cover the cost of clothing, and whether such payment level varies by the type of care or the special needs or age of the child, and, if so, the payment levels for each special needs, care or age category. States that do not pay a differential rate for children who are HIV-positive or have AIDS, or children who are drug-addicted or have complications due to drug or alcohol exposure, or have other severe special needs, must state the reasons for this decision. In addition, the report must include information on any limitations imposed by the State on adoption assistance payment levels.

Effective Date

October 1, 1994.

Senate Amendment

No provision.

****1540*851** Conference Agreement

The conference agreement does not include the provision in the House bill.

11. Case Review System Requirements (Secs. 13221 and 13222 of House bill)

Present Law

In order to receive certain incentive funds under title IV–B, States are required to implement and operate, in addition to other activities, a case review system for each child receiving foster care under the supervision of the State. Section 475 of title IV–E defines "case review system" to mean a procedure for assuring that: (a) each child has a case plan meeting certain specified requirements; (b) the status of each child is reviewed at least once every six months by a court or by administrative review; and (c) each child in foster care is guaranteed a dispositional hearing in a family or juvenile court or another court of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 18 months after the original placement in foster care (and periodically thereafter during a continuation of foster care).

The dispositional hearing determines: (a) the future status of the child, including but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should be continued in foster care on a permanent or long-term basis; and (b) for a child who is age 16 or older, the services needed to assist the child to make the transition to independent living.

House Bill

(a) Dispositional hearing.–The initial dispositional hearing would continue to have to take place no later than 18 months after the original placement in foster care, but subsequent hearings would have to take place at least every 12 months thereafter (rather than "periodically").

(b) Health care plans for foster children.–Each child's case plan would have to include a record that the foster care provider was advised (where appropriate) of the child's eligibility for early and periodic screening, diagnostic, and treatment services.

The Committee report includes language requesting that the Secretary review the efficiency and performance of State foster care programs that rely on citizen review panels or citizen participation in State administrative reviews, and compare such State programs to other State programs. The Secretary also is requested to examine impediments to additional States adopting citizen participation in foster care reviews, and possible incentives for further State implementation of such citizen participation. The Secretary's report should be completed within 12 months after the date of enactment.

Effective Date

(a) Upon enactment.

(b) The amendment would apply to case plans established or reviewed on or after January 1, 1994.

****1541*852** Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provisions in the House bill.

The conferees request the Secretary to conduct a review of State programs that include citizen review panels or citizen participation in State administrative reviews, and contrast their performance in meeting the goals of the Act with States that do not involve citizens in the review process. Beyond the comparison of overall performance, the Secretary's assessment should address, at a minimum, the nature of citizen involvement in reviews in different States, the structural relationships of citizen boards to both agencies and courts, the role review boards play in assisting States' compliance with the periodic and dispositional review requirements in P.L. 96–272, the data maintained by citizen review boards, the annual reports generated as a result of administrative reviews, and the continuity in personnel and case planning review boards offer for families and children who come before them. The Secretary should also report on impediments to additional States implementing citizen review panels or other citizen participation programs in foster care reviews, and possible Federal incentives for State implementation of such systems. The Secretary should report to the Congress within 18 months of enactment.

12. Amendments to the Independent Living Program (Sec. 13223 of House bill)

Present Law

The independent living program is a Federal-State entitlement program designed to help ease the transition of foster children age 16 and older to independent living. States may include children who are not receiving title IV–E foster care benefits in the program, and may also allow children who have left foster care, up to age 21, to participate.

The AFDC resource test applies to a foster child on whose behalf the State is claiming reimbursement under the title IV–E foster care maintenance payments program. Should such a child accumulate assets above those allowed under the AFDC test while on foster care: (1) the child may become ineligible to participate in the independent living program, if the State in which the child resides allows only title IV–E eligible foster children to participate; and (2) the child may lose Medicaid benefits, since foster children receiving State-only benefits are not categorically eligible for Medicaid and generally must meet a resource test.

Youths who leave foster care and apply for or receive AFDC benefits are subject to the same rules regarding income and resources as other AFDC applicants and recipients.

The authorization for the independent living program expired at the end of fiscal year 1992. The entitlement ceiling in fiscal year 1992 was $70 million.

****1542*853** House Bill

(a) Treatment of assets of youth participating in independent living program.–Effective beginning fiscal year 1996, with respect to a child who is receiving assistance under an independent living program, reasonable amounts (as determined by the State) of the assets of the child which would otherwise be regarded as resources for purposes of determining eligibility for programs under title IV may be disregarded for the purpose of allowing the child to establish a household, pursue further education, or otherwise complete the transition to independent living.

(b) Permanent extension of program.–The authorization for the independent living program would be made permanent, effective October 1, 1992, at $70 million per year.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill modifying the treatment of assets of youths participating in independent living programs. The conference agreement follows the House bill with respect to the permanent extension of the independent living program.

13. Elimination of Foster Care Ceiling and Transfer Authority (Sec. 13224 of House bill)

Present Law

The foster care ceilings and the authority to transfer foster care funds to child welfare services expired September 30, 1992.

Prior to the expiration, the law imposed mandatory State-by-State ceilings on foster care funds if the Federal appropriation for child welfare services reached a specified trigger level, most recently $325 million. In the absence of a mandatory foster care ceiling, States could elect to operate under a voluntary ceiling. A State could use one of several methods to calculate the most favorable ceiling. The mandatory ceiling did not go into effect after 1981.

Under a voluntary ceiling, a State could transfer a portion of its unused foster care funds to its child welfare services program. However, the amount transferred, together with the State's IV–B allocation, could not exceed what the State would have received if the child welfare services funding had triggered the ceiling. It is estimated that the amount transferred by States equaled less than $1 million for fiscal year 1991, and no funds were transferred for fiscal year 1992.

House Bill

Repeals the ceiling and transfer provisions.

Effective Date

October 1, 1993.

****1543*854** Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

14. Training of Agency Staff and Foster and Adoptive Parents (Sec. 13225 of House bill)

Present Law

Prior law provided that States were entitled under the title IV–E program to a payment equal to 75 percent of expenditures for the training of personnel employed or preparing for employment by the State or local child welfare agency, and for the training of foster and adoptive parents. This enhanced Federal match expired at the end of fiscal year 1992.

House Bill

The authorization for Federal reimbursement at 75 percent would be extended permanently.

Effective Date

Effective retroactive to October 1, 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, effective October 1, 1993.

15. On-Site Reviews and Audits of State Claims for Foster Care and Adoption Assistance (Sec. 13226 of House bill)

Present Law

Section 471(a)(13) requires, as a component of State plans under title IV–E, that States arrange for periodic and independent audits of their activities under titles IV–B and IV–E, to be conducted at least once every three years. The Secretary may disallow expenditures for Federal reimbursement under title IV–E as a result of several review procedures, including audits conducted pursuant to section 471(a)(13). Disallowances may result from audits conducted by the Inspector General, regional office reviews of quarterly expenditure reports submitted by States as part of the claims reimbursement process, or Federal financial reviews.

Title IV–E financial reviews are conducted retrospectively, after conclusion of the fiscal year. However, States are not generally reviewed annually, and States may be reviewed for more than one fiscal year at a time.

****1544*855** States may appeal disallowances to the Departmental Appeals Board.

House Bill

The provision would require the Secretary to:

(a) publish regulations to be used in on-site reviews and audits of State title IV–E programs, which must specify the criteria to be used to determine the appropriateness of expenditures identified in sampled case files, the criteria to be used to determine the appropriateness of expenditures for child placement services and administration, and types of erroneous expenditures which will be disregarded for purposes of determining the appropriateness of payments (including erroneous payments resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided by the Secretary to the State); and

(b) after consultation with State and local agencies, furnish State agencies a written description of the procedures and methodologies to be used in on-site reviews and audits, which must specify the methods and procedures to be used to select a sample of case files for review or audit, the procedures to be used in reviewing or auditing sampled case files to determine erroneous expenditures, the procedures to be used to review or audit State expenditures for child placement services and plan administration, and the methodology to be used to extrapolate from review or audit findings to all expenditures.

The Secretary could not use, in a review or audit of State expenditures during a fiscal year, any criteria, methodology, or

procedure, unless published in a final regulation or furnished to the State in writing (as applicable) not later than three months before the beginning of that fiscal year.

Effective Date

The amendment made by this section would be effective with respect to State programs in fiscal years beginning on or after October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees understand that the Secretary already has the necessary authority to publish the regulations required by the House provision and urge the Secretary to use that authority to carry out the purpose of the House provision.

16. Reviews of State Conformity with State Plan Requirements (Sec. 13227 of House bill)

Present Law

(a) Title IV–B.–Section 427 of title IV–B contains certain protections for foster children with which States must comply to be eligible ****1545*856** to receive incentive funds (see item A.4 above). The Department of Health and Human Services (HHS) has developed a review system to determine State compliance with these protections.

States self-certify their compliance with section 427 requirements, and are then reviewed by HHS to determine actual compliance. To verify compliance with section 427, HHS conducts a two-stage review. The first stage is an administrative review to determine whether States have developed policies and procedures necessary to implement section 427 protections for all children in foster care under the responsibility of the State. The second stage is a case record survey to determine if these policies are being implemented throughout the State.

An initial review is conducted for the first year in which the State self-certifies its eligibility. The case record survey in the initial review must confirm that section 427 protections are provided for at least 66 percent of the children in foster care. If a State meets the initial review requirements, a subsequent review is conducted for the following fiscal year, which must find that section 427 protections are provided for at least 80 percent of the children. States which meet the subsequent review will be reviewed for the third fiscal year following the fiscal year for which the subsequent review was conducted. This triennial review must find section 427 protections are being provided for at least 90 percent of the children in foster care. If a State does not meet the requirements for any year under review, the review is conducted each succeeding fiscal year until eligibility is established for title IV–B incentive funds, or until the State withdraws its self-certification.

(b) Title IV–E.–Section 471(a)(13) of title IV–E requires, as a component of State plans under title IV–E, that States arrange for periodic and independent audits of their activities under titles IV–B and IV–E, to be conducted at least once every three years. In addition, section 471(b) allows the Secretary of HHS to withhold or reduce payments to States upon finding that a State plan no longer complies with State plan requirements, or, in the State's administration of the plan, there is substantial failure to comply with its provisions. The Secretary must first provide reasonable notice and opportunity for a hearing.

House Bill

The provision would bar the Secretary from imposing financial penalties on States for failures of State programs under titles

IV–B and IV–E to conform to provisions of the State plan and to applicable State plan requirements under Federal statutes and regulations, except under final regulations published in accordance with this amendment after consultation with the State agencies administering those programs.

The regulations would have to:

(a) specify the review timetable, which would have to require annual reviews of each State program in the first two years of program operation and within one year following any review finding a State not to be in substantial compliance; and could permit less frequent reviews of State programs found in substantial compliance, but would permit the Secretary to reinstate a more frequent ****1546*857** review schedule based on any information indicating problems with compliance;

(b) specify the plan requirements subject to review, and the criteria for measuring compliance with such requirements and whether there is a substantial failure to comply;

(c) specify the method to be used to determine the financial penalty to be imposed for failure to comply, under which: (i) no penalty could be imposed unless the program fails substantially to comply, (ii) no penalty could be imposed for a failure resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary, and (iii) the penalty would be related to the extent of noncompliance;

(d) require the Secretary, with respect to any State found to have failed substantially to comply with plan requirements, (i) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the noncompliance, (ii) to make technical assistance available to the State to the extent necessary to enable the State to develop and implement the corrective action plan, (iii) to suspend the imposition of any penalty while the corrective action plan is in effect, and (iv) to forgive any penalty if the noncompliance is ended by successful completion of the corrective action plan.

The regulations must: (i) require the Secretary to give notice to a State not later than 10 days after the determination of noncompliance, stating the basis for the determination and the amount of the financial penalty (if any) imposed on the State, (ii) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days of receipt of the notice (or, if later, after failure to continue or to complete a corrective action plan), and (iii) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, by appeal to the appropriate Federal district court within 60 days after receiving notice of the Board's decision.

Statutory language is added stating that the provision could not be construed to prevent the Secretary, in the interim before the effective date of the final regulations, from conducting compliance reviews of State programs for the purpose of providing information and technical assistance to States on corrective actions needed in order to comply with applicable requirements.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

****1547*858** 17. Repeal of Annual Report on Voluntary Placement (Sec. 13228 of House bill)

Present Law

The Secretary is required to report annually to Congress on the number of children placed in foster care pursuant to voluntary placement agreements, and the reasons for such placements, together with a description of the extent to which such placements have contributed to the achievement of the objectives of title I of the Adoption Assistance Act of 1980, including recommendations on the continuation of the authority for voluntary placements.

House Bill

The provision would repeal the requirement for the annual report on voluntary placements.

Effective Date

Upon enactment

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

18. Demonstration Projects (Sec. 13229 of House bill)

Present Law

No similar provision.

House Bill

The provision would authorize the Secretary to permit up to 10 States to conduct demonstration projects which she finds likely to promote the objectives of titles IV–B or IV–E. The Secretary could waive State compliance with any requirement of titles IV–B and IV–E, which, if applied, would prevent the State from carrying out the demonstration or from effectively achieving the purpose of the demonstration, except the Secretary could not waive: (i) the foster care child protections of title IV–B, (ii) the requirement for the reporting of data on adoption and foster care (section 479), and (iii) any provision of title IV–E which, if waived, would impair the entitlement of any qualified child or family to benefits under title IV–E.

For purposes of Federal payments, expenditures under an approved demonstration could be treated, at State option, as expenditures under title IV–B or under title IV–E.

Demonstrations would be limited to five years. A State seeking to conduct a demonstration project must submit an application to the Secretary, in the form the Secretary requires, which includes:

(a) a description of the proposed project, the geographic area in which the project would be conducted, the children or families ****1548*859** to be served, and the services to be provided (which must provide, where appropriate, for random assignment of children and families to groups served under the demonstration and to control groups);

(b) a statement of the period during which the project would be conducted;

(c) a discussion of the benefits that are expected from the project;

(d) an estimate of the costs or savings of the project;

(e) a statement of current program requiements for which waivers would be needed to permit conduct of the demonstration;

(f) a description of the proposed evaluation design; and

(g) such additional information as the Secretary may require.

The State must obtain an evaluation by an independent contractor of the effectiveness of the demonstration project, using an evaluation design approved by the Secretary which provides for: (i) comparison of methods of service delivery under the demonstration, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management; (ii) comparison of outcomes for children and families (and groups of children and families) under the demonstration, and such outcomes under the State plan or plans, for purposes of assessing the effectiveness of the demonstration in achieving its goals; and (iii) any other information that the Secretary requires. The State must provide interim and final evaluation reports to the Secretary at such times and in such manner as the Secretary may require.

The Secretary could not authorize a State to conduct a demonstration unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the demonstration over its approved term (or some portion thereof or other period the Secretary may find appropriate) will not exceed the amount of such funds that would be spent under the State programs under parts B and E of title IV in the State if the demonstration were not conducted.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

19. Placement Accountability (Sec. 13230 of House bill)

Present Law

Title IV–E does not require the States to implement any specialized reviews or procedures in the case of children who are placed in foster care outside the State.

****1549*860** Under title IV–E, States are required to provide for the development of a case plan for each child receiving foster care maintenance payments, which must meet certain requirements.

House Bill

The case plan for a child placed in a foster family home or child care institution a substantial distance from his home, or in a

different State, would have to include a declaration of the reasons why the placement is in the best interests of the child. Also, in the case of a child placed in foster care in a different State, the case plan for the child must require that, at least every 6 months, an agency caseworker of either State visit the child in the foster home or institution, and submit a report on the visit to the State agency of the child's home State. In addition, the dispositional hearing (see item I.A.11.) for a child placed in foster care in a different State must determine whether the out-of-State placement continues to be appropriate and in the best interests of the child.

The statutorily-mandated data collection system relating to adoption and foster care (section 479(b)(2) of title IV–E) must provide information on the number and characteristics of children placed in foster care outside the State.

Effective Date

October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees urge the Secretary to ensure that information on children placed in foster care outside the State is provided through the foster care and adoption data collection system of section 479 of title IV–E.

20. Payments of State Claims for Foster Care and Adoption Assistance (Sec. 13231 of House bill)

Present Law

No provision. However, Federal regulations provide a timetable for the treatment of State claims for foster care and adoption assistance, and other programs.

House Bill

The provision would codify the regulations. Title IV–E would provide that upon receipt of a State claim for expenditures, the Secretary must within 60 days allow, disallow, or defer the claim. Within 15 days after a decision to defer a claim, the Secretary must notify the State of the reasons for the deferral action and of the additional information which the Secretary believes is necessary ****1550** to determine the allowability of the claim. Within 90 days after receiving all information (in readily reviewable form) necessary ***861** to determine the allowability of the claim, the Secretary must either: (1) disallow the claim, if able to complete the review and make a determination that the claim is not allowable, or (2) in any other case, allow the claim subject, as necessary, to later disallowance upon completion of the review, and subject, in any case, to later disallowance on the basis of findings of an audit or financial management review.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

21. Moratorium on Collection of Disallowances (Sec. 13232 of House bill)

Present Law

No provision.

House Bill

The provision would prohibit the Secretary: (1) before October 1, 1994, from reducing any payment to, withholding any payments from, or seeking any payments from any State, under titles IV–B or IV–E, by reason of a determination made in connection with a review of State compliance with the title IV–B (section 427) foster care protections for any fiscal year before fiscal year 1995; and (2) from reducing any payments to, withholding any payments from, or seeking any repayments from any State, under title IV–E, by reason of a determination made in connection with a Federal title IV–E financial review or an audit conducted by the Inspector General.

Effective Date.

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified to provide that the moratorium on the collection of disallowances under title IV–E resulting from a financial review or an audit conducted by the Inspector General would end on October 1, 1994.

****1551*862** 22. Border Region Child Welfare Worker Training Demonstration (Sec. 13233 of House bill)

Present Law

No provision.

House Bill

The provision would authorize training demonstrations in States along the United States-Mexico border (Texas, New Mexico, Arizona and California) for the delivery of culturally sensitive and bilingual child welfare services to residents of the border region of the States. The Secretary would have to make grants to up to 5 institutions of higher learning. One demonstration program would have to provide training to deliver services to historically unserved or underserved populations in an urban center with a high concentration of such populations.

The term historically unserved or underserved populations would include: (1) socially and economically disadvantaged populations; (2) persons with limited English proficiency; (3) urban populations exhibiting a high incidence of child neglect, abuse or abandonment; (4) homeless persons; (5) persons who are, or are in danger of becoming, infected with human immunodeficiency virus; and (6) alcohol and drug abusers.

In order to receive approval by the Secretary, an application would have to (i) demonstrate that the institution has a history of, or plan for, training students to deliver culturally-sensitive and bilingual child welfare services in a border county; (ii) provide assurances that the institution will develop and implement, in consultation with the child welfare agency of the State in which the applicant is located, a curriculum in the field of child welfare services that is sensitive to the culture of the areas of the United States that border on Mexico (or, for the urban center demonstration, the historically unserved or underserved populations of the urban center) and that includes training for identification of health problems of children and their families and of child abuse and neglect; and (iii) provide assurances that each individual who receives a stipend will enter into an agreement with the institution of higher learning under which the recipient agrees to be employed for a number of years equivalent to the period of the traineeship in a public or private nonprofit family assistance agency that provides services directly to residents of the border county in which the agency is located (or, for the urban center demonstration, the urban center in which the agency is located). In the event a recipient fails to comply, the recipient would have to repay all or part of the amount of the stipend, plus interest, and if applicable, reasonable collection fees.

Each institution that conducts a demonstration would have to develop and carry out a plan for evaluating the effects of the training provided under the project, and would have to submit a report on the evaluation.

A border county is defined as a county that is on the Mexico border and a county that borders on a county on the border.

****1552*863** The term urban center is defined to mean an area in a metropolitan statistical area, as designated by the Director of the Office of Management and Budget, which has a high incidence of individuals in historically unserved or underserved populations who are in need of social services, as determined by the Secretary using the most recent and best available information.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees encourage the Secretary to conduct border region demonstration projects under section 426 of title IV–B of the Social Security Act, under which grants are made for research, training and demonstration projects in the field of child welfare.

23. Effect of Failure to Carry Out State Plan (Suter v. Artist M.) (Sec. 13234 of House bill)

Present Law

The "State plan" titles of the Social Security Act include Aid to Families with Dependent Children (AFDC) (Title IV–A), Child Welfare Services (Title IV–B), Child Support and Establishment of Paternity (Title IV–D), Foster Care and Adoption Assistance (Title IV–E), Job Opportunities and Basic Skills Training (JOBS) (Title IV–F), and Medicaid (Title XIX). Under these titles, as a precondition of funding, each participating State is required to develop a written "State plan" that meets

certain statutory requirements in order to be approved by the Secretary of the Department of Health and Human Services (HHS).

The Adoption Assistance and Child Welfare Act of 1980 amended the Social Security Act to require States to provide in their title IV–E plans that, in the case of each child, reasonable efforts will be made (a) prior to the placement of the child in foster care, to prevent or eliminate the need for removal of the child from his home, and (b) to make it possible for the child to return to his home (Sec. 471(a)(15)).

On March 15, 1992, the U.S. Supreme Court held in Suter v. Artist M., that the "reasonable efforts" clause does not confer a federally-enforceable right on its beneficiaries, nor does it create an implied cause of action on their behalf. In rendering its opinion, the Court also stated that although section 471(a) does place a requirement on the States, that requirement "only goes so far as to ensure that the States have a plan approved by the Secretary which contains the 16 listed features."

****1553*864** House Bill

The provision would amend title XI of the Social Security Act by adding a new section that reads as follows:

"In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action."

The committee report states: "The intent of the provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in Suter v. Artist M., while also making clear that there is no intent to overturn or reject the determination in Suter that the reasonable efforts clause of title IV–E does not provide a basis for a private right of action. The Committee does not believe that Suter v. Artist M. would be applied to the unemployment compensation program."

Effective Date

The amendment would apply to actions pending on the date of enactment and to actions brought on or after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees note their strong support for the provision in the House bill. The provision's exclusion from the conference agreement should not be read by any court as a statement by Congress on the merits of the provision.

CHILD SUPPORT ENFORCEMENT

1. State Paternity Establishment Programs (Sec. 13241 of House bill; Sec. 7602 of Senate amendment)

Present Law

The Child Support Enforcement Program was enacted as part of the Social Security Act in 1975. The States operate their own programs within Federal law and regulations. The Federal Government pays for 66 percent of the administrative costs. States are responsible for establishing paternity, locating absent parents, establishing child support orders, and enforcing child support. The Federal ****1554*865** role includes monitoring and evaluating State programs, providing technical assistance, and in certain instances, helping States locate absent parents and collect child support payments. The Internal Revenue Service (IRS) collects some child support in arrears by offsetting income tax refunds otherwise due to taxpaying obligors.

Paternity Establishment Performance Standards.–A State shall be found in compliance with Federal law if its paternity establishment percentage for fiscal years beginning on or after October 1, 1991 is at least: (a) 50 percent; (b) the paternity establishment percentage of the State for fiscal year 1988, increased by 3 percentage points for each year after fiscal year 1989 and ending before the fiscal year for which the standard is to apply; or (c) the paternity establishment percentage determined with respect to all States for the fiscal year.

The term "paternity establishment percentage" for a State for a given fiscal year is the percent obtained by dividing the number of children in the State who are born out of wedlock, are receiving cash benefits or Title IV–D child support enforcement services, and for whom paternity has been established by the number of children who are born out of wedlock and are receiving cash benefits or IV–D child support services.

House Bill

Paternity Establishment Performance Standards.–A new paternity establishment standard would require that a State's paternity establishment percentage be based on the most recent data available which are found by the Secretary to be reliable, and must: (1) be 75 percent; or (2) have increased by 3 percentage points over the previous fiscal year for a State with a percentage between 50 and 75 percent, or by 6 percentage points over the previous fiscal year for a State with a percentage below 50 percent.

Additional Requirements.–The provision would require each State to have in effect laws requiring the use of additional procedures:

(1) for a simple civil process for voluntarily acknowledging paternity under which the State must explain the rights and responsibilities of acknowledging paternity and afford due process safeguards. Procedures must include. (A) a hospital-based program for the voluntary acknowledgment of paternity during the period immediately preceding or following the birth of a child; and (B) the inclusion of signature lines on applications for official birth certificates which, once signed by the father, and the mother, constitute a voluntary acknowledgment of paternity;

(2) under which the voluntary acknowledgment of paternity in the manner described in (1)(B) above creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgments are admissible as evidence of paternity;

(3) under which the voluntary acknowledgment of paternity in the manner described in (1)(B) must be recognized as a basis for seeking a support order without first requiring any further proceedings to establish paternity;

****1555*866** (4) which provide that any objection to genetic testing results must be made in writing within a specified number of days prior to any hearing at which such results may be introduced in evidence, and if no objection is made the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

(5) which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child; and

(6) which require default orders in paternity cases upon a showing that process has been served on the defendant and whatever additional showing may be required by State law.

(7) which require States to have expedited processes for paternity establishment in contested cases and to require that a State give full faith and credit to determinations of paternity made by other States.

The State plan requirements are further amended by requiring States to have in effect procedures under which, in the administration of any law involving the issuance, reissuance, or amendment of a birth certificate, the State must require each parent to furnish the social security number (SSN) to assist in identifying the parents of the child, unless the State (in accordance with regulations prescribed by the Secretary) finds good cause for not requiring the furnishing of the number. The SSN could not appear on the birth certificate, and the use of the SSN is restricted to child support purposes, unless the Privacy Act of 1974 does not prohibit the State from requiring the disclosure of the number.

Effective Date

The provision would be effective on: (1) October 1, 1993, or (2) if later, upon enactment by the State legislature of all laws required by the provision, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after enactment of this bill.

Senate Amendment

Same as House bill, except does not require that the voluntary acknowledgment be "in the manner described in (1)(B)," does not require that the voluntary acknowledgment be "in the manner described in (1)(B)," and does not require State procedures to acquire social security numbers in conjunction with issuing birth certificates.

Effective Date

Same as House bill.

Conference Agreement

The conference agreement follows the Senate amendment, with technical changes in the paternity establishment percentage definition and standards.

****1556*867** 2. Enforcement of Health Insurance Support (Sec. 13242 of House bill; Sec. 7432 of Senate amendment)

Present Law

Public Law 98–378, the Child Support Enforcement Amendments of 1984, required the Secretary of Health and Human Services to issue regulations to require State agencies to petition to include medical support as part of any child support order whenever health care coverage is available to the non-custodial parent at a reasonable cost. The regulations were required to provide for improved information exchange between State child support enforcement agencies and the Medicaid agencies with respect to the availability of health insurance coverage.

Title XIX of the Social Security Act requires State Medicaid plans to provide that, as a condition of eligibility for Medicaid, an individual must assign to the State any rights to medical support that has been ordered by a court or administrative order. The individual is also required to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for medical services, unless the State Medicaid agency determines that the individual has good cause for refusing to do so.

House Bill

The provision would amend title IV–D of the Social Security Act to require the State to have in effect laws requiring health insurers:

(1) to disregard an individual's eligibility for Medicaid benefits in determining eligibility for and coverage under the insurer's policy;

(2) to treat all State Medicaid programs as subrograted to Medicaid recipients' rights under health insurance policies in cases where an individual has assigned medical support rights to the States; and to treat State Medicaid agencies (when acting as agents or subrogees of applicants or beneficiaries) no differently from any other applicant, beneficiary, agent, or subrogee with respect to deadlines for filing claims or any other matters;

(3) not to bar coverage of a child under a parent's health insurance on grounds that the child does not reside with the parent or was born out of wedlock;

(4) where a parent is required by court or administrative order to provide health insurance coverage for a child, require insurers, without regard to otherwise applicable enrollment season restrictions, (A) to permit that parent to enroll in family coverage (if otherwise eligible and not already so enrolled) and to enroll the child, and (B) if that parent fails to apply, to enroll the child under that parent's family coverage upon application by the child's other parent or by the State Medicaid or child support enforcement agency; and

(5) to process and pay claims for medical care of such child submitted by the custodial parent, the service provider, or the State Medicaid agency, without the approval of the noncustodial parent.

****1557** State laws would be required to require employers to: (1) upon notice of a court or administrative order for such coverage, and upon application by the employee, (or, where the employee fails to apply, by the other parent, or the State Medicaid or child support enforcement agency), to permit enrollment at any time, under employer-sponsored group health coverage, of any employee's child who is the subject of such an order; (2) to permit disenrollment only upon receipt of satisfactory, written evidence that the order is no longer in effect or that alternative insurance coverage will take effect immediately; and (3) to withhold any employee share of premiums from the employee's pay.

***868** State laws would be required to require the State child support agency to garnish employment income of, and to withhold amounts from State tax refunds to, any person who: (1) is required by court or administrative order to provide coverage of the costs of medical services to a Medicaid-eligible individual; (2) has received third-party payment for such costs; and (3) has not used such payments to reimburse, as appropriate, either the individual or the provider for such costs. Such garnishment or withholding would be permitted to the extent necessary to reimburse the Medicaid agency for expenditures for such costs, but claims for child support would take priority over claims for such medical costs.

Effective Date

Calendar quarters beginning on or after April 1, 1994, except in the case of a State that the Secretary determines requires State legislation in order for the program to need the additional requirements imposed by these provisions. The exception would expire the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. In the case of a State that has a two-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Senate Amendment

The provision amends title XIX as follows:

Each State is required to have laws that:

(1) prohibit an insurer from denying enrollment of a child under the health insurance coverage of the child's parent on the grounds that the child was born out of wedlock, is not claimed as a dependent on the parent's Federal income tax return, or

does not reside with the parent or in the insurer's service area;

(2) require an insurer and an employer doing business in the State, in any case in which a parent is required by court or administrative order to provide health coverage for a child and the child is otherwise eligible for family health coverage through the insurer, (a) to permit the parent, without regard to any enrollment season restrictions, to enroll such child under such family coverage; (b) if the parent fails to provide health insurance coverage for a child, to enroll the child upon application by the child's other parent or the State child support or Medicaid agency; and (c) with respect to employers, not to disenroll (or eliminate coverage of) the child unless there is satisfactory written evidence that the order is no longer in ****1558*869** effect, or the child is or will be enrolled in comparable health coverage through another insurer that will take effect not later than the effective date of the disenrollment;

(3) require an employer doing business in the State, in the case of health insurance coverage offered through employment and providing coverage for a child pursuant to a court or administrative order, to withhold from the employee's compensation the employee's share of premiums for health insurance, and to pay that share to the insurer. The Secretary of Health and Human Services may provide by regulation for such exceptions to this requirement (and other requirements described above that apply to employers) as the Secretary determines necessary to ensure compliance with an order, or with the limits on withholding that are specified in section 303(b) of the Consumer Credit Protection Act;

(4) prohibit an insurer form imposing requirements upon a State agency, which is acting as an agent or assignee of an individual eligible for medical assistance and covered by the insurer, that are different from requirements applicable to an agent or assignee of any other individual;

(5) require an insurer, in the case of a child who has coverage through the insurer of a noncustodial parent, (a) to provide the custodial parent with the information necessary for the child to obtain benefits; (b) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and (c) to make payment on claims directly to the custodial parent, the provider, or the State agency; and

(6) permit the State Medicaid agency to garnish the wages, salary, or other employment income of, and to withhold State tax refunds to, any person who (a) is required by court or administrative order to provide health insurance coverage to an individual eligible for Medicaid, (b) has received payment from a third party for the costs of medical services to that individual, and (c) has not reimbursed either the individual or the provider. The amount subject to garnishment or withholding would be the amount required to reimburse the State agency for expenditures for costs of medical services provided under the Medicaid program. However, claims for current or past-due child support shall take priority over any claims for the costs of medical services.

Effective Date

April 1, 1994, or, if the Secretary determines that State legislation is needed, the State plan shall not be regarded as failing to comply with the requirements of title IV–D because it has not met these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment. In the case of a State that has a two-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

****1559*870** Conference Agreement

The conference agreement is described in the Medicaid section because it amends Title XIX instead of Title IV of the Social Security Act.

3. Reports to Credit Bureaus on Persons Delinquent in Child Support Payments (Sec. 13243 of House bill)

Present Law

The Child Support Enforcement Amendments of 1984 required State child support enforcement agencies to provide information regarding the amount of overdue support owed by an obligor residing in the State to any consumer reporting agency, as defined under the Fair Credit Reporting Act, upon the request of that agency, if the arrearage exceeds $1,000. If the amount of overdue support is less than $1,000, the State may choose whether or not to report the delinquency.

The information may not be made available to the consumer reporting agency until notice of the proposed action has been sent to the obligor, the obligor has been given a reasonable opportunity to contest the accuracy of the information and all procedural due process requirements of the State have been fulfilled. Also, a fee, not to exceed the cost of furnishing the information, may be imposed on the requesting agency by the State.

The Ted Weiss Child Support Enforcement Act of 1992 amended the Fair Credit Reporting Act to require consumer reporting agencies to include in any consumer report information on child support delinquencies provided by or verified by State or local child support enforcement agencies which predates the report by no more than seven years

House Bill

The provision would require State child support enforcement agencies to report periodically the names of obligors who are at least 2 months delinquent in the payment of support and the amount of the delinquency to consumer reporting agencies. The present law requirement that the amount of the delinquency must exceed $1,000, and the requirement for notice and due process, would be retained. The provision relating to payment of a fee by the credit reporting agencies would be repealed.

Information could not be made available to a consumer reporting agency if: (1) the State determined that the consumer reporting agency lacked capacity to make systematic and timely use of the information; and (2) it did not furnish evidence satisfactory to the State that it conforms to the definition of a “consumer reporting agency” under Federal law.

Effective Date

October 1, 1994, except if the Secretary determines that a State is unable to comply with the provision. Such State would be exempt from compliance until the State establishes an automated data processing and information retrieval system or October 1, 1995, whichever occurs earlier.

****1560*871** Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

SUPPLEMENTAL SECURITY INCOME

1. Fee for Federal Administration of State Supplementary Payments (Sec. 13251 of House Bill)

Present Law

The Social Security Administration administers the State supplementation of Supplemental Security Income (SSI) benefits in 27 States and the District of Columbia. No fee is charged for this service.

States have the option to supplement the Federal SSI benefit standard. All but nine States and jurisdictions provide State

supplementation. Those that do not are: Arkansas, Georgia, Kansas, Mississippi, North Dakota, Northern Mariana Islands, Tennessee, Texas, and West Virginia. States may elect to administer their supplementary payments themselves or may contract with the Social Security Administration for Federal administration. Since the SSI program began in 1974, six States have shifted from Federal to State administration of their optional State supplementation program.

In addition, all States must supplement SSI benefits paid to beneficiaries if their current level of payment would be less than beneficiaries received under State programs prior to establishment of the SSI program in 1974.

House Bill

The Social Security Administration would be required to charge States fees for the Federal cost of administering State supplemental SSI payments. The fee would apply to both optional and mandatory supplementary payments. The fee would be: (1) $1.67 for each monthly supplementary payment for fiscal year 1994; (2) $3.33 for each monthly supplementary payment for fiscal year 1995; and (3) $5.00 for each monthly supplementary payment for fiscal year 1996. The fee for subsequent fiscal years would be $5.00 or such amount as the Secretary determines is appropriate, taking into consideration the complexity of the State's supplementary payment program.

Further, the Secretary would be required to charge fees for additional services requested by States that are beyond the level customarily provided for administration of the State's supplementary payment program.

Effective Date

The provision would be effective for supplementary payments made in months beginning after September 1993.

****1561*872** Senate Amendment

Same as House bill, except the fees begin in fiscal year 1995 rather than in 1994.

Conference Agreement

The conference agreement follows the House bill with technical modifications.

2. Exclusion of State Relocation Assistance from Countable Income under the SSI Program (Sec. 13252 of House bill)

Present Law

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 excludes from income and resources any relocation assistance provided under the Act to individuals receiving Federal assistance, including SSI. Relocation assistance is paid when individuals are required to move by the Government. For example, the Government might need their land for a public building or highway or they might need to move because toxic wastes were discovered on the site. Under Public Law 101–508, comparable State or local relocation assistance was excluded from countable income under SSI and also from resources for no more than 9 months, for the three-year period ending May 1, 1994.

House Bill

The provision would make permanent the exclusion of State and local relocation assistance from countable income under the SSI program.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified to also provide for exclusion from countable resources.

3. Prevention of Adverse Effects on Eligibility for, and Amount of, SSI Benefits when Spouse or Parent of Beneficiary is Absent from the Household Due to Active Military Service (Sec. 13253 of House bill)

Present Law

If the parent or spouse of family members who receive Supplemental Security Income (SSI) payments resides in the household and then is required to be absent from the household because of an active military duty assignment, this absence can cause the family members to lose benefits or eligibility for SSI. This is because absence from the household causes more of the income of the ****1562*873** absent member to be attributed to those receiving SSI in the household. Also, if the military duty assignment involves armed conflict, the service member may receive hazardous duty pay. This additional income, if sent back to the household, can also reduce the SSI payments or cause ineligibility of family members.

House Bill

The provision would require that a spouse or parent who is absent from an SSI household solely because of a military assignment on active duty be deemed to be still living in the household. Certain hazardous duty pay would be excluded from countable income under the SSI program.

Effective Date

The first day of the second month that begins after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

4. Eligibility for Children of Armed Forces Personnel Residing Outside the United States Other Than in Foreign Countries (Sec. 13254 of House bill)

Present Law

SSI benefits are generally continued for children who are U.S. citizens and who accompany their parents on U.S. military assignments to foreign countries. Benefits do not continue if the parents are stationed in Puerto Rico or in the territories or possessions of the United States.

House Bill

The provision would continue SSI benefits to children who are U.S. citizens if they received SSI benefits in the United States and then accompany their parents on U.S. military assignment to Puerto Rico or territories or possessions of the United States.

Effective Date

The first day of the second month that begins after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

****1563*874** 5. Definition of Disability for Children under Age 18 Applied to All Individuals under Age 18 (Sec. 13255 of House bill)

Present Law

Present law provides a definition of disability applicable to children. Under this definition, a child's physical or mental impairments are evaluated according to criteria that have been developed especially for children. The SSI program defines a child as someone who is neither married nor the head of a household, and who is:

(1) under age 18, or (2) under age 22 and a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful work. As a result, the special evaluation criteria developed to evaluate childhood disabilities may not be used for some SSI applicants who are under age 18.

House Bill

The provision would extend the SSI childhood definition of disability to any person under age 18.

Effective Date

Applies to determinations made on or after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

6. Valuation of Certain In-kind Support and Maintenance When There is a Cost of Living Adjustment in SSI Benefits (Sec. 13256 of House bill)

Present Law

A person who lives in the household of another person and receives in-kind support and maintenance from the householder must have his or her Federal SSI benefit reduced by one-third of the Federal benefit. Regulations provide for a "presumed maximum value" for measuring in-kind support and maintenance for a person who lives in his or her own household and receives in-kind support and maintenance, or lives in another person's household and receives food or shelter, but not both. This "presumed maximum value" is one-third of the Federal SSI benefit plus $20 per month (the amount of the unearned income exclusion from countable income).

Under the 2-month retrospective accounting principle that generally governs SSI benefit calculations, SSI benefits are determined after looking at the income in the second preceding month. In this system, an individual's countable income in the second month before the current month is used to determine the SSI benefit for the ****1564*875** current month (e.g., January's SSI benefit is based on income received in November).

As a result of this use of retrospective accounting, the presumed value of in-kind support is not increased at the time an annual cost-of-living adjustment (COLA) to SSI benefits takes effect. Each time SSI benefits are increased by a COLA, SSI benefits for January and February are calculated using the increased value, but the reduction in benefits for receipt of support and maintenance in-kind is made on the lower pre-COLA November and December Federal SSI benefit. A 2-month lag occurs between the receipt of the COLA and the adjustment for increased value of in-kind support. A beneficiary will receive a COLA in January and February. Then in March, when the post-COLA Federal SSI benefit is used for valuing the reduction for in-kind support and maintenance, SSI benefits will drop.

House Bill

This provision would require that the current month's Federal benefit amount be used in determining the value of in-kind support and maintenance in calculating the current month's Federal benefit to be paid. This would eliminate the unintended benefit increase for January and February following a COLA and the offsetting reduction for March.

Effective Date

Applies to benefits paid for months after calendar year 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House Bill. The provision applies to benefits paid for months after the calendar year 1994.

7. Exclusion of Certain Income Received by Indians from Interests Held in Trust (Sec. 13257 of House bill)

Present Law

Income received by Indians from tribally-owned trust lands is exempt from consideration under Federal welfare programs, such as AFDC and Supplemental Security Income (SSI). This income is distributed on a per capita basis to tribal members, but the land is owned by the tribe as a whole and managed for the tribe's benefit by the Bureau of Indian Affairs.

Individually-owned trust or restricted Indian lands are excluded from resources in applying the resource test under AFDC and SSI. However, income derived from leases on individually-owned trust or restricted Indian lands and paid to an individual is included in countable income when determining eligibility and benefit amounts for these cash welfare programs.

****1565*876** House Bill

The provision exempts the first $2,000 per year of income received by an individual derived from leases on individually-owned trust or restricted Indian lands in determining eligibility and benefit levels under the AFDC and SSI programs.

Effective Date

January 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House Bill, effective January 1, 1994.

AID TO FAMILIES WITH DEPENDENT CHILDREN

1. Limit Federal Funding Match to 50 Percent for State Administrative Costs (Sec. 13261 of House bill; Sec. 7601 of Senate amendment)

Present Law

In general, the Federal Government provides 50 percent reimbursement for State administrative expenses under the aid to families with dependent children (AFDC) program. Enhanced Federal reimbursement is available, however, for three categories of expenses:

(a) Expenditures related to the verification of the immigration status of aliens.–Under the Social Security Act, States must require and determine, as a condition of an individual's eligibility, that the individual is either a citizen, or an alien lawfully admitted for permanent residence or otherwise residing permanently in the U.S. under color of law. If an individual is not a citizen, the State must verify the individual's immigration status with the Immigration and Naturalization Service (INS), through an immigration status verification system. State expenditures for the costs of implementing and operating the system are fully reimbursed by the Federal government.

(b) Expenditures related to information management.–Under the AFDC program, States may establish and operate a statewide management information system, in accordance with an initial and annually updated advance planning document approved by the Secretary. State expenditures relating to the planning, design, development and installation of the system are

reimbursed by the Federal government at a rate equal to 90 percent.

(c) Expenditures related to fraud control.– Under the AFDC program, States may establish and operate a fraud control program in accordance with certain statutory guidelines. In general, under the program, certain penalties (in the form of benefit reductions) apply for a specified period in cases where an individual is found to have intentionally committed fraud for the purpose of maintaining his family's eligibility for benefits or securing increases in the ****1566*877** amount of aid. State expenditures relating to the costs of carrying out the fraud control program, including costs related to investigation, prosecution, and administrative hearing of fraudulent cases, and collection, are reimbursed by the Federal government at a rate equal to 75 3percent.

House Bill

The provision would reduce the Federal matching rates for each of these three categories of expenditures to 50 percent.

In addition, the provision would make the State verification of the individual's immigration status with the Immigration and Naturalization Service (INS), through an immigration status verification system, optional.

Effective Date

The provision would be effective April 1, 1994, except that the Secretary may delay applicability to a qualified State until the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after the date of enactment. The Secretary shall establish what the term "qualified State" means and apply it uniformly, including whether the State legislature meets biennially and does not have a regular session scheduled in calendar year 1994.

Senate Amendment

Same as House bill except for technical difference; there is also no provision making the verification of an individual's immigration status optional with the States.

Effective Date

The provision would be effective April 1, 1994. In the case of a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, the amendment would be effective no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Delay in Effective Date of AFDC–UP Participation Rate Requirements (Sec. 13262 of House bill)

Present Law

In general, the Family Support Act of 1988 included a provision that requires States to require at least one parent in an AFDC–UP family (a family eligible for AFDC due to the unemployment of the principal earner in the family) to participate in any of certain specified work activities at least 16 hours a week, if either parent is not exempt from participation.

The requirement is not effective until fiscal year 1994. States will be considered to have met this requirement for a fiscal year

****1567*878** if the following average monthly percentages of AFDC–UP families in the State participate in work activities: 40 percent for fiscal year 1994; 50 percent for fiscal year 1995; 60 percent for fiscal year 1996; and 75 percent for fiscal year 1997 and 1998. HHS regulations provide that the Federal matching rate to a State for the JOBS program will be reduced to 50 percent if the State does not satisfy the participation rate requirement for the prior year. (Non-administrative JOBS expenditures are generally matched by the Federal government at the Medicaid rate, with a minimum Federal match of 60 percent).

The Secretary may waive any penalty if she finds that (1) the State has made a good faith effort to meet the requirement but has been unable to do so because of economic conditions in the State (including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely limited), or because of rapid and substantial increases in the caseload that cannot reasonably be planned for, and (2) the State has submitted a proposal which is likely to achieve the required percentage of participants for the subsequent fiscal years.

House Bill

The provision would delay by one year Federal requirements regarding AFDC–UP participation rates. States will be considered to have met the requirement for a fiscal year if the following average monthly percentages of AFDC–UP families in the State participate in work activities: 40 percent for fiscal year 1995; 50 percent for fiscal year 1996; 60 percent for fiscal year 1997; and 75 percent for fiscal years 1998 and 1999.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

3. Report to Congress on Performance Standards in the JOBS Program (Sec. 13263 of House bill)

Present Law

Section 487 of the Social Security Act requires the Secretary, not later than 3 years after the effective date of the Family Support Act of 1988, to develop performance standards for the Job Opportunities and Basic Skills (JOBS) program and to submit her recommendations for performance standards to appropriate committees of Congress. The recommendations must include recommendations with respect to specific measurements of outcomes, may not be based solely on levels of activity or participation, and must take into account what States reasonably can be expected to achieve.

****1568*879** House Bill

The provision would delay the required date for recommendations by one year. Also, the Secretary would be required to develop criteria for the performance standards, rather than performance standards.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

4. Measurement and Reporting of the Degree to Which Families Depend on Income from Welfare (Sec. 13264 of House bill)

Present Law

National and State information on AFDC receipt and the characteristics and financial circumstances of AFDC recipients is compiled annually by the Department of Health and Human Services (DHHS), using data from the National Integrated Quality Control Review System (NIQCS).

House Bill

The provision would require the Secretary of Health and Human Services, in consultation with the Secretary of Agriculture, to develop (1) measures of the rate at which, and the degree to which, families depend on income from welfare programs; and the duration of welfare participation; and (2) predictors of welfare receipt. Not later than 2 years after the date of enactment, the Secretaries of HHS and Agriculture would be required to submit an interim report with conclusions to designated committees of Congress.

A temporary Advisory Board on Welfare Participation would be created, composed of 12 Members with equal numbers appointed by the House of Representatives, the Senate and the President. The Board would be composed of experts in the field of welfare research and statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues. The Board will provide advice and recommendations to the Secretary on the development of the measures described above, and on the development and presentation of the annual report on welfare participation.

The provision would require the Secretary to prepare an annual report on welfare participation, that provides information on the measures described above, trends in the measures, predictors of welfare participation, the causes of welfare participation, patterns of multiple program participation, and such other information ****1569*880** as the Secretary deems relevant; and such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce (1) the rate at which, and the degree to which, families depend on income from welfare programs; and (2) the duration of welfare participation. The report shall include analysis of families and individuals receiving assistance under means-tested programs, including AFDC, food stamps, SSI, and State or local general assistance. The first report would be due no later than 3 years after the date of enactment.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

5. New Hope Demonstration Project (Sec. 13265 of House bill)

Present Law

No provision.

House Bill

The provision would allow the Secretary to provide for a demonstration project for a qualified program to be conducted in Milwaukee, Wisconsin. A qualified program is defined as a program operated by the New Hope Project, Inc., a private not-for-profit corporation in Milwaukee, which offers low-income residents employment, wage supplements, child care, health care, and counseling and training for job retention or advancement.

The provision would require the Secretary to make payments for no more than 20 quarters, in an amount equal to the aggregate amount that would otherwise have been payable to the State with respect to participants in the program, in the absence of the program, for cash assistance and child care under Title IV–A, and for administrative expenses for these programs. Expenses of the program relating to evaluation would qualify for 50 percent Federal matching.

The operator of the program must provide in the application that the following conditions will be met: (1) the operator will implement an evaluation plan designed to provide reliable information on the impact and implementation of the program, that will include adequately sized groups of participants and control groups assigned at random; (2) the operator will develop and implement a plan addressing the services and assistance to be provided by the program, the timing and determination of payments from the Secretary to the operator of the program, and the roles and responsibilities ****1570*881** of the Secretary and the operator with respect to meeting specified requirements; (3) the operator will specify a methodology for determining expenditures to be paid to the operator by the Secretary, with assistance from the Secretary in calculating the amount; and (4) the operator will issue an interim and final report on the results of the evaluation of the program at such times as required by the Secretary.

Effective Date

The provision would take effect on the first day of the first calendar quarter that begins after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

6. Delay in AFDC–UP Mandate for Outlying Jurisdictions (Sec. 13266 of House bill)

Present Law

The Family Support Act of 1988 included a requirement that any State AFDC plan make AFDC available to needy dependent

children of unemployed parents (for at least 6 out of 12 months). The amendment was effective for the States on October 1, 1990, and for Puerto Rico, Guam, the Virgin Islands and American Samoa on October 1, 1992. (American Samoa, however, does not participate in the AFDC program.) Unlike States, these outlying areas are subject to limitations on payments for AFDC and related programs.

House Bill

This provision would delay the requirement for implementation of the Unemployed Parent program in Puerto Rico, Guam, the Virgin Islands, and American Samoa until such time as the limitations on Federal matching payments to these jurisdictions for purposes of making AFDC maintenance payments are repealed.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

****1571*882** 7. Declaration of Citizen and Alien Status (Sec. 13267 of House bill; Sec. 7601 of Senate amendment)

Present Law

Section 1137(d) of the Social Security Act specifies that States must require, as a condition of eligibility for the AFDC, Medicaid, unemployment compensation, and food stamp programs, a declaration in writing by each adult individual (or, in the case of a child, by another individual on the child's behalf), stating whether the individual is a citizen or national of the U.S., and if not, that the individual is in a satisfactory immigration status. Under AFDC policy, a newborn child may not be eligible until a declaration has been signed.

Legislation enacted in 1990 overrode the provision of sec. 1137 with respect to the food stamp program. Under that legislation, one adult member of the food stamp household is required to sign, under penalty of perjury, a written declaration as to the citizenship or satisfactory immigration status of all household members, and by regulation, a declaration for newborn children is allowed no later than the next redetermination of eligibility.

House Bill

With respect to the AFDC program, this provision would allow one adult member of a family or household to sign a declaration, under penalty of perjury, on behalf of other adults in the household. In addition, in the case of a newborn child, it would permit an adult to sign a declaration on behalf of the child no later than the date of the next redetermination of the eligibility of the family or household.

Effective Date

The provision would become effective with respect to benefits provided on or after October 1, 1993.

Senate Amendment

Same as House bill, except applies to all programs listed under section 1137(d).

Effective Date

Upon enactment.

Conference Agreement

No provision.

8. Increase in Disregard of Stepparent Income (Sec. 13268 of House bill)

Present Law

Effective in July 1963, Federal law required the AFDC agency to disregard "reasonable" work expenses when counting the earned income of AFDC applicants and recipients. The 1981 Omnibus Budget Reconciliation Act (Public Law 97–35) replaced the reasonable ****1572*883** work expense deduction with a standard work expense disregard of $75 monthly. In 1981, Congress required that a portion of the income of the stepparent of an AFDC applicant or recipient, even in States that did not hold all stepparents to be financially responsible for stepchildren, must be deemed available to the stepchild; and it then extended the $75 disregard to stepparent earnings. In 1988, effective October 1, 1989, the standard work expense disregard was increased from $75 to $90 per month for AFDC applicants and recipients, but not for stepparents living with AFDC-eligible children.

House Bill

This provision would increase the earnings disregard for stepparents to $90 monthly. This amount of earnings would not be counted in determining the eligibility and benefit amounts of AFDC applicants and recipients.

Effective Date

October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

9. Extension of New York State Child Assistance Program (Sec. 13269 of House bill)

Present Law

New York State currently operates a Child Assistance Program (CAP) demonstration under Federal waiver authority enacted

under the Omnibus Budget Reconciliation Act of 1987. The demonstration is testing an alternative to AFDC for families with child support orders and monthly earnings. The five year waiver is effective through March 31, 1994.

House Bill

The provision would extend the CAP demonstration project for an additional five years, to April 1, 1999.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

****1573*884** 10. Early Childhood Development Projects (Sec. 13270 of House bill)

Present Law

The Family Support Act of 1988 authorized up to 10 demonstration projects to test and evaluate the effect of early childhood development programs on families receiving AFDC and participating in Job Opportunities and Basic Skills Training (JOBS), and authorized $6 million for each of fiscal years 1990, 1991, and 1992 for these and two other categories of projects. No funds were appropriated for the early childhood development projects for fiscal years 1990 through 1993.

House Bill

The provision would extend the authorization for early childhood development projects through fiscal year 1998. It authorizes to be appropriated for these projects up to $3 million for each of fiscal years 1994 through 1998.

Effective Date

Date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees encourage the Secretary to conduct eary childhood demonstration projects under section 1110 of the Social Security Act, which funds social services and income maintenance research.

11. State Option to Condition AFDC Payments on Child Immunization

Present Law

No provision.

House Bill

No provision.

Senate Amendment

States would have the option of providing that if a family receiving AFDC includes a child under age 6 who has not received appropriate immunizations (as determined by the State), the State will take actions to encourage timely immunization including, but not limited to, reducing the total benefits received by the family by all or a portion of the benefits allocable to the parent or guardian of the child.

The State would have the option of either placing all or a portion of the amount in an account; until the family demonstrates to ****1574*885** the State that the child has been appropriately immunized, or using all or a portion of the amount to provide services to the family intended to ensure that the child receives appropriate immunizations.

The Secretary of HHS would be required to provide for the establishment of programs intended to ensure the appropriate immunization of children to be operated in a State; that elects to take actions to encourage the timely immunization of children. The Secretary would pay each State conducting a program an amount equal to the State's Federal percentage (as determined under sec. 403(a) of the Social Security Act) of the expenditures incurred by the State in conducting the program. In conducting programs, the Secretary could pay no State more than $250,000 in any year for expenses incurred under title IV and sec. 1903 of the Social Security Act.

Effective Date

Upon date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

UNEMPLOYMENT INSURANCE

1. Short Time Compensation (Sec. 13271 of House bill)

Present Law

All funds withdrawn from the unemployment trust fund of a State must be used solely in payment of unemployment compensation, exclusive of administrative expenses and refunds of erroneously paid sums except: (1) certain authorized disability payments; (2) certain "Reed Act" expenses; (3) authorized health insurance costs; (4) repayments of overpayments; and (5) short-time compensation.

Short-time compensation is a plan under which an employer, faced with the need for layoffs because of reduced workload, might spread the hours of work required to produce a given product, avoiding layoffs by reducing the number of regularly

scheduled hours of work for all employees in an establishment or work unit. Unemployment benefits are payable to workers for hours of work lost as a fraction of the weekly benefit amount. For example, workers laid off for one day per week would receive one-fifth of their weekly benefit amounts. Duration is often limited. For example, California and New York limit duration to 20 weeks.

States with short-time compensation programs are: Arizona, Arkansas, California, Florida, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Missouri, New York, Oregon, Rhode Island, Texas, Vermont, and Washington. Connecticut authorized a pilot program, but had not issued regulations on it as of the beginning of 1993.

Public Law 102–318, the Unemployment Compensation Amendments of 1992, explicitly authorized the use of unemployment trust funds for payment of short-time compensation. Although this law defined short-time compensation, it did not define ****1575** short-time compensation in the Federal Unemployment Tax Act for the purposes of approving State laws and withdrawing funds from the unemployment trust fund to pay ***886** short-time compensation. The Solicitor of the U.S. Department of Labor has concluded that this puts States with short-time compensation programs at risk of being out of compliance with Federal law because existing State laws might not comply with the vague language in the Federal Unemployment Tax Act now.

House Bill

The provision would amend the Federal Unemployment Tax Act to define explicitly a short-time compensation program.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

2. Unemployment Trust Fund Transfers (Sec. 13272 of House bill)

Present Law

Title IX of the Social Security Act allocates Federal unemployment tax revenue into three accounts of the unemployment trust fund: (1) the Employment Security Administration Account (ESAA); (2) the Extended Unemployment Compensation Account (EUCA); and (3) the Federal Unemployment Account (FUA).

House Bill

The provision would strike language that was inadvertently included in the Emergency Unemployment Compensation Act, as amended. The language would have allocated funding that was not adopted in conference committee and therefore, is not needed.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

****1576*887** 3. Advisory Council on Unemployment Compensation (Sec. 13273 of House bill)

Present Law

The Emergency Unemployment Compensation Act of 1991 authorized a quadrennial advisory council on unemployment compensation to examine the purpose, goals, and functioning of the unemployment compensation system, and to make recommendations for improvement. Its first report is due by February 1, 1994.

House Bill

The provision would delay the Council's report for one year to February 1, 1995.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

4. Emergency Unemployment Compensation (Sec. 13274 of House bill)

Present Law

Under the Emergency Unemployment Act, as amended by the Unemployment Compensation Amendments of 1992, Public Law 102–318 (H.R. 5260), the Emergency Unemployment Compensation program was intended to phase down when the national unemployment rate for two consecutive months fell below 7 percent. The number of weeks of benefits was intended to drop from the current 20 or 26 weeks to 10 or 15 weeks if the national unemployment rate were below 7 percent for two consecutive months. Further, if the national unemployment rate fell below 6.8 percent for two consecutive months, it was intended that the number of weeks of benefits available would fall to 7 or 13 weeks.

Under the Department of Labor's interpretation of the statute, the number of weeks of benefits would be reduced if the "average" rate of national unemployment for a 2-month period falls below 7 percent.

House Bill

The provision would amend the phase-down trigger language to reflect the intent of the conferees on H.R. 5260 so that the program would phase down as the national unemployment rate falls during two consecutive months.

****1577*888** Effective Date

Effective as if included in the amendments made by section 101(b) of the Unemployment Compensation Amendments of 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

5. Increase in Amount of Federal Reimbursement for Extended Benefits (Sec. 13275 of House bill)

Present Law

The Federal matching rate under the Extended Benefits program is 50 percent.

House Bill

The provision would increase the Federal matching rate to 75 percent.

Effective Date

Weeks beginning after October 2, 1993. In the case of any State legislature which has not been in session for at least 30 calendar days between the date of enactment and October 1, 1993, the provision would not be a State law requirement before 30 calendar days after the first day on which its legislature is in session on or after October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

6. Repeal of Special Eligibility Requirements for Extended Benefits (Sec. 13275 of House bill)

Present Law

Public Law 102–318, the Unemployment Compensation Amendments of 1992, suspended certain Extended Benefits (EB) suitable work, job search, and re-employment requirements until January 1, 1995. During the suspension, States may apply the same requirements they use in their regular State programs.

Under the suspended requirements of the Extended Benefits program (EB), benefits may not be paid to an individual in any week of unemployment if: (a) he fails to accept an offer of "suitable work" or he fails to apply for suitable work to which he was referred by the State agency; or (b) he fails to actively seek work, unless: ****1578*889** (1) he was issued a summons to appear for jury duty before any court of the United States or any State, or (2) he was hospitalized for treatment of any emergency or a life-threatening condition if such exemptions apply to claimants of regular State benefits and the State chooses to apply them to claimants of EB.

If a claimant is ineligible because of either (a) or (b) above, the claimant is disqualified for the week following the week in which the violation occurred and for each subsequent week until he has been employed for at least 4 weeks and earned at least 4 times his weekly benefit amount.

The term "suitable work" means any work within the claimant's capabilities, except that if the individual furnishes evidence that his prospects for obtaining work in his customary occupation within a reasonably short time period are good, the definition of "suitable work" conforms to State law.

EB may not be denied to a claimant for a failure to apply for or accept a suitable job if: (a) the gross pay does not exceed the claimant's weekly benefit amount plus any supplemental benefits payable to him; (b) the position was not offered in writing and was not listed with the State employment service; (c) such failure would not result in a denial of regular State benefits as long as other conditions of the EB program are met; or (d) the job pays wages less than the higher of; (1) the Federal minimum wage, or (2) the applicable State or local minimum wage.

The claimant is treated as actively seeking work if: (a) he has engaged in a systematic and sustained effort to obtain work; and (b) he provides tangible evidence to the State agency that he has engaged in such effort.

The State must provide for referring applicants for EB to any suitable work to which these provisions apply.

No provision of State law which terminates a disqualification of a claimant for regular State benefits because of voluntarily leaving a job, being discharged for misconduct, or refusing suitable work applies to the EB program unless such termination is based on subsequent employment.

House Bill

The provision would repeal the currently suspended eligibility requirements.

Effective Date

Weeks beginning on or after October 2, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

****1579*890** 7. Two-Year Extension of Federal Unemployment Surtax (Sec. 13276 of House bill)

Present Law

The Federal unemployment tax of 0.8 percent is paid by employers on the first $7,000 paid annually to each employee. Of the 0.8 percent tax rate, 0.6 percentage point is permanent and 0.2 percentage point is scheduled to expire at the end of 1996.

House Bill

The 0.2 percent surtax would be extended for two years, through 1998.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

8. Disclosure of Information to Railroad Retirement Board (Sec. 13277 of House bill)

Present Law

The Railroad Retirement Board (RRB) has access to returns and return information regarding taxes imposed under the Railroad Retirement Tax Act for purposes of the administration of the Railroad Retirement Act (RRA), but it is not authorized to receive returns and return information filed under the Railroad Repayment Tax provisions. (The Railroad Unemployment Repayment Tax was imposed to repay loans from the Railroad Retirement Account obtained by the Railroad Unemployment Insurance Account.) In addition, there is no specific authority to disclose RRA information for purposes of the administration of the Railroad Unemployment Insurance Act (RUIA).

House Bill

The provision would amend the Internal Revenue Code to enable the RRB to obtain Railroad Unemployment Tax information.

Effective Date

Upon enactment.

Senate Amendment

No provision.

****1580*891** Conference Agreement

The conference agreement does not include the provision in the House bill.

SOCIAL SERVICES BLOCK GRANT

1. Targeted Federal Assistance for Social Services

Present Law

Under title XX of the Social Security Act, States are entitled to receive social services block grant funds. Title XX is a capped entitlement, with an entitlement ceiling of $2.8 billion per fiscal year. The share for each State is based on its relative share of the national population.

States may use the block grant funds for a wide range of social services, directed at five goals: (1) achieving or maintaining economic self-support to prevent, reduce or eliminate dependency; (2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency; (3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families; (4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and (5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

According to State preexpenditure reports, which describe the intended use of block grant funds, in fiscal year 1992 States funded such services as: substance abuse services; residential care and treatment; education and training; employment; transportation; health-related services; prevention and intervention services; and social support services (such as recreation, camping, family development and physical activities).

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement makes $1 billion available under Title XX to the Secretary for grants to States for social services. Each State is entitled to grants for each qualified empowerment zone and each qualified enterprise community in the State.

An empowerment zone or enterprise community is qualified if it has been designated a zone or community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 and if its strategic plan (required in an application for designation under the Internal Revenue Code) is qualified.

A qualified plan is a plan that: (a) includes a detailed description of the activities proposed for the area that are to be funded with the grant; (b) contains a commitment that the amounts provided ****1581*892** will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of the grant; (c) to the extent a State does not use the funds on certain program options (see below), explains the reasons why not; and (d) was developed in cooperation with the local government or governments with jurisdiction over the zone or community.

With respect to each empowerment zone, the Secretary will make one grant to each State in which the zone lies, on the date of its designation, and a second grant on the first day of the first fiscal year that begins after the designation. With respect to each enterprise community, the Secretary will make one grant to each State in which the community lies, on the date of its designation.

The amount of each grant to a State for an empowerment zone will equal $50 million if the zone is designated in an urban area and $20 million if the zone is designated in a rural area (multiplied by the proportion of the population of the urban or rural zone that resides in the State).

The amount of each grant to a State for an enterprise community will equal 1/95 of $280 million, multiplied by the proportion of the population of the community that resides in the State.

A State must use the grant funds: (a) for social services directed at three goals: (i) achieving or maintaining economic self-support to prevent, reduce or eliminate dependency; (ii) achieving or maintaining self-sufficiency, including reduction or prevention of dependency; or (iii) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families; (b) in accordance with the strategic plan for the zone or community; and (c) on activities that benefit residents of the zone or community.

The following are among the program options available to the States:

(1) in order to prevent and remedy the neglect and abuse of children, a State may use the grant funds to make grants to, or enter into contracts with, entities to provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women and mothers, and their children.

The conferees intend that such programs provide, directly or in collaboration with other community-based programs, pregnant women and mothers, and their children, a wide array of services based on their need for services, such as: referral and linkages to obstetric and pediatric medical care; addiction and substance abuse education, counseling and treatment; parenting skills counseling and education with an emphasis on infant and child development; access to schools and child care; job counseling and training, transitional housing assistance; transportation; post-program follow-up services and activities; and referral and linkages to other services.

(2) In order to assist disadvantaged adults and youths in achieving and maintaining self-sufficiency, a State may use the grant funds to make grants to, or enter into contracts with: (a) organizations operated for profit or not for profit, for the purpose of training and employing disadvantaged adults and youths in the construction, rehabilitation, or improvement of ****1582*893** affordable housing, public infrastructure; and community facilities; and (b) nonprofit organizations and community or junior colleges, for the purpose of enabling them to provide short-term training courses in entrepreneurism and self-employment, and other training that will promote individual self-sufficiency and the interests of the community.

The conferees intend that, to the extent possible, programs under (2)(a) use public funds to match private investment, by entities located in the zone, in projects to rehabilitate public infrastructure that will benefit the community.

(3) A State may use grant funds to make grants to, or enter into contracts with, nonprofit community-based organizations to enable them to provide activities designed to promote and protect the interests of children and families, outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

(4) In order to assist disadvantaged adults and youths in achieving and maintaining economic self-support, a State may use grant funds to: (a) fund services designed to promote community and economic development, such as skills training, job counseling, transportation services, housing, counseling, financial management and business counseling; (b) assist in emergency and transitional shelter for disadvantaged families and individuals; or (c) support programs that promote home ownership, education or other routes to economic independence for low income families and individuals.

The conferees intend that funds may be used for transportation services that improve access by zone residents to areas of high job growth that are not located in the zone. For example, funds may be used to supplement job training and placement programs with transportation services in the form of van service operated by a public or private job program; to provide

transportation counseling to supplement job counseling; and to provide a direct subsidy of transportation expenses.

TECHNICAL PROVISIONS

1. Corrections Related to the Income Security and Human Resource Provisions of the Omnibus Budget Reconciliation Act of 1990 (Sec. 13281 of House bill)

Present Law

No provision.

House Bill

The provision would correct references and punctuation in various SSI and AFDC provisions, eliminate conflicting provisions concerning the reporting date of the National Commission on Children, and correct and simplify language concerning special sequestration rules for JOBS funds.

Senate Amendment

No provision.

****1583*894** Conference Agreement

The conference agreement does not include the provision in the House bill.

2. Corrections Related to the Human Resource and Income Security Provisions of the Omnibus Budget Reconciliation Act of 1989 (Sec. 13282 of House bill)

Present Law

No provision.

House Bill

The provision would correct a word and spacing in AFDC quality control and adoption assistance legislative language, and a reference concerning foster care and adoption assistance.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

3. Elimination of Obsolete Provisions Relating to Treatment of the Earned Income Tax Credit (Sec. 13283 of House bill)

Present Law

No provision.

House Bill

The provision would eliminate provisions in SSI law about treatment of EITC made obsolete by OBRA 1990, which specifies that SSI (and AFDC, Medicaid, and food stamps) are to disregard EITC as income.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

4. Redesignation of Certain Provisions (Sec. 13284 of House bill)

Present Law

No provision.

****1584*895** House Bill

The provision would redesignate two subparagraphs of the Social Security Act concerning when face-to-face interviews at field offices must be granted.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM

1. Clarification of Statutory Requirement for Public Telephone Access to Local Social Security Offices (Sec. 13001 of House bill)

Present Law

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508), requires SSA to: (a) maintain telephone access to local

offices at the level generally available as of September 30, 1989, and (b) relist the numbers of affected offices in local telephone directories. P.L. 101–508 also required the General Accounting Office to report to Congress on the level of public telephone access to local offices following enactment of these requirements.

In September 1991, the GAO reported that SSA had generally complied with the requirement that it relist local office telephone numbers. It also reported that general inquiry lines to the offices to which the provisions of P.L. 101–508 apply had decreased by 30 percent, or 766 lines, below the level that existed on September 30, 1989.

House Bill

The provision would add the following sentence to the current statutory requirement that SSA maintain public access to its local offices at the level generally available on September 30, 1989:

"In carrying out the requirements of the preceding sentence, the Secretary shall reestablish and maintain in service the same number of telephone lines to each such local office which were in place as of such date, including telephone sets for connections to such lines."

In addition, the General Accounting Office would be required to make an independent determination of the number of telephone lines to each SSA local office which are in place 90 days after enactment and to report its findings to the House Committee on Ways and Means and the Senate Committee on Finance no later than 150 days after enactment.

SSA would be required to maintain its toll-free service at a level at least equal to that in effect on the date of enactment.

****1585*896** Effective Date

The provision relating to local telephone access would be effective 90 days after enactment. The provision relating to toll-free service would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

2. Increase in Social Security Exclusion for Election Workers (Sec. 13002 of the House bill)

Present Law

Election workers who earn less than $100 per year are subject to three Social Security exclusions: (a) at the option of a State, they may be excluded from the State's voluntary coverage agreement with the Secretary of Health and Human Services (HHS); (b) they are excluded from the requirement that State and local workers hired after March 31, 1986, pay the hospital insurance portion of the Social Security tax (1.45 percent); and (c) they are excluded from the requirement in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) that State and local workers who are neither covered by a State or local retirement system nor by a voluntary agreement pay the full Social Security tax (7.65 percent).

House Bill

These three exclusions would be modified to apply to election workers with annual earnings of up to $1,000, rather than the current $100; and the new exempt amount would be indexed for increases in wages in the economy.

Effective Date

The provision would apply to service performed on or after January 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

3. Use of Social Security Numbers for Jury Selection (Sec. 13003 of House bill)

Present Law

The Privacy Act of 1974 prohibits States from requiring individuals to provide Social Security numbers for identification purposes ****1586*897** unless the State was doing so prior to January 1, 1975, or the State is specifically permitted to do so under Federal law. The Social Security Act currently authorizes States to use the Social Security number in administration of any tax, general public assistance and driver's license or motor vehicle registration law within its jurisdiction. Other Federal statutes authorize the State use of the Social Security number for other purposes.

Currently, courts utilize jury source lists within their jurisdiction to select jurors. Source lists (most commonly made up of lists of licensed drivers and registered voters) are usually computer tapes merged by the courts to form one pool–or master list–from which jurors are selected.

States which are permitted under current law to collect Social Security numbers for purposes such as driver's licenses and voter registration are not allowed to use those Social Security numbers for other purposes such as refining jury selection master lists to identify and eliminate duplicate names, unless the court was using the Social Security number for that purpose before the Privacy Act took effect.

Current law likewise prevents State and Federal Courts from using the Social Security number to run the merged list against computerized lists of convicted felons in order to eliminate these individuals from jury pools.

House Bill

States and Federal District Courts would be permitted to use Social Security numbers which have already been collected for purposes permitted under current law to eliminate duplicate names and names of convicted felons from jury source lists. Any Federal law enacted prior to enactment of this provision which is inconsistent with the above policy would be null, void, and of no effect.

Effective Date

The provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

4. Authority for Optional Social Security Coverage of Police Officers and Firefighters under a Retirement System (Sec. 13004 of House bill)

Present Law

In general, employees of State and local governments who participate in a public retirement system can be brought under Social Security by means of voluntary agreements entered into by the States with the Secretary of Health and Human Services.

****1587*898** However, the State option to obtain Social Security coverage for police officers and firefighters who are under a public retirement system applies only in 24 States that are named in the Social Security Act. (An additional option applies with respect to firefighters only: any State may obtain coverage for them if the governor certifies that it would improve the overall benefit protection of firefighters in the coverage group and a referendum is held among the group under authorization of the State). The Act also provides that, in the 24 named States, Social Security coverage can be obtained only after a State-sponsored referendum.

House Bill

The provision would extend to all States the option to provide police officers and firefighters who participate in a public retirement system with Social Security coverage under their voluntary agreements with the Secretary of HHS. The existing requirement for a referendum held under the authority of the State would continue to apply.

Effective Date

The provision would apply with respect to State requests made after enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

5. Limited Exemption from SECA for American Ministers Working and Resident in Canada (Sec. 13005 of House bill)

Present Law

Section 233(c)(1) of the Social Security Act authorizes the President to enter into “totalization agreements” with foreign countries to coordinate entitlement to Social Security benefits in the U.S. with pension benefits in those foreign countries.

The law requires that international agreements concluded pursuant to that section provide for the elimination of dual coverage of work under the Social Security systems of the United States and another country.

Article V(7) of the totalization agreement between the United States and Canada provides that individuals considered self-employed by the United States who are American citizens but are residents of Canada are covered only under the Canadian Pension Plan.

Under the Social Security Act, an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order is generally considered self-employed for Social Security payroll tax purposes and subject to SECA taxes.

****1588*899** The Canadian social insurance program treats ministers as employees of the church rather than self-employed.

Prior to the 1984 totalization agreement with Canada, duly ordained and licensed ministers who were American citizens but residents of Canada were required to pay SECA taxes to the United States and Social Security taxes to Canada.

In some cases, ministers who were American citizens but residents of Canada failed to file tax returns or pay SECA tax believing that they were not required to do so because they were paying into the Canadian Pension Plan as residents of Canada. The Internal Revenue Service has assessed taxes and penalties against those ministers who failed to file a return and pay the required taxes prior to the 1984 agreement.

House Bill

The provision would exempt ministers who failed to pay SECA taxes in the United States on earnings from services performed in Canada before the 1984 totalization agreement between the United States and Canada went into effect, and who were required to pay social insurance taxes in Canada on such earnings, from the payment of such taxes or related penalties, owed to the United States.

In addition, the provision provides that the ministers' Social Security earnings records would not be credited for years in which the SECA tax was not paid.

Effective Date

The provision would be effective for individuals who meet the requirements of the statute and who file a certificate with the Internal Revenue Service within six months after the IRS issues regulations implementing this provision. The certificate shall be effective for taxable years 1979 through 1984.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

6. Totalization Benefits and the Windfall Elimination Provision (Sec. 13006 of House bill)

Present Law

The President is authorized to enter into "totalization agreements" with foreign countries. If an individual has worked under

social security systems in both the U.S. and a foreign country with which the U.S. has an agreement, but has not worked long enough to qualify for a benefit, a totalization agreement allows the individual's coverage under both systems to be combined, or "totalized," in order for one country (or both) to pay a benefit. Benefits paid under a totalization agreement are generally prorated to take account of ****1589*900** the fact that the person did not work for an entire career under the system that is paying benefits.

The windfall elimination provision (WEP) is applied to the computation of Social Security benefits for workers who are eligible for both Social Security and a pension from work not covered by Social Security. Under the WEP, a different benefit formula yielding a lower amount is used to calculate the worker's Social Security benefit.

With respect to individuals who have worked under Social Security systems in both the United States and a foreign country with which the United States has a totalization agreement, the WEP applies: 1) in the computation of some U.S. totalization benefits, and 2) in the computation of regular U.S. Social Security benefits if the individual receives a foreign totalization benefit.

House Bill

The provision would disregard the windfall elimination provision in computing any U.S. totalization benefit, and in computing the amount of a regular U.S. benefit of an individual who (1) receives a foreign totalization benefit based in part on U.S. employment and (2) does not receive any other pension which is based on noncovered employment.

Effective Date

The provision would be effective with respect to benefits payable for months after October, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

7. Exclusion of Military Reservists from Application of the Government Pension Offset and the Windfall Elimination Provision (Sec. 13007 of House bill)

Present Law

The Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) are intended to reduce Social Security benefits payable to an individual who qualifies for both a Social Security benefit and a pension based on employment not covered by Social Security.

The WEP reduces a worker's Social Security retirement or disability benefit in cases where the worker is receiving both a Social Security benefit and a pension based on employment not covered by Social Security. The WEP is designed to eliminate the windfall resulting from the weighted Social Security benefit formula which is intended to replace a higher proportion of wages for low-earning workers than for high-earning workers.

****1590*901** Active military service became covered under Social Security in 1957. Inactive duty by reservists (such as weekend drills) became covered under Social Security in 1988. A pension based on either type of service (active or inactive), if performed before 1957, does not trigger the WEP. The only military pension which triggers the WEP is a pension based on

inactive duty after 1956 and before 1988.

Under the GPO, spouse's and widow(er)'s benefits received by an individual based on his or her spouse's Social Security-covered work are reduced by two-thirds of the amount of any government pension to which the individual is entitled based on his or her own work in a government job not covered under Social Security.

In general, an individual is exempt from the GPO if the last day of his or her work in a government job was covered by Social Security. Thus, reservists who retired from military service before 1988 may be subject to the GPO depending on whether the last day of their duty status happened to be covered (active duty, such as two-week training duty) and therefore exempt from the GPO or not covered (inactive duty) and therefore subject to the GPO.

House Bill

An individual's receipt of a pension based wholly on service performed as a member of a uniformed service, whether on active or inactive duty and whether performed prior to 1988 or not, would not trigger application of the GPO and WEP to the individual's Social Security benefits.

Effective Date

The provision would be effective with respect to benefits payable for months after October, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

8. Repeal of Facility-of-Payment Provision (Sec. 13008 of House bill)

Present Law

As a general rule, when an individual receiving benefits as the dependent of a worker has a deduction in his or her benefits–for example, due to his or her own earnings above the earnings test exempt amount–and the Maximum Family Benefit rule applies, the withheld benefits are redistributed and paid to the other dependents. (The Maximum Family Benefit, or MFB, is a limit on the total amount of benefits which can be paid on a worker's record to the worker and his or her dependents).

However, if all of the dependents are living in the same household, the affected individual's benefit check is not actually withheld; ****1591*902** instead, the individual receives a notice from the Social Security Administration accompanying the benefit check. This notice explains that the beneficiary is subject to a benefit deduction and should not actually receive the benefit check. However, the benefit is being paid with the understanding that it is for the use and benefit of the other dependent beneficiaries. This procedure is known as the facility-of-payment provision.

In cases where all of the dependent beneficiaries are not residing in the same household, the facility-of-payment provision does not apply and the withheld benefits are redistributed and paid directly to the remaining dependents.

House Bill

The facility-of-payment provision would be repealed. As a result, a beneficiary who is subject to a deduction would have his or her benefits withheld, and the withheld amount would be redistributed and paid directly to the other dependents.

Effective Date

The provision would be effective for benefits for months after December, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

9. Application of Subsequent Entitlement Guarantee to Maximum Family Benefits (Sec. 13009 of House bill)

Present Law

A guarantee is provided for workers who receive disability benefits, then stop receiving disability benefits, and subsequently become reentitled to benefits due to death, retirement or disability. This "subsequent entitlement guarantee" provides that the basic benefit amount (the Primary Insurance Amount, or PIA) of a worker who becomes reentitled to benefits or dies (thereby entitling his or her survivors) cannot be less than the PIA in effect in the last month of the worker's prior entitlement to disability benefits.

Due to a drafting error in the 1977 Social Security Amendments, when this guarantee was created, the guarantee does not extend to the Maximum Family Benefit (MFB) payable on the worker's record, which is determined based upon the PIA. (The MFB is a limit on the total amount of benefits which may be paid on a worker's record to the worker and his or her dependents.) As a result, the MFB which is payable when the worker becomes reentitled to benefits or dies may be less than the MFB payable in the last month of the worker's prior entitlement to disability benefits.

****1592*903** House Bill

The provision would make a conforming change in the Maximum Family Benefit, so that the guaranteed PIA would be the basis for calculating the guaranteed MFB.

Effective Date

The provision would be effective for the MFB of workers who become reentitled to benefits or die (after previously having been entitled) after October, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

10. Disclosure of Social Security Administration Information for Epidemiological Research (Sec. 13010 of House bill)

Present Law

Current law prohibits Federal agencies from releasing personal information contained in an individual file without the written consent of the individual.

Prior to the 1989 Supreme Court decision United States Department of Justice v. Reporters Committee for Freedom of the Press (Reporters Committee), the Social Security Administration (SSA) would permit disclosure of personally identifiable information to epidemiological researchers believing that it was permitted to do so under the Freedom of Information Act (FOIA). Disclosure of personal information is permitted under FOIA when the public interest served by the disclosure outweighs the privacy interest served by withholding the information.

In the Reporters Committee decision, the Supreme Court restricted disclosures of personally identifiable information under FOIA, ruling that disclosure of personal information serves the public interest only when the requested information gives the public insight into the Federal Government's performance of its statutory duties.

As a result of the Reporters Committee decision, SSA has discontinued the practice of disclosing information from its files to epidemiological researchers.

Epidemiological research examines specific risk factors (such as exposure to chemical agents or specific medical treatments) that may cause disease by measuring the effect of these factors on a known population. For example, medical researchers may need to know which members of a research population have died or in which state they died (in order to follow-up on the cause of death). The information is usually requested by private researchers and colleges and universities conducting research on behalf of private entities.

***904** House Bill

****1593** The provision would require SSA, under certain circumstances, to disclose limited personally identifiable information for epidemiological research purposes only, and it would permit the Secretary of the Treasury to provide such information to SSA for purposes of complying with such requirement.

Under the provision, SSA would be required to comply with requests for information showing whether an individual is alive or deceased. However, the requestor would be required to meet two conditions:

(1) the information would be used for epidemiological or similar research which the Secretary determined showed a reasonable promise of contributing to a national health interest; and

(2) the requestor agrees to reimburse the Secretary for providing such information and agree to comply with limitations on safeguarding and rerelease or redisclosure of such information, as specified by the Secretary.

The Secretary of the Treasury would be permitted to provide such information to SSA for purposes of complying with such a requirement.

Effective Date

The provision would apply to requests for information made after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

11. Prohibition of Misuse of Symbols, Emblems or Names Related to the Social Security Administration, Health Care Financing Administration and the Department of Health and Human Services (Sec. 13011 of House bill)

Present Law

In 1988, Congress enacted a provision prohibiting the use of words, letters, symbols and emblems of the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) in a manner that the user knows or should know would convey the false impression that such an item was approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration or the Department of Health and Human Services, or that the user has some connection with, or authorization from, these agencies.

The law permits the Secretary of Health and Human Services (HHS) to impose civil monetary penalties not to exceed $5,000 per violation or, in the case of a broadcast or telecast, $25,000 per violation. The total amount of penalties which may be imposed is limited to $100,000 per year.

Amounts collected by the Secretary are deposited as miscellaneous receipts of the Treasury of the United States.

****1594*905** House Bill

The provision would amend current law to:

(a) eliminate the annual cap on penalties;

(b) also prohibit the use of words and letters of the Department of Health and Human Services, Supplemental Security Income Program, or Medicaid, and the symbols or emblems of the Department of Health and Human Services;

(c) define a “violation,” with regard to mailings, as each individual piece of mail in a mass mailing;

(d) further prohibit the use of the names, letters or emblems of SSA, HCFA, or HHS in a manner that reasonably could be interpreted to convey a relationship with these agencies;

(e) exempt from the prohibition the use by any State agency or instrumentality of State, or political subdivision of any words, letters, symbols, or emblems which identify an agency or instrumentality of the State or political subdivision;

(f) repeal the present law requirement that the Department of Health and Human Services obtain a formal declination from the Department of Justice (DOJ) before pursuing a civil monetary penalty case under this provision;

(g) provide that penalties collected by the Secretary for violations of this provision would be deposited in the Old-Age and Survivors Insurance Trust Fund;

(h) stipulate that no person may reproduce, reprint, or distribute for a fee any form, application, or other publication of the Social Security Administration unless such person has obtained specific written authorization for such activity in accordance with regulations prescribed by the Secretary.

(i) provide that any determination of whether there is a violation of this provision shall be made without regard to a disclaimer; and

(j) require the HHS Secretary to report annually to the Congress detailing the number of complaints of deceptive practices received by SSA, the number of cases in which SSA sent a notice of violation of this section to an individual requesting that the individual cease misleading activities, the number of cases referred by SSA to the HHS Inspector General (IG), the number of investigations undertaken by the HHS IG, the number of civil monetary penalties formally assessed by the HHS IG in a demand letter, the total amount of civil monetary penalties assessed during the year, the total amount of civil monetary penalties deposited in the OASI trust fund during the year, and the number of hearings requested pursuant to this provision and their disposition.

(k) clarify that the provisions in section 1140 would continue to be enforced by the Office of the Inspector General of the Department of Health and Human Services.

Effective Date

The provision would apply to violations occurring after the date of enactment.

****1595*906** Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

12. Increase in Penalties for Unauthorized Disclosure of Social Security Information (Sec. 13012 of House bill)

Present Law

Each year, the Social Security Administration (SSA) receives and maintains earnings information, including the names and addresses of employers, on over 130 million working Americans in its computer system. Employers are required to file annually with the Social Security Administration copies of their workers' W–2 statements. The statements contain the worker's Social Security numbers and the amount of wages the workers received during the year. In addition, each SSA file contains an individual's birth certificate information, such as date of birth, father's name and mother's maiden name. For those receiving Social Security benefits, the file contains a current address and monthly benefit amounts.

The Social Security Act includes provisions which prohibit the unauthorized disclosure of information contained in Social Security Administration files. The Act provides that any person who violates these provisions and makes an unauthorized disclosure can be found guilty of a misdemeanor and, upon conviction, punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both.

House Bill

The provision stipulates that unauthorized disclosure of information and fraudulent attempts to obtain personal information under the Social Security Act would be a felony. Each occurrence of a violation would be punishable by a fine not exceeding $10,000 or by imprisonment not exceeding five years, or both.

Effective Date

The provision would apply to violations occurring after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

****1596*907** 13. Simplification of Employment Taxes on Domestic Services (Sec. 13013 of House bill)

Present Law

Individuals who hire domestic employees such as baby-sitters, housekeepers, and yard workers are required to withhold and pay employment taxes when the worker's wages exceed certain thresholds. (Individuals who hire independent contractors to provide domestic services are excluded from these requirements.) For Social Security, the wage threshold is $50 per quarter; for Federal unemployment insurance, it is $1,000 per quarter. When the $50 threshold is reached, the employer must file a quarterly report (form 942) with the Internal Revenue Service, submitting with it the required Social Security tax for both the employer and the employee. The employer must also provide the employee and the Social Security Administration with a Wage and Tax Statement (form W–2) at the end of the year. When the $1,000 unemployment insurance wage threshold is reached in any calendar quarter, the employer must file a report (form 940) with the IRS at the end of the year, submitting the required tax.

In addition, employers of domestic workers must: notify employees who may be eligible for the earned income tax credit of the existence of this credit; withhold income tax if the employee requests it and the employer agrees; file and pay State unemployment insurance tax in each quarter in which the State unemployment insurance wage threshold (equal to the $1,000 Federal threshold is 45 States) is reached; and, in some States, report wages paid to domestic employees to the State for purposes of State income tax.

House Bill

The provision would:

Change the threshold for withholding and paying Social Security taxes on domestic workers from $50 per quarter to $1,800 annually in 1994 and index it thereafter for increases in average wages in the economy;

Adjust the Social Security tax threshold retroactively for increases in average wages in the economy since 1950 and annualize the threshold retroactively. No underpayment of taxes (or any penalty or interest with respect to such underpayment) which is covered by this provision for the years 1951 through 1993 shall be assessed (or, if assessed, shall be collected), effective on or after the date of enactment. No tax refunds would be provided;

Require individuals who employ only domestic workers to report on a calendar-year basis any Social Security or Federal unemployment tax obligations for wages paid to these workers and authorize the Secretary of the Treasury to revise Federal form 1040 to enable such employers to report both taxes on their own Federal income tax returns;

Include domestic employers' Social Security and Federal unemployment taxes in estimated tax provisions, thereby enabling these employers to satisfy their tax obligations through ****1597*908** regular estimated tax payments or increased tax withholding from their own wages;

Authorize the Secretary of the Treasury to enter into agreements with States to collect State unemployment taxes in the manner described above; and

Require the Secretary of the Treasury to provide to domestic employers a comprehensive package of informational materials, including all requirements of Federal law and a notification that they may also be subject to State unemployment insurance and workers compensation laws.

Effective Date

The provision would generally apply to remuneration paid in calendar years beginning after December 31, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

14. Increase in Authorized Period for Extension of Time to File Annual Earnings Report (Sec. 13014 of House bill)

Present Law

In general, individuals under age 70 who receive Social Security retirement or survivors benefits must file an annual report of their earnings with the Social Security Administration for any taxable year in which their earnings or wages exceed the annual exempt amount of earnings under the Social Security earnings test. These reports are due to be filed by the same date as Federal income tax returns, the fifteenth day of the fourth month after the close of the taxable year (normally April 15). Individuals may be granted a reasonable extension of time for filing an earnings report if there is a valid reason for delay, but not more than 3 months. An extension of time for filing an income tax return may be granted for up to 4 months.

House Bill

The time for which an extension could be granted for filing an earnings report would be increased to 4 months.

Effective Date

The provision would be effective with respect to reports of earnings for taxable years ending on or after December 31, 1993.

Senate Amendment

No provision.

****1598*909** Conference Agreement

The conference agreement does not include the House provision.

15. Reallocation of a Portion of the Old-Age and Survivors' Insurance Payroll Tax to the Disability Insurance Trust Fund (Sec. 13015 of House bill)

Present Law

Employees and employers each pay a tax of 7.65 percent on earnings up to a specified ceiling. Of the 7.65 percent, 1.45 percent is allocated to the Hospital Insurance Trust Fund, 5.6 percent is allocated to the Old-Age and Survivors Insurance Trust Fund, and 0.6 percent is allocated to the Disability Insurance Trust Fund. The 15.3 percent tax on net earnings from self-employment is similarly allocated to the HI Trust Fund (2.90 percent), the OASI Trust Fund (11.2 percent) and the DI Trust Fund (1.2 percent). As a result of the 1983 Social Security Amendments (P.L. 98–21), 0.71 percent will be allocated to the DI Trust Fund beginning in the year 2000.

In its 1993 report to Congress, the Social Security Board of Trustees determined that, under its intermediate economic assumptions, the DI Trust Fund will be depleted during 1995.

House Bill

The provision would allocate an additional 0.275 percent of the employer and employee Social Security payroll tax rate, each, and 0.55 of the self-employment tax rate from the OASI Trust Fund to the DI Trust Fund, effective for 1993 and future years. The combined OASDHI tax rate of 7.65 percent would remain unchanged.

In addition, the Secretary of Health and Human Services would be required to conduct a comprehensive study of the reasons for rising costs in the DI program. The study would determine the relative importance of: (a) increased numbers of applications for benefits, (b) higher rates of benefit allowances, and (c) decreased rates of benefit terminations in increasing DI program costs. It would also identify, to the extent possible, underlying social, economic, demographic, programmatic, or other trends responsible for changes in DI applications, allowances, and terminations. No later than December 31, 1995, the Secretary would be required to issue a report to the House Committee on Ways and Means and the Senate Committee on Finance summarizing the results of the study and, if appropriate, making legislative recommendations.

Effective Date

The provision would apply to wages paid after December 31, 1992, and to self-employment income for taxable years beginning after this date.

Senate Amendment

No provision.

****1599*910** Conference Agreement

The conference agreement does not include the House provision.

16. Extension of Disability Insurance Program Demonstration Project Authority (Sec. 13016 of House bill)

Present Law

Section 505(a) of the Social Security Disability Insurance Amendments (P.L. 96–265), as extended by the Omnibus Budget Reconciliation Act of 1989 (P.L. 101–239) and the Omnibus Budget Reconciliation Act of 1990 (P.L. 102–508), authorizes the Secretary of Health and Human Services to waive compliance with the benefit requirements of titles II and XVIII for purposes of conducting work incentive demonstration projects to encourage disabled beneficiaries to return to work. The authority to waive compliance applies to projects initiated prior to June 10, 1993. A final report is due no later than Oct. 1, 1993.

House Bill

The Secretary's authority to initiate disability work incentive demonstration projects that waive compliance with benefit provisions (as provided in P.L. 96–265) would be extended through June 9, 1996.

Effective Date

The provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

17. Technical Corrections (Sec. 13017 of House bill)

Present Law

The Social Security Act contains a number of typographical errors, erroneous references, circular cross references, inconsistent margination, incorrect punctuation, and references to outdated versions of the Internal Revenue Code.

House Bill

The provision would correct those technical errors.

Effective Date

Senate Amendment

No provision.

****1600*911** Conference Agreement

The conference agreement does not include the House provision.

18. Cross-Matching of Social Security Account Numbers and Employer Identification Numbers Maintained by the Department of Agriculture (Sec. 13018 of House bill)

Present Law

Under current law, the Department of Agriculture is allowed to collect and maintain a list of the names, Social Security numbers and employer identification numbers of the owners and officers of retail grocery stores which redeem food stamps. The list is used only to keep track of grocery store operators who have been sanctioned for violations under the Food Stamp

Act.

House Bill

The provision would permit the Secretary of Agriculture to share the list of names and identifying numbers with other Federal agencies which otherwise have access to Social Security account numbers for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for investigating violations of other Federal laws, or enforcement of such laws. The Secretary of Agriculture must restrict access to Social Security account numbers obtained pursuant to this provision to officers and employees of the United States whose duties or responsibilities require access for such purposes.

Effective Date

The provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

19. Prohibition of Misuse of Symbols, Emblems, or Names Related to the Department of the Treasury and the Internal Revenue Service (Sec. 13019 of House bill)

Present Law

There is no provision in present law prohibiting the use of titles, symbols, emblems, and names of the Department of the Treasury (and its subsidiary agencies) in connection with advertisements, mailings, solicitations, or other business activities.

House Bill

The provision would prohibit the use in advertisements, solicitations, and other business activities of words, abbreviations, titles, ****1601*912** letters, symbols, or emblems associated with the Department of the Treasury (and services, bureaus, offices or subdivisions of the Department, including the Internal Revenue Service) in a manner which could reasonably be interpreted as conveying a connection with or approval by the Department of the Treasury.

The bill would establish a civil penalty of not more than $5,000 per violation (or not more than $25,000 in the case of a broadcast or telecast). In addition, the bill would establish a criminal penalty of not more than $10,000 (or not more than $50,000 in the case of a broadcast or telecast) or imprisonment of not more than one year, or both, in any case in which the prohibition is knowingly violated. Any determination of whether there is a violation would be made without regard to the use of a disclaimer of affiliation with the Federal Government. The Secretary of the Treasury would be required to provide to the Committee on Ways and Means and the Committee on Finance, no later than May 1, 1995, a report on enforcement activities relating to the implementation of the provision.

Effective Date

The provisions would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

SUBCHAPTER D–CUSTOMS AND TRADE PROVISIONS

PART I–EXTENSION OF CUSTOMS USER FEE, GSP, AND TRADE ADJUSTMENT ASSISTANCE PROGRAMS

Extension of Authority to Levy Customs User Fees (sec. 13602 of House bill; sec. 7701 of Senate amendment; sec. 13801 of conference agreement)

Present Law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (19 U.S.C. 58c) authorizes the U.S. Customs Service to collect user fees for services the agency provides to the traveling and importing public. A statutory schedule of flat rate fees is imposed for the processing of air and sea passengers, commercial vessels, barges, rail cars, trucks, dutiable mail packages and customs brokers permits ("COBRA fees"). Fees collected reimburse appropriations for the costs incurred by Customs in providing inspectional overtime and excess preclearance costs. Also, expenditures are authorized from surplus revenues in excess of $30 million to add new positions and acquire equipment to enhance services provided to the payers of the fees.

Customs also collects a 0.19 percent ad valorem merchandise processing fee (MPF) on the value of formally entered imported commercial cargo, subject to a $21 minimum and $400 maximum ****1602*913** fee. In addition, a $2, $5, or $8 entry fee is charged for processing informal entries valued below $1,250. Certain products and countries are exempt from the fee; the MPF for Canadian goods will be eliminated as of January 1, 1994, and currently is 20 percent of the rate applicable to goods from other sources.

Receipts from the MPF are deposited into a "Customs User Fee Account" within the general fund and, subject to authorization and appropriation, offset Customs costs incurred in commercial operations. User fee collections are scored as receipts which offset direct spending.

All user fee authority expires September 30, 1995.

House Bill

Section 13602 of H.R. 2264 as passed by the House amends section 13031(j)(3) of the COBRA to extend all customs user fee authority (both COBRA fees and MPF) for three additional fiscal years through fiscal year 1998.

Senate Amendment

Section 7701 of the Senate amendment is identical to the House bill.

Conference Agreement

Section 13801 of the conference agreement retains the provisions in the House bill and Senate amendment.

Generalized System of Preferences (sec. 13603 of House bill; sec. 13802 of conference agreement)

Present Law

Title V of the Trade Act of 1974, as amended, authorizes the President to grant preferential duty-free treatment (Generalized System of Preferences) on imports of eligible articles from designated beneficiary developing countries, subject to certain conditions and limitations. Section 502(b) includes the "Union of Soviet Socialist Republics", and thus its successor independent republics, on a specific list of countries which the President is prohibited from designating as eligible for beneficiary country status under the GSP program.

Section 505(a) of the Trade Act of 1974 provides that no duty-free treatment under Title V shall remain in effect after July 4, 1993.

House Bill

Section 13603(a) of H.R. 2264 as passed by the House amends section 502(b) of the Trade Act of 1974 to remove the "Union of Soviet Socialist Republics" from the statutory list of countries prohibited from designation for beneficiary status under the GSP program.

Section 13603(b) amends section 505(a) of the Trade Act of 1974 to authorize a 15-month extension of GSP duty-free treatment through September 30, 1994. It also provides that, notwithstanding ****1603*914**section 514 of the Tariff Act of 1930 or any other provision of law, the entry (including withdrawal from warehouse for consumption) of any article made after July 4, 1993, and before date of enactment of the extension to which GSP duty-free treatment would have applied shall be liquidated or reliquidated as free of duty and the Secretary of the Treasury shall refund any duty paid, upon proper request filed with the appropriate customs officer within 180 days after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

Section 13802 of the conference agreement follows the House bill.

Extension of Trade Adjustment Assistance Program (sec. 13604 of House bill; sec. 7702 of Senate amendment; sec. 13803 of conference agreement)

Present Law

Title II of the Trade Act of 1974 authorizes the Trade Adjustment Assistance (TAA) programs for workers and firms certified by the Secretary of Labor and the Secretary of Commerce, respectively, as adversely affected by increased imports. Eligible workers are entitled to weekly cash payments, training and other employment services, and job search and relocation allowances, subject to specific qualifying requirements and limitations. Certified firms are eligible for technical assistance to prepare and implement economic adjustment plans, or for industry-wide assistance, subject to certain conditions.

Section 245 of the Trade Act of 1974 authorizes appropriations to the Department of Labor of such sums as may be necessary for the TAA program for workers through fiscal year 1993.

Section 256(b) of the Trade Act of 1974 authorizes appropriations to the Secretary of Commerce of such sums as may be necessary to remain available until expended for the TAA program for firms through fiscal year 1993.

Section 285(b) of the Trade Act of 1974 provides that no assistance, vouchers, allowances or other payments may be provided under the TAA program for workers, and that no technical assistance may be provided under the TAA program for firms, after September 30, 1993.

House Bill

Section 13604(a) of H.R. 2264 as passed by the House amends section 285(b) of the Trade Act of 1974 to extend the termination date for the TAA program for workers for three years through September 30, 1996. Section 13604(b) amends section 245 of the Trade Act of 1974 to authorize appropriations of such sums as may be necessary for the worker TAA program for fiscal years 1994, 1995, and 1996.

****1604*915** Senate Amendment

Section 7702(a) of the Senate amendment amends section 285(b) of the Trade Act of 1974 to extend the termination dates for the provisions of assistance for both the worker and the firm TAA programs for five years through September 30, 1998. Section 7702(b) amends sections 245 and 256(b) of the Trade Act of 1974 to authorize appropriations for the worker and firm TAA programs for fiscal years 1994, 1995, 1996, 1997, and 1998.

Conference Agreement

Section 13803 of the conference agreement follows the Senate amendment with an amendment to section 236(a)(2)(A) of the Trade Act of 1974 reducing the total amount of payments that may be made for training under section 236(a)(1) in fiscal year 1997 from a maximum of $80,000,000 to a maximum of $70,000,000.

Customs and Trade Agency Authorizations for Fiscal Years 1994 and 1995 (sec. 13601 of House bill)

Present Law

Section 330(e)(2) of the Tariff Act of 1930, as amended, authorizes two-year appropriations for the U.S. International Trade Commission (ITC). The most recent authorization (section 101 of the Customs and Trade Act of 1990, Public Law 101–382) was $44,052,000 for fiscal year 1992. The total appropriation to the ITC for fiscal year 1993 (Public Law 102–395) is $44,852,000, of which an amount not to exceed $2,500 is available to be used for reception and entertainment expenses, subject to the approval of the Chairman of the Commission.

The Customs Procedural Reform and Simplification Act of 1978 (Public Law 95–110) provides for a two-year authorization of appropriations for the U.S. Customs Service. The Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) requires that the salaries and expenses portion of the Customs Service authorization specify separate amounts for noncommercial and commercial operations. The most recent authorization (section 101 of the Customs and Trade Act of 1990, Public Law 101–382) was $542,091,000 for noncommercial operations and $705,793,000 for commercial operations in fiscal year 1992, and $150,199,000 was authorized for the Air Interdiction Program. The total budget authority under the Treasury Appropriation Act (Public Law 102–393) for fiscal year 1993 is $1,328,694,000 for Customs Service salaries and expenses and $132,416,000 for the Air Interdiction Program.

Section 141(g)(1) of the Trade Act of 1974, as amended, authorizes two-year appropriations to carry out the functions of the Office of the U.S. Trade Representative (USTR). The most recent authorization (section 103 of the Customs and Trade Act of 1990, Public Law 101–382) was $21,077,000 for fiscal year 1992. The appropriation to the USTR for fiscal year 1993 (Public Law 102–395) is $19,992,000, of which not to exceed $98,000 is available for official reception and entertainment expenses and not to exceed $2,500,000 shall remain available until expended, plus a supplemental appropriation of $500,000

(Public Law 103–50).

****1605*916** House Bill

Section 13601(a) of H.R. 2264 as passed by the House amends section 330(e)(2) of the Tariff Act of 1930 to provide an authorization of appropriations for the ITC of $45,416,000 for fiscal year 1994 and $45,974,000 for fiscal year 1995. Of these amounts, not more than $2,500 per fiscal year may be used for reception and entertainment expenses, subject to the approval of the Chairman of the Commission.

Section 13601(b) amends section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 to authorize appropriations for the U.S. Customs Service not to exceed $540,783,000 in fiscal year 1994 and $527,000,000 in fiscal year 1995 for salaries and expenses incurred in noncommercial operations, and not less than $771,036,000 in fiscal year 1994 and $748,000,000 in fiscal year 1995 for salaries and expenses incurred in commercial operations. The authorization for operation and maintenance of the Air and Marine Interdiction Program is $95,156,000 in fiscal year 1994 and $128,000,000 in fiscal year 1995.

Section 13601(c) amends section 141(g)(1) of the Trade Act of 1974 to provide a two-year authorization of appropriations to the USTR of $20,143,000 in fiscal year 1994 and $20,419,000 in fiscal year 1995. Of these amounts, not to exceed $98,000 may be used for entertainment and representation expenses and not to exceed $2,500,000 shall remain available until expended.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment, with the understanding that the Senate intends to consider these provisions in separate legislation as soon as possible.

Extension of Uruguay Round Trade Agreement Negotiation and Proclamation Authority and of “Fast Track” Procedures to Implementing Legislation (sec. 13605 of House bill)

Present Law

Section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 authorizes the President, before June 1, 1993, to enter into trade agreements with foreign countries and to proclaim tariff modifications (subject to limitations) he determines to be required or appropriate to carry out such agreements. Section 1102(b) of the Act authorizes the President, before June 1, 1993, to enter into trade agreements with foreign countries to reduce, eliminate, prohibit, or limit nontariff barriers.

Section 1103(a)(1) of the 1988 Act provides that agreements entered into under section 1102(b) shall enter into force only if the President notifies the House and Senate at least 90 calendar days in advance of his intention to enter into the agreement (for purposes of consultations required with committees of jurisdiction under subsection (c)) and, after entering into the agreement, the ****1606*917** President submits to the House and Senate a copy of the final legal text, a draft implementing bill and statement of any proposed administrative action, and supporting information, and the implementing bill is enacted into law. Section 1103(b) provides that the “fast track” procedures under section 151 of the Trade Act of 1974 apply to implementing bills submitted with respect to trade agreements entered into before June 1, 1991 (extended until June 1, 1993, through operation of provisions of section 1103(b)). Under these procedures, implementing (revenue) bills, upon submission by the President and introduction on the same day by the leadership of the House and Senate, are subject to a maximum 90-legislative day period for Congressional consideration (60 days in the House), without amendment.

Section 135(e) of the Trade Act of 1974, as amended, requires the Advisory Committee for Trade Policy and Negotiations and appropriate private sector policy, functional or sectoral advisory committees to report to the President, the Congress, and the USTR on each trade agreement entered into under section 1102 of the 1988 Act not later than the date the President notifies the Congress of his intention to enter into the agreement.

House Bill

Section 13605 of H.R. 2264 as passed by the House amends section 1102 of the Omnibus Trade and Competitiveness Act of 1988 by adding a new subsection (e) that–

(1) Authorizes the President to enter into trade agreements under sections 1102(a) and (b) after May 31, 1993, and before April 16, 1994, resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT), if these negotiations have not resulted in agreements by May 31, 1993;

(2) Provides that no proclamation under section 1102(a) to carry out provisions of an Uruguay Round trade agreement regarding tariffs may take effect before enactment of legislation that implements the provisions of the agreement on nontariff barriers;

(3) Requires the President to provide the House and Senate under section 1103(a)(1)(A) of the Act at least 120 days advance notice of his intention to enter into the trade agreement, but not later than December 15, 1993; and extends the application of "fast track" procedures to implementing bills submitted with respect to such an agreement entered into before April 16, 1994; and

(4) Requires the reports by private sector advisory committees under section 135 of the Trade Act of 1974 not later than 30 days after the President notifies the Congress, but before January 15, 1994.

Senate Amendment

No provision.

****1607*918** Conference Agreement

The conference agreement follows the Senate amendment. Public Law 103–49, enacted on July 2, 1993, contains identical provisions.

Repeal of East-West Trade Statistics Monitoring System (sec. 13606 of House bill)

Present Law

Section 410 of the Trade Act of 1974, as amended (19 U.S.C. 2440) established the East-West Trade Statistics Monitoring System. It requires the U.S. International Trade Commission to monitor U.S. imports from, and exports to, nonmarket economy countries. Such data must be published and transmitted to Congress each quarter.

House Bill

Section 13606 of H.R. 2264 as passed by the House repeals section 410 of the Trade Act of 1974.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment, with the understanding that the Senate intends to consider this provision in separate legislation as soon as possible.

PART II–CUSTOMS OFFICER PAY REFORM

Overtime and Premium Pay for Customs Officers (sec. 13701 of House bill; sec. 13811 of conference agreement)

Present Law

Customs inspectors are compensated with overtime pay for work performed outside the statutorily-defined work week (i.e., Monday through Saturday, 8:00 a.m. through 5:00 p.m.). Overtime pay is paid at a rate of two times basic pay, with any amount of work conducted during a 2-hour period treated as 4 hours pay (2 hour minimum at a rate of two times basic pay).

Customs inspectors who are required to work after their normal duty (callback), between 5:00 p.m. and 9:00 p.m., are paid overtime beginning at 5:00 p.m. and for hours actually worked, at a rate of two times basic pay. Customs inspectors who are required to work after their normal duty (callback), between 9:00 p.m. and 6:00 a.m., are paid for 8 hours (4 minimum hours at a rate of two times basic pay), plus hours actually worked of at least 4 hours (2 minimum hours at a rate of two times basic pay), for a total of 12 hours pay for any time worked.

There is no separate provision in present law to compensate Customs inspectors for a second commute due to callback.

Customs inspectors are compensated with overtime pay for work performed at night and on Sundays and holidays, plus certain ****1608*919** minimum hour credits, at a rate of two times basic pay. At night (after 5:00 p.m. and before 8:00 a.m.), Customs inspectors are compensated with 4 hours pay (2 hours minimum at a rate of two times basic pay) for any time worked. On Sundays, Customs inspectors are compensated with 16 hours pay (8 hours minimum at a rate of two time basic pay) for any time worked. On holidays, Customs inspectors are compensated with 16 hours pay (as on a Sunday) plus basic pay for any time worked.

Customs inspectors may receive up to $25,000 in overtime pay, annually.

Customs Canine Enforcement Officers are provided overtime compensation in the same manner as other Federal employees under the Federal Employee Pay Act (FEPA).

House Bill

Customs officers would be defined as any individual performing those functions specified by regulation by the Secretary of the Treasury for a Customs inspector or canine enforcement officer.

Customs officers would be compensated with overtime pay for work performed in excess of a 40-hour week or 8-hour day, at a rate of two times basic pay, for actual time worked.

Customs officers who must return to their place of work (callback) beyond their normal duty, where the work begins more than 1 hour after their duty ends or before their next duty begins, would be paid 4 hours pay (2 minimum hours at a rate of two times basic pay), plus hours actually worked beyond 2 hours (at a rate of two times basic pay).

In addition to callback pay, Customs officers would be paid 3 hours (at the basic pay rate) as compensation for travel time. Compensation is not payable if the work does not begin within 16 hours of the last assignment, or if it starts within 2 hours of

the next assignment.

Customs officers would be provided additional compensation (15 percent of basic pay) where a majority of the work is performed at night (between 3:00 p.m. and midnight) and additional compensation (20 percent of basic pay) where a majority of the work is performed at night (between 11:00 p.m. and 8:00 a.m.), where the night work is performed during their regular work week. Customs officers who work between 7:30 p.m. and 3:30 a.m. would receive additional compensation in the amount of 15 percent of basic pay for the period from 7:30 p.m. to 11:30 p.m. and 20 percent of basic pay for the period from 11:30 p.m. to 3:30 a.m.

Customs officers would be provided additional compensation (at a rate of time and one-half basic pay) for work performed on Sunday, where the Sunday work was performed during their regular work week.

Customs officers would be provided additional compensation (at a rate of two times basic pay) for work on a holiday.

The newly-created premium pay for work performed at night, on a Sunday, and on a holiday, and compensation received for any second commute would be subject to the annual $25,000 overtime pay limitation. Also, the annual overtime pay limitation would be made a part of the same law that controls payment of inspectional overtime.

****1609*920** The Secretary of the Treasury would be authorized to promulgate regulations to insure that callback assignments are commensurate with the overtime compensation authorized for such work and to prevent the disproportionate assignment of overtime work to Customs officers near retirement. This provision would be effective on October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with clarification that the Secretary of the Treasury would be required to promulgate regulations to prevent abuses in the areas of callbacks and retirement benefits. The conferees understand that the Secretary already has the authority to promulgate regulations otherwise implementing this Section. The conference agreement also delays the effective date to January 1, 1994.

With respect to the provision that includes premium pay within the $25,000 annual cap on overtime pay, it is not the intention of the conferees in any way to diminish unfairly the retirement benefits of those Customs officers required to work in the evenings or at night. Although such Customs officers would earn premium pay for such work, the amount of overtime pay (which would count toward retirement benefits) they could earn may be correspondingly reduced. It is the conferees intention to monitor closely the operation of this provision, and to revisit this issue if it appears that Customs officers required to work evenings and nights are being disadvantaged with respect to their retirement benefits.

Additional Benefits for Customs Officers (sec. 13812 of conference agreement)

Treatment of Certain Pay for Retirement Purposes (sec. 13704 of House bill; sec. 13812(a) of conference agreement)

Present Law

Customs inspector overtime pay is not treated as compensation for Federal retirement benefit purposes when calculating employee retirement annuities.

House Bill

Overtime pay would be included when calculating retirement annuities for Customs officers, up to an amount equal to 50 percent of the overtime pay cap. Fifty percent of the current overtime pay cap is $12,500. This provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a technical amendment melding this provision into a single section regarding ***921**1610** additional benefits for Customs officers. No substantive changes are intended.

Foreign Language Proficiency Awards (sec. 13702 of House bill; sec. 13812(b) of conference agreement)

Present Law

There is no provision in present law authorizing Foreign Language Proficiency Awards for Customs inspectors.

House Bill

The Secretary of the Treasury would be authorized to pay up to 5 percent of basic pay to any Customs officer who possesses and makes substantial use of one or more foreign languages in the performance of official duties.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a technical amendment to provide, in section 13813 of the conference agreement, that these awards would be paid from the Customs COBRA User Fee Account, rather than be subject to appropriations. The conference agreement also clarifies that the provisions are effective on January 1, 1994.

Reimbursements from the Customs User Fee Account (sec. 13703 of House bill; sec. 13813 of conference agreement)

Present Law

User fees are authorized to be collected on various conveyances and air passengers (the “COBRA” User Fees) and are paid into a dedicated Customs User Fee Account. The fees are used to pay the costs of inspectional overtime, preclearance operations, additional officers, and equipment. The Customs COBRA User Fee Account is not subject to annual authorization and appropriation. Spending for inspectional overtime and preclearance operations is not subject to Office of Management and Budget apportionment authority. Spending for existing premium pay is funded from the Salaries and Expenses appropriations.

House Bill

The Secretary of the Treasury would be authorized to use the Customs COBRA User Fee Account, in addition to present law

purposes, for a portion of Customs officer premium pay and for Customs retirement-fund contributions for Customs officer overtime pay. The Customs COBRA User Fee Account would continue to be available without the annual authorization and appropriation process. However, it would be subject to Office of Management and Budget apportionment.

Funds in the Customs COBRA User Fee Account would only be used to pay that portion of premium pay not currently authorized ***922**1611** under FEPA. The portion of premium pay that would be authorized under current law and currently paid from the annual appropriated salaries and expenses account would continue to be paid from that account. Only the difference between the newly-created premium pay authorized by this bill and the premium pay currently authorized by FEPA would be paid from the COBRA User Fee Account.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification to provide for the reimbursement from the COBRA User Fee Account of Foreign Language Proficiency Awards, after payments for all other purposes other than payments for the hiring of full-time inspectors.

With respect to OMB apportionment of the Customs COBRA User Fee Account, it is not the intention of the conferees that this provision interfere with Customs' ability to allocate resources and effectively serve the travel and trade communities. The conferees intend to monitor closely the implementation of this provision to ensure that the apportionment authority does not impair Customs' ability to accomplish its drug enforcement and facilitation missions.

The conferees believe that the user fee structure used to finance inspectional services may have become ineffective, inefficient, and inequitable. Accordingly, the conferees intend that the Secretary of the Treasury, as part of the President's fiscal year 1995 budget request, submit recommendations for improvements to the user fee laws used to finance inspectional services. This report should address, at a minimum: (1) whether all activities relating to air passenger processing should be consolidated under the Customs COBRA User Fee Account; (2) whether the Customs COBRA User Fee Account should be subject to the authorization and appropriation process, and; (3) whether the Secretary should have the authority to adjust periodically the COBRA User Fee in a way similar to that currently authorized for the merchandise processing fee. The conferees also intend that the Secretary submit to the Committee on Ways and Means and the Committee on Finance, at the end of each fiscal year, an accounting for all Customs COBRA User Fee Account expenditures. Finally, the conferees intend that, within one year of the date of enactment, the Comptroller General review the effectiveness, efficiency, and fairness of the user fees used to finance inspectional services and report to the Committee on Ways and Means and the Committee on Finance.

Reports (sec. 13705 of House bill)

Present Law

The Secretary of the Treasury is required to report annually to the Congress on expenditures for additional officers and additional equipment from the Customs COBRA User Fee Account.

****1612*923** House Bill

The Secretary of the Treasury would be required, at the end of each fiscal year, to report to the Committee on Ways and Means and the Committee on Finance on Customs COBRA User Fee Account expenditures including overtime expenditures and de minimis callback assignments. The Secretary also would be required to submit proposals for improvements to the user fee laws used to finance inspectional services. The Comptroller General would be required, within one year after date of

enactment, to review user fees used to finance inspectional services and identify additional cost savings.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

CHAPTER 3

FOOD STAMP PROGRAM

Short title (H. 1301)

The House Bill provides that the bill may be cited as the “Mickey Leland Childhood Hunger Relief Act”.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision.

References to Act (H. 1302)

The House Bill provides that references in the bill to “the Act” are references to the Food Stamp Act of 1977.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision.

Maximum benefit level (H. 1311)

The House Bill provides that food stamp benefits will be based on 104% of the thrifty food plan beginning in fiscal year 1994.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Helping low-income high school students (H. 1312)

The House Bill excludes the income of elementary and secondary school students 21 years of age or under for the purpose of calculating eligibility and benefit levels for the Food Stamp Program.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision.

Families with high shelter expenses (H. 1313)

The House Bill removes the shelter deduction cap for households that do not contain elderly or disabled members effective October 1, 1994. In the interim, it increases shelter deduction caps for ****1613*924** fiscal year 1994; the cap for households in the contiguous 48 states is increased to $214.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provisions with an amendment establishing interim caps until January 1, 1997, at which time the cap will be removed.

In administering the shelter deduction, the managers expect the Secretary will fully implement existing law, including the amendments included in the 1985 Farm Bill, except to the extent that they have been changed by subsequent legislation. The 1985 amendments on households receiving energy assistance, which reflect the results of debate and votes on the floor of both houses, were accurately explained in the narrative accompanying the U.S. Department of Agriculture's 1986 and 1987 Federal Register rule-makings on these issues. The managers believe that the 1985 amendments establish a rule that should be relatively simple for states to administer. The Department should not establish or enforce a policy that imposes administrative burdens on the states or dilutes the benefits of any energy assistance, whatever the source, except as specifically authorized by the 1985 amendments and not precluded by subsequent legislation.

Resource exclusion for earned income tax credits (H. 1314)

The House Bill excludes earned income tax credits received by households from consideration as resources for one year following their receipt.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision. The requirement of continuous participation in this section is not intended to deny the exclusion to households that temporarily leave the program for a short time for administrative reasons, such as a deadline being missed at recertification or a monthly reporting sanction, but who continue otherwise to meet the Food Stamp Program's income and resource eligibility criteria.

Homeless families in transitional housing (H. 1315)

The House Bill excludes from food stamp income the full amount of vendor payments for transitional housing for homeless households.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision.

Households benefiting from general assistance vendor payments (H. 1316)

The House Bill includes only GA vendor payments provided for housing expenses, but excluding energy or utility-cost assistance, as income for determining food stamp eligibility and benefit levels.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision.

****1614*925** Continuing benefits to eligible households (H. 1317)

The House Bill provides that eligible households reapplying or recertified during the first month following the end of their prior certification period will receive full benefits for the first month of their certification period.

The Senate Amendment contains no comparable provisions.

The Conference Substitute adopts the House provision.

Improving the nutritional status of children in Puerto Rico (H. 1318)

The House Bill provides that for fiscal year 1994 the block grant funding for Puerto Rico is increased from $1.091 billion to $1.111 billion, and for fiscal year 1995 it is increased from $1.133 billion to $1.158 billion.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision with an amendment to increase the funding for the Puerto Rico block grant to $1.096 billion for fiscal year 1994 and to $1.143 billion for fiscal year 1995.

Income exclusion for education assistance (H. 1321)

The House Bill requires that all education assistance be excluded from consideration as income for purposes of determining Food Stamp program eligibility and allotment levels.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Child support payments to non-household members (H. 1322)

The House Bill excludes from consideration as income for purposes of determining Food Stamp Program eligibility and allotment levels any child support payments a household member makes to support a child outside of the household, if the payments are a legal obligation.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision with an amendment changing the treatment of these child support payments from an exclusion to a deduction. This provision is effective beginning September 1, 1994, and states must implement it no later than October 1, 1995.

This provision authorizes the Secretary to promulgate rules establishing a system to determine the amount of the deduction to be provided to absent parents for their child support payments. This authority is intended to allow the Secretary to minimize burdens on State agencies and households alike. For example, states could be permitted to base a household's deduction for a certification period on the average amount it paid in the prior certification period (with appropriate adjustments for any changes in the order) rather than having to keep track throughout a certification period of how much the absent parent actually pays each month. The managers do not intend for this procedure to deny a household a deduction for any child support actually paid, but rather the intention is to give states the option to use consistent budgeting procedures ***926**1615** that would minimize the number of changes they would be required to make. State agencies correctly following such procedures would not be charged with quality control errors if the amount of child support that a household paid increased or decreased as long as the state agency adjusted the household's allotment prospectively at its next recertification.

Child support exclusion (H. 1323)

The House Bill excludes from consideration as household income in determining Food Stamp Program eligibility and

allotment levels the first $50 a month received for child support. The requirement for states to reimburse the Federal government is deleted by the amendment.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Improving access to employment and training activities (H. 1324)

The House Bill raises the current dependent care deduction, allowed in computing household income for purposes of determining program eligibility and benefit levels to $200 a month for children under age 2 and $175 a month for other dependents.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision.

The House Bill raises dependent care reimbursements to the applicable local market rate as determined using procedures consistent with those used for employment and training programs in the Aid to Families with Dependent Children (AFDC) program, but no less than the cap on the dependent care deduction ($200 for children under 2 years old and $175 for other dependents).

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision.

The House Bill clarifies that State agencies may reimburse any work-related, non-dependent care costs for Food Stamp Program employment and training program participants that they reimburse for AFDC's Job Opportunities and Basic Skills Training Program. It further stipulates that State agencies can set the reimbursement limit for work-related, non-dependent care costs at any level, but not less than $25 a month.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

The House Bill makes a conforming change to raise the amounts of E&T dependent care and other work-related reimbursements made by State agencies to recipients for which State agencies will be reimbursed (at the normal fifty percent rate) by USDA.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision with an amendment making it applicable only to dependent care reimbursements.

The managers believe that the dependent care deduction and dependent care reimbursement provisions should be implemented in ways that will minimize administrative burdens on State agencies. For example, when a child reaches his or her second birthday ****1616*927** before the end of a certification period, the State agency should not be required to reduce the ceiling on the allowable dependent care costs until the household's next regularly scheduled recertification.

Vehicles needed to seek and continue employment and for household transportation (H. 1325)

The House Bill raises the vehicle fair market value threshold to $5,500 for fiscal year 1994 and then requires that the $5,500 threshold be adjusted, beginning October 1, 1994, and on each October 1 thereafter, to reflect changes in the Consumer Price

Index.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision with an amendment raising the vehicle fair market value threshold from $4,500 to $4,550 beginning September 1, 1994, to $4,600 beginning October 1, 1995, and then requiring that the threshold be adjusted, using for purposes of calculation a base of $5,000, beginning on October 1, 1996, and on each October 1, thereafter, to reflect changes in the Consumer Price Index. The managers understand, based on estimates of the Congressional Budget Office, that using this method, the threshold for fiscal year 1997 will be $5,150.

Vehicles necessary to carry fuel or water (H. 1326)

The House Bill excludes from financial resources, for purposes of determining Food Stamp Program eligibility, a vehicle that is used by a household to transport fuel for heating or water when that fuel or water is the primary source for the household.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision. The managers expect that households without heating fuel or water piped into their homes will receive the benefit of this exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle.

Demonstration projects testing resource accumulation. (H. 1327)

The House Bill authorizes the Secretary to conduct demonstration projects allowing households already receiving food stamp benefits to accumulate up to $10,000 in resources and remain eligible for program participation. Separate accounts would have to be established and designated for a specific goal that could provide self-sufficiency. Such goals would be limited to improving the education, training, or employability of household members, buying a house for the household's use, changing the household's residence, or making major household repairs.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision with an amendment to mandate that the Secretary conduct the project.

Simplifying the household definition for households with children and others (H. 1331)

The House Bill requires that parents and their children 21 years of age or younger (who are not themselves parents living ****1617*928** with their children or married living with their spouses) who live together, children under the age of 18 who live with and are under the parental control of a person other than their parent (with the exception of foster children) together with that person, and spouses who live together would continue to be treated as a group of individuals who customarily purchase and prepare meals together even if they do not do so.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision. This provision clearly prohibits minor children under the parental control of adult household members from establishing separate households. The managers intend for this limitation to prevent young children from being treated as separate households when they are in the care of adults whether or not legal adoption has taken place. It is not intended to discourage friends and relatives from taking in children who might otherwise have to be placed through the foster care system. The managers understand that State agencies have reported few problems with the policy on verification of household status that the Secretary adopted in implementing the Food Stamp Act of 1977 and has maintained ever since. The managers expect this policy to be continued.

Eligibility of children of parents participating in drug or alcohol treatment programs (H. 1332)

The House Bill provides Food Stamp Program eligibility to children living with their program-eligible parents in a drug or alcohol rehabilitation center.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision.

Resources of households with disabled members (H. 1333)

The House Bill increases the resource limit for determining Food Stamp Program eligibility from $2,000 to $3,000 for any household containing a disabled member.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Ensuring adequate funding for the Food Stamp Program (H. 1334)

The House Bill requires that the USDA monthly report on whether supplemental appropriations will be needed to operate the Food Stamp Program be made quarterly. It also authorizes a reduction in food stamp benefits and notification to the States if the Secretary determines that Food Stamp Program funding is insufficient.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Use and disclosure of information provided by retail food stores and wholesale food concerns (H. 1341)

The House Bill permits disclosure of information provided by retail food stores and wholesale food concerns, including sales and ****1618*929** food stamp redemption information, to State and Federal law enforcement and investigative agencies for the purposes of administering or enforcing the Food Stamp Act or other Federal or State laws.

The House Bill also establishes penalties to be imposed against those who publish, divulge, or disclose to any extent not authorized by Federal law any of the information obtained pursuant to this amendment.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Additional means of claims collection (H. 1342)

The House Bill permits information obtained from former food stamp recipients to be provided to Federal agencies for purposes of collecting coupon overissuances arising from household errors through offset of Federal tax or pay.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision with an amendment deleting the reference to Federal tax.

The House Bill authorizes collection of these types of claims by offset of Federal pay and clarifies the authority to collect these types of claims by offset of Federal tax.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision with an amendment deleting the reference to Federal tax.

The managers feel strongly that this provision should be implemented in a manner that protects federal employees and any other affected individual from stigma, ridicule, or invasion of privacy because he or she is a current or former food stamp recipient who is having a claim recovered in this manner. The managers intend that this procedure only be employed to collect claims that have been determined valid after the household member has received specific notice of the basis and calculation of the claim and the action contemplated and has had opportunity to respond.

Demonstration projects testing activities directed at street trafficking in food stamps (H. 1343)

The House Bill authorizes the Secretary to use up to $4 million of demonstration project funds provided in advance in appropriations Acts to conduct demonstration projects in fiscal year 1994 in which State or local food stamp agencies can test new ideas for working with State or local law enforcement agencies to investigate and prosecute street food stamp trafficking.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Clarification of categorical eligibility (H. 1351)

The House Bill adds to the exceptions for categorical eligibility for the Food Stamp Program those households disqualified from the program for failure to comply with the requirements of a food stamp workfare program.

The House Bill also removes the reference to title II of the Social Security Act in section 5(j).

****1619*930** The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision.

Technical amendments related to electronic benefit transfer (H. 1352)

The House Bill includes references to the access devices used for electronic benefits transfer (EBT) in provisions concerning disqualifications of individuals for intentional program violations and imposition of civil money penalties against or disqualification of retail food stores for trafficking.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision. The managers are very much aware of the benefits to recipients, retailers, and program administrators of electronic benefits transfer systems. The Secretary is strongly urged by the managers to encourage States to develop and establish such delivery systems. The standards for the approval of such a system should include determining on a prospective basis the cost effectiveness of the system to ensure that the operational cost of the system, including the pro rata cost of capital expenditures and other reasonable start-up costs and considering any credit for government savings attributed to reduced benefit loss and other government savings or benefits derived from substituting an EBT system for a coupon-based system, does not exceed the operational cost of issuance systems in use prior to the implementation of the on-line EBT system.

Disqualification of recipients for trading firearms, ammunition, explosives, or controlled substances for food stamps (H. 1353)

The House Bill requires a one year disqualification from Food Stamp Program eligibility of food stamp recipients on the first occasion of a finding of their trading controlled substances for food coupons, and permanent disqualification on the second such finding. This amendment also requires permanent disqualification from Food Stamp Program eligibility on a finding of trading of firearms, ammunition, or explosives for food coupons.

The Senate Amendment contains no comparable provision.

***931** The Conference Substitute adopts the House provision with an amendment to clarify that any finding of trading coupons for firearms, ammunition, explosives, or controlled substances should be made by a Federal, State, or local court, and not a State hearing officer.

Increased cap for civil money penalty for trafficking in food stamps (H. 1354)

The House Bill removes the $40,000 cap on civil money penalties that can be imposed during a two year period on a retailer for food stamp trafficking. The provisions of current law limiting to $20,000 per violation the amount of a civil money penalty that may be imposed on a retailer for trafficking is unchanged by the House provision.

The Senate Amendment contains no comparable provision.

****1620** The Conference Substitute adopts the House provision with an amendment deleting the House provision, striking the words "during a two year period" from current law, and establishing that the civil money penalty may not exceed $40,000 for all violations (NOT each violation) occurring during a single investigation. The managers agree that any civil money penalty imposed in lieu of disqualification will be applied on a store by store basis.

Increased cap for civil money penalty for selling firearms, ammunition, explosives, or controlled substances for food stamps (H. 1355)

The House Bill removes the $40,000 cap on civil money penalties that can be imposed on retailers for selling firearms, ammunition, explosives, or controlled substances for food stamps. The provisions of current law limiting to $20,000 per violation the amount of a civil money penalty that may be imposed on a retailer for these offenses is unchanged by the House provision.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision with an amendment deleting the House provision, striking the words "during a two year period" from current law, and establishing that the civil money penalty may not exceed $40,000 for all violations (NOT each violation) occurring during a single investigation. The managers agree that any civil money penalty imposed in lieu of disqualification will be applied on a store by store basis.

This provision, and other program integrity provisions in the bill, expand upon the previous efforts of Congress to maintain strict vigilance against fraud and abuse in the Program. An earlier effort in a similar vein was the provision of the 1990 Farm Bill authorizing the Secretary to require authorized retail food stores to apply for reauthorization to continue participating in the Program. The managers note that the 1990 amendment authorized the Secretary to promulgate regulations, which would provide an opportunity for public notice and comment, before any reauthorization efforts take place.

The managers believe that reauthorization is a potentially important tool in maintaining the integrity of the Program, but they also believe that serious misunderstandings might result if the Secretary were to proceed without first promulgating rules. In particular, some stores might inadvertently submit incorrect, misleading, or otherwise unreliable information to the Secretary if they are asked to complete forms that are not completely clear or that omit important information about the program's eligibility requirements.

For example, the application form sent to retail stores before the end of the previous Administration to reauthorize all the stores omitted critical information regarding which foods were "staple foods." The official notice with the form thus could

have misled stores.

This is very important since staple food sales have to equal or exceed 50 percent of total food sales in order for the store to participate.

If foods that should have been considered as staple foods were omitted from consideration as staple foods then the store could ****1621*932** have incorrectly reported that its staple food sales did not equal or exceed 50 percent of all food sales.

For example, staple foods are defined in the USDA form to include "fresh produce (fruit and vegetables)". Stores could have been misled into thinking that frozen vegetables were not staple foods. They clearly are staple foods.

In the list of staple foods provided by the USDA beans and potatoes are omitted. Beans and potatoes are clearly staple foods.

Pasta is omitted. Is pasta a staple food? If a store guesses wrong it could be thrown off the food stamp program.

This demonstrates the need for advance public comment regarding the entire process including the content of the retailer application form. This process should not continue until regulations are issued and made final pursuant to notice and comment rulemaking.

Modifying the food stamp quality control system (H. 1356)

The House Bill requires the use of an annual national average and a sliding scale to determine the level of penalty, beginning with the penalties to be assessed for fiscal year 1992. Penalties are to be assessed for error rates in excess of the national average combined error rate (overpayments, payments to ineligible households, and underpayments) announced for each fiscal year. Under this provision, sanctions will be adjusted to reflect how far above the national average tolerance level a state's combined error rate is. In addition the House bill extends to 120 days the grace period of 60 days (or 90 days at the discretion of the Secretary) immediately following the implementation date of a change to regulations affecting program eligibility or benefits determinations within which a State will be held harmless for errors made in implementing the change.

The Senate Amendment contains no comparable provision.

The Conference Substitute adopts the House provision with an amendment to streamline the appeals process for quality control claims. The determination to waive all or part of a State agency's quality control liability will be made by an administrative law judge if the administrative law judge determines that the State agency had good cause for failure to meet its error rate goal. In addition, to promote prompt resolution of these claims, State agencies will be assessed interest on outstanding liabilities if the administrative appeals process takes more than one year to resolve these claims. The Conference Substitute retains the provision that judicial review of the final determination of the administrative law judge will be a review of the administrative record created before the administrative law judge.

The House Bill directs the Office of Technology Assessment to undertake a study of measurement error in the food stamp quality control system and report with recommendations to the appropriate Congressional committees no later than 12 months after enactment of this subtitle. This section also directs the Secretary to conduct a study of major causal factors which contribute to the payment error rate. The Secretary shall also conduct controlled experiments to determine the degree of uniformity in quality control error rate measurements. The Secretary must report with recommendations ****1622*933** to the appropriate Congressional committees no later than 2 years from the date of enactment of this subtitle.

The Senate Amendment contains no comparable provision.

The Conference Substitute deletes the House provision. However, the managers understand that the U.S. Department of Agriculture intends to form a task force to study the statistical validity of the quality control system. To assist in that effort, the managers intend to request that the Office of Technology Assessment undertake the study that would have been required by the House bill. The managers also strongly urge the Secretary of Agriculture to conduct the study that would have been required by the House bill, and recommend that the Secretary consider conducting the controlled experiments that would have been required by the House bill.

Uniform reimbursement rates (H. 1361; S. 1301)

The House Bill reduces the enhanced funding level for State automatic data processing costs to 60 percent on July 1, 1995, and to 50 percent on July 1, 1996. It reduces the enhanced federal funding level for State food stamp fraud investigations to 70 percent on July 1, 1994, to 60 percent on July 1, 1995, and to 50 percent on July 1, 1996. Finally, the House Bill reduces the federal funding for State agency use of the Systematic Alien Verification for Entitlement program to 70 percent on July 1, 1994, to 60 percent on July 1, 1995, and to 50 percent on July 1, 1996.

The Senate Amendment reduces enhanced funding to 50% with respect to calendar quarters beginning on or after April 1, 1994.

The Conference Substitute adopts the Senate provision.

The House Bill stipulates that these reductions in federal match rates shall apply to payments to States for expenditures after either the end of the State fiscal year that ends during calendar year 1994, or in the case of a State with a State legislature which is not scheduled to have a regular legislative session in calendar year 1994 the end of the State fiscal year that ends during 1995.

The Senate Amendment provides that the Secretary may delay the effective date of this section for a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, where there is no mechanism in that State for appropriating the additional funds that would be required before the next regular legislative session.

The Conference Substitute adopts the Senate provision.

The Conference Substitute adds a section requiring that the Secretary of Treasury pay to the Secretary of Agriculture specified amounts for fiscal years 1994 through 1996 for the purchase, processing and distribution of additional commodities. Two states shall be selected by the Secretary of Agriculture to test the acceptability by, ease of storage and preparation by, and impact on low-income participants in the Emergency Food Assistance Program of more nutritious foods.

****1623*934** Implementation and effective dates (H. 1371)

The House Bill provides that sections 1312, 1315, 1316, 1317, 1322, 1323, 1326, 1331, 1333, and 1353 will become effective and be implemented on July 1, 1994. The quality control reforms of section 1356(a) (1) and (3) are effective October 1, 1991. The provisions of section 1356(a)(2) are effective and must be implemented beginning on October 1, 1992. Other provisions of the bill will become effective and must be implemented on October 1, 1993.

The Senate Amendment contains no comparable provision.

The Conference Substitute accommodates new section numbering consistent with changes in the bill and provides that section 1351 shall take effect on October 1, 1991, except subsection (c)(2) shall take effect on October 1, 1992. Section 1361 shall be effective with respect to calendar quarters beginning on or after April 1, 1994, and the Secretary is authorized to delay implementation for certain states with legislatures that meet biennially. Sections 1311, 1313, 1314, 1315, 1316, 1322, 1324, 1331, 1332, and 1351 shall take effect on September 1, 1994. Section 1321 shall take effect on September 1, 1994; state agencies shall implement section 1321 not earlier than September 1, 1994, and not later than October 1, 1996. Section 1312(b)(2) shall take effect on January 1, 1997. Except as otherwise provided in the subtitle, all other sections shall take effect and be implemented beginning on October 1, 1993.

The managers anticipate that these provisions will be implemented in the normal manner in that beginning on the effective date states will be required to apply several of the new rules for new applicants and for participants only at recertification.

The managers believe that several of these provisions amending the Food Stamp Act have the potential to have a significant and beneficial impact on many low-income households not now participating in the Food Stamp Program. The managers

expect the Secretary to engage in meaningful outreach activities to inform low-income populations about these changes. In addition, the 1990 Farm Bill authorized funding for outreach grants to state and local entities. The managers expect the Secretary to make funding for these projects a high priority in the Department's budget deliberations.

CHAPTER 4

TIMBER SALES

Timber Receipts–Forest Service

The House Bill contains no comparable provision.

The Senate Amendment contains no comparable provision.

The Conference Substitute provides for a new payment calculation for fiscal years 1994 through 2003 for payments to counties in the States of Washington, Oregon, and California in which National Forests are situated and which are affected by decisions related to the Northern Spotted Owl.

Notwithstanding the provisions of the Act of May 23, 1908, payments to counties for fiscal years 1994 through 1998 will be an amount based on the new payment calculation (an applicable percentage ***935**1624** times the average annual payment made to each State for each county pursuant to the Act of May 23, 1908 during the five year period of fiscal years 1986 through 1990).

In fiscal years 1999 through 2003, such payments will be the greater of an amount based on the new payment calculation or the amount calculated under the provisions of the Act of May 23, 1908.

The applicable percentage for fiscal years 1994 through 2003 will be as follows:

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Timber Sale Receipts–Bureau of Land Management.

The House Bill contains no comparable provision.

The Senate Amendment contains no comparable provision.

The Conference Substitute provides a new payment calculation for fiscal years 1994 through 2003 for counties sharing Bureau of Land Management timber sale receipts.

Notwithstanding the provisions of the Act of August 28, 1937 providing for a fifty percent share of the revenues paid to counties in the States of Oregon and California, and notwithstanding the provisions of the Act of May 24, 1939 requiring payments to counties, payments to each such county for fiscal years 1994 through 1998 will be based on a new payment calculation (equal to the applicable percentage times the average of the revenues to each such county during the five-year period of fiscal years 1986 through 1990).

In fiscal years 1999 through 2003, such payments will be the greater of the amount based on the new payment calculation or the amount calculated under the provisions of the Act of August 28, 1937 and the Act of May 24, 1939.

The applicable percentage for fiscal years 1994 through 2003 will be as follows:

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Note that the House recedes to the Senate on all material related to the executive and congressional budget process. The House conferees agreed to recede based on their understanding that inclusion of that material would make the entire conference report subject to a point of order in the Senate under section 306 of the Congressional Budget Act of 1974 and thereby endanger final enactment of the reconciliation bill. Therefore, the conferees' decisions should not be considered as necessarily judging the relative merits of the Senate and House positions.

DISCRETIONARY SPENDING LIMITS, THE PAY-AS-YOU-GO REQUIREMENT, AND RELATED PROCEDURES

Summary

Subtitles A and B of Title XV (Budget Process) of the House-passed bill amend the Balanced Budget and Emergency Deficit Control Act of 1985, more commonly known as the Gramm-Rudman-Hollings (GRH) Act, and the Congressional Budget Act (CBA) of 1974. The purpose of the amendments is to extend the discretionary spending limits and pay-as-you-go (PAYGO) requirement, both enforced by sequestration, through fiscal year 1998, and to make other changes in the budget process. Subtitle A, called the Budget Enforcement Act (BEA) of 1993, revises the procedures under the Gramm-Rudman-Hollings Act for enforcement of the discretionary spending limits and the pay-as-you-go requirement. Subtitle B revises and extends the discretionary spending limits in the Congressional Budget Act of 1974 (and makes other changes in the congressional budget process, which this joint statement discusses below).

Title XIV (Enforcement Procedures) of the Senate amendment extends the discretionary spending limits and the pay-as-you-go requirement through fiscal year 1998, and makes minor modifications in the procedures for enforcing them, by amending the Congressional Budget Act and the Gramm-Rudman-Hollings Act

In conference, the House recedes to the Senate. As noted, both the House and the Senate extend the discretionary caps and the pay-as-you-go requirement through 1998. Both chambers consider this extension to be important for enforcing the overall budget and economic plan. Thus, the conference disposition of title XV, subtitle A, of the House bill and title XIV of the Senate bill is consistent with the intent of both chambers.

Background

Congress enacted the Gramm-Rudman-Hollings Act (Pub. L. No. 99–177, tit. II, 99 Stat. 1037, 1038–1101 (1985)) in late 1985, following a period of prolonged deadlock over budgetary policies, to provide a strong incentive for the President and Congress to reduce the deficit each year through the regular legislative process. The Gramm-Rudman-Hollings Act established a declining series of deficit targets (referred to as "maximum deficit amounts") leading to a balanced budget in fiscal year 1991. The Act enforced the deficit targets by the sequestration process, under which automatic, ****1626*937** across-the-board spending reductions would occur if the projected deficit exceeded the deficit targets.

Two years later, after the Supreme Court ruled the sequestration triggering mechanism in the Gramm-Rudman-Hollings Act unconstitutional in Synar v. Bowsher, 478 U.S. 714 (1986), Congress amended the Act (by the Balanced Budget and Emergency Deficit Control Act of 1987, Pub. L. No. 100–119, tit. I, 101 Stat. 754, 754–784 (1987)), extending the goal of a balanced budget to fiscal year 1993 and placing responsibility for the automatic triggering of sequestration in the hands of the Director of the Office of Management and Budget (OMB).

Congress fundamentally revised the sequestration process with the Budget Enforcement Act (BEA) of 1990 (title XIII of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101–508, tit. XIII, 104 Stat. 1388, 1388–573 to –630 (Nov. 5, 1990) (codified as amended in scattered sections of 2 U.S.C. and at 15 U.S.C. S 1022 (Supp. II 1990)). First, the Act extended the process through fiscal year 1995 (although the budget was not required, nor expected, to be balanced by that time). Second, the Act made the deficit targets adjustable for changes in economic conditions and other factors. Third, the Act established adjustable discretionary spending limits to control the growth of annual appropriations and instituted a pay-as-you-go (PAYGO) requirement to ensure that legislative changes in mandatory spending and revenue levels do not increase the deficit in the net. The act also made these latter two procedures (in effect through fiscal year 1995) enforceable by sequestration. Congress intended that the appropriations caps and the pay-as-you-go requirement would control

subsequent legislation, so that Congress and the President would not undo the deficit reduction that the 1990 budget summit agreement accomplished. Congress has the same purpose for extending the appropriations caps and the pay-as-you-go requirement in this Act–to prevent future legislation from undoing the spending cuts and revenue increases agreed to in the budget resolution and the other titles of this Act, the Omnibus Budget Reconciliation Act (OBRA) of 1993.

The Congressional Budget Act of 1974 is linked to the procedures under the Gramm-Rudman-Hollings Act in various ways. In particular, the Congressional Budget Act of 1974 sets forth the deficit targets and discretionary spending limits used for purposes of sequestration.

1. DEFINITIONS (SECTION 250 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

Section 250 of the Gramm-Rudman-Hollings Act provides 21 definitions and treatments that underlie the other sections of the Act. Included are "budget authority," "outlays," "deficit," "sequester," "breach," "baseline," "discretionary appropriation," and "deposit insurance," among others.

House Bill

The House bill includes many wording changes. (In the following description, all references are to the paragraph numbers in the House bill unless noted.)

****1627*938** In section 250(b)(1), the bill deletes a provision that includes the Health Insurance (HI) Trust Fund (Medicare Part A) in the budget for purposes of Gramm-Rudman-Hollings. That provision is also deleted in the existing section 257(b)(3). Instead, a single provision treating HI as on-budget for all purposes of Gramm-Rudman-Hollings is included in the new section 250(b)(20). A similar general rule is incorporated into the Congressional Budget Act by an amendment made in subtitle B to section 403 of that Act.

In section 250(b)(2) and many places throughout the bill, any reference to "budgetary resources" is changed to a reference to "budget authority." This simplification is made possible by a change in the definition of budget authority, in the Congressional Budget Act, made by subtitle B.

In section 250(b)(3) the term "breach" is modified by deleting obsolete references to "categories." The bill also codifies existing practice, that the measurement of enacted appropriations follows rules specified in section 257, the baseline. (Those rules themselves are also clarified, especially regarding part-year appropriations.)

The existing section 250(b)(4), defining "category," is deleted as obsolete.

In section 250(b)(6), defining "discretionary," and in section 250(b)(7), defining "direct spending," scorekeeping rule #3 is codified. This scorekeeping rule has been Gramm-Rudman-Hollings practice since 1990 and congressional practice since the Congressional Budget Act was enacted, if not before. Under scorekeeping rule #3, if the Appropriations Committee writes substantive legislation that would otherwise be considered direct spending, the effect is charged against the discretionary caps. Vice versa if an authorizing committee writes provisions that would otherwise be considered discretionary appropriations. The purpose is to maximize Committee accountability.

When this scorekeeping rule is invoked, OMB later reclassifies the amount of "otherwise direct spending" placed on the discretionary scorecard (or the amount of discretionary spending placed on the pay-as-you-go scorecard), using the authority to reclassify under section 251(b)(1). Thus, for example, if an appropriations Act includes a direct spending increase, initially the Appropriations Committee is held accountable by having the increase entered on the discretionary scorecard, but ultimately it is held accountable by having the discretionary caps lowered by the amount of the increase.

In section 250(b)(8) which replaces (b)(18), the bill envisions a new list of mandatory and discretionary appropriations to

be included in the Statement of Managers. It should be noted that even with no changes in definitions or interpretations, the existing list needs updating (and can be updated without a change in statute) simply to reflect the many new accounts, changes in account names, or changes in account numbers made since 1990, especially as a result of the reform of credit accounting.

In section 250(b)(9), which defines "current" economic and technical assumptions to be those consistent with the President's ***939**1628** budget submission, the bill allows correction of pure errors in the statement of economic and technical assumptions, if the corrections are submitted in the mid-session review. It should be noted that the existing interpretation of Gramm-Rudman-Hollings is that pure errors can and should be corrected.

In section 250(b)(10), which defines "real economic growth," the bill changes the measurement from Gross National product (GNP) to Gross Domestic Product (GDP), a similar concept of annual economic activity that is now the standard used by the government and economics profession.

In section 250(b)(14), which defines "outyear," the bill defines that term to mean each fiscal year after the budget year through 1998 for purposes of enforcing discretionary funding. But the term is defined to cover fiscal years through 2002 for pay-as-you-go purposes. This is explained more fully in the discussion of 5-year rolling enforcement under the House provisions for section 252.

The existing section 250(b)(17), dealing with pay-as-you-go scoring of legislation at the end of the 101st Congress, is deleted as obsolete.

In section 250(b)(18), defining and setting forth composite outlay rates, the definition is simplified by dropping as obsolete the separate rates for the international and domestic categories. Previously outlay rates were used to compute the spendout of the "Special Budget Authority Allowance" for those two categories, both to calculate an upward cap adjustment and a decrease in the available "Special Outlay Allowance" by the same amount. In the bill, the use of a composite outlay rate applies only to the simplified calculation of an inflation adjustment; the Special Budget Authority Allowance is dispensed with, and the Special Outlay Allowance is handled in other ways.

In section 250(b)(19), the definition of "asset sale" is limited to non-loan assets since credit reform accounting now handles loan asset sales. This codifies the existing treatment.

Senate Amendment

The Senate amendment makes no changes to section 250 of the Gramm-Rudman-Hollings Act.

Conference Agreement

The House recedes.

2. DISCRETIONARY SPENDING LIMITS (SECTION 251 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

The Budget Enforcement Act of 1990 established discretionary spending limits for fiscal years 1991 through 1995 in section 601(a)(2) of the Congressional Budget Act of 1974. The limits on discretionary budget authority and discretionary outlays are used for spending control under section 251 of the Gramm-Rudman-Hollings ***940**1629** Act and are enforceable by the sequestration process. The Budget Enforcement Act of 1990 divides total discretionary spending into three categories–defense, international, and domestic–for fiscal years 1991 through 1993. For fiscal years 1994 and 1995, the limits apply to total discretionary budget authority and total discretionary outlays.

Additionally, section 601(b) of the Congressional Budget Act of 1974 creates a point of order in the Senate against the

consideration of any budget resolution or appropriations bill that violates the discretionary spending limits.

Section 251 of the Gramm-Rudman-Hollings Act sets forth a detailed procedure for the periodic, automatic adjustment of the discretionary spending limits. Adjustments are made for various factors, including (among others) changes in accounting concepts and inflation, quota increases for the International Monetary Fund, funding increases for the compliance initiative of the Internal Revenue Service, and emergency spending if so designated by the President and Congress.

Section 251 also provides: (1) that a within-session sequester may occur prior to July 1 during a fiscal year, but after that date the amount of the breach is dealt with in the subsequent fiscal year; and (2) that sequestration reductions must be applied uniformly (at the account and, if appropriate, activity level).

House bill

The House bill continues the use of adjustable discretionary limits ("caps"). They initially are set forth in a new section 601 of the Congressional Budget Act of 1974, and cover the period 1994–1998. The current limits for fiscal years 1994 and 1995 are revised and new limits are established for fiscal years 1996 through 1998 (see table below). Those limits are consistent with the fiscal year 1994 budget resolution, H. Con. Res. 64 (103d Congress), adopted by the House on March 31, 1993, and by the Senate on April 1. As is the case under current law, separate limits are established each year for total discretionary budget authority and outlays.

Consistent with the budget resolution, the bill reduces the current budget authority limits for fiscal years 1994 and 1995 by almost $27 billion. It sets the outlay limits equal to those stated in OMB's most recent preview report plus the outlays flowing from the existing "Special Budget Authority Allowance" (section 251(b)(2)(E)(i) and (ii) of current law, as made applicable to fiscal years 1994 and 1995 under the last sentence of the current section 253(g)(1)(B)). This allows the deletion, as obsolete, of those provisions.

Current law, the House bill, and the Senate amendment have the same outlay limits for fiscal years 1994 and 1995. In the table below, the current and Senate outlay limits appear lower than those in the House bill only because they do not yet reflect the outlays from the "Special Budget Authority Allowance," an adjustment that will be made at the end of the session. The House bill and Senate amendment have the same budget authority and outlay limits for fiscal years 1996–1998.

Unlike the current process (in which adjustments are made in the limits when the President submits his budget and when the ****1630*941** OMB Director issues a final sequestration report for the year), the bill allows adjustments to be made whenever appropriate. Further, all references to adjustments for fiscal years 1991–1993 are dropped as obsolete.

A "discretionary scorecard" is added by the bill. The scorecard captures the multiyear effects of individual appropriation Acts (as well as any sequester that occurs), listed by fiscal year. This provision codifies existing practice, and allows a clearer explanation of scorekeeping and enforcement under section 251.

In subtitle B, the bill remains with modifications (in a new section 602) the former section 606(d)(2) of the Congressional Budget Act. That section of the Congressional Budget Act reflects the fact that some adjustments to the discretionary limits are contingent upon enactment of appropriations for specific purposes. Those adjustments have the effect of "holding harmless" for some or all of those specific appropriations. In Congress, the analogous way to "hold harmless" is to not score those costs, which is what the existing section 606(d)(2) provides. The new section 602 simply conforms that approach to subtitle A.

In specific, the House bill provides for the following:

In section 251(b)(1), adjustments are required for changes in accounting concepts, as in current section 251(b)(1)(A). The purpose of this provision of current law is to ensure that discretionary programs are neither unfairly squeezed or given an inappropriate windfall. This is accomplished by adjusting the limits upward or downward to the extent that a change in what is scored as "discretionary" is just a deficit-neutral accounting change. Such a change can occur when, for example, accounting concepts are altered by the scorekeepers. The House bill makes clear that a change in accounting concepts also includes changes in scorekeeping conventions, classifications, and definitions.

An accounting change can also occur when a new law has the effect of changing the way an existing budgetary transaction should be scored, even under current accounting concepts. For example, a new law might make an existing discretionary program mandatory, or vice versa. But it is not always obvious whether such a law is establishing a new program or, in effect, reclassifying an existing one. Therefore, if (for example) Congress intends to convert an existing discretionary program to mandatory, it should provide legislative history that the new law is intended as a "change in budget classifications" under section 251(b)(1). If so, the limits are changed by the baseline amount of that program (as it existed before the bill), and savings or costs are entered on the pay-as-you-go scorecard only to the extent that they are decreased or increased by the bill. If not (i.e. if the intent is to create a new program that does not replace an existing program), the limits are not changed. Scorekeepers should give weight to Congressional intent in judging whether a reclassification has occurred.

Treatments of reclassifications are addressed in the scorekeeping rules, in part to explain the discretionary and pay-as-you-go rules that scorekeepers should follow when faced with a law that has the effect of reclassifying an existing budgetary transaction, and in part to cover the period after the enactment of the law that will generate the reclassification. The latter is needed because, ***942**1631** under existing law, reclassifications cannot generate cap adjustments until the next session's "preview report." One purpose of the House bill is to allow cap adjustments during the immediate session.

In section 251(b)(2), the bill provides for increases or decreases to the limits if actual inflation differs from inflation as projected at the time of the fiscal year 1994 budget resolution. This is the same approach taken by current law in section 251(b)(1)(B). The bill simplifies the calculation by allowing the budget authority limit to be adjusted directly to reflect any observed change in inflation, and the outlay limit to be changed by the average composite spendout of the budget authority change. (Current law required making a baseline projection using two different sets of inflators, and treating the resulting budget authority and outlay differences as the amount by which the limits should be changed.)

The House bill also resolves the question, under current law, of whether a change in inflation applies to the entire amount of the limits or just to the "non-pay" amount; under the House bill, changes in inflation apply to the entire amount of the limits.

Finally, the bill establishes benchmark levels of "expected inflation" for the fiscal year 1996–98 cycles consistent with levels for the GDP fixed-weight deflator assumed in the fiscal year 1994 budget resolution. It also rebases the expected fiscal year 1993 benchmark (which will produce the inflation adjustment occurring with the fiscal year 1995 Budget) at the level assumed in that budget resolution.

The current section 251(b)(1)(C), allowing adjustments if OMB changes is estimates of the amount of subsidy budget authority needed to finance a given volume of direct or guaranteed loans, is deleted. Those adjustments have proven very complex, and have had very little effect on the total levels of the limits.

The current section 251(b)(2)(B), providing adjustments if appropriations were enacted in 1990 or 1991 forgiving any part of Egypt or Poland's debt to the US, is deleted as obsolete.

In section 251(b)(3), the bill provides an adjustment to the budget authority limit if a "replenishment" of the International Monetary Fund quota is enacted in an appropriation Act. This extends through 1998 a similar provision of current law, section 251(b)(2)(C). There are no outlays associated with such an appropriation, and many analysts do not consider it to be budget authority; it is akin to an equal-value exchange of lines of credit. Such replenishments occur periodically, and one might be called for by fiscal year 1998.

In section 251(b)(4), the bill retains the current adjustment to the limits that occurs if appropriations for the IRS compliance initiative are above the levels in CBO's 1990 baseline. Under section 251(b)(2)(A) of current law and in the House and Senate bills, this provision applies through fiscal year 1995. The House bill simplifies the text by dropping portions relating to years already completed.

In section 251(b)(5), the bill provides a new adjustment for the net costs of the advance appropriations made in section 601 of Public Law 102–391. OMB has estimated those costs at zero, so the limits would not actually be adjusted under this provision. However, ***943**1632** as described previously, Congress would be held harmless for CBO's higher estimate of the costs by the operation of section 602 of the Congressional Budget Act, as provided in subtitle B of the bill. The purpose

of this approach is to minimize CBO–OMB scoring differences. While such estimating differences are inevitable, this is the only specific budget authority and outlay difference already on the books (because the advance appropriations were enacted last session); therefore, that estimating difference is resolved by this bill.

In section 251(b)(6), the bill provides a new adjustment to the extent that the costs of renewing expiring multiyear subsidized housing contracts or providing replacement contracts when units are lost due to "prepayments" differs from current estimates. This adjustment reflects the bitter experience Congress has had with estimates of expiring housing contracts. When such contracts expire or are prepaid, they must be renewed or the stock of subsidized housing decreases–renters are evicted. The existing baseline, the 1994 budget resolution, and the limits in the bill all include the currently estimated costs of those renewals in each fiscal year. But given the poor quality of past estimates, this bill provides an adjustment if the estimates prove wrong again.

A number of features should be noted. First, the adjustment might be up or down. Second, the adjustment is limited to changes in costs solely for renewals/prepayments. There would be no adjustment triggered by an increase or decrease in funding for subsidized housing generally, or for an appropriation that could be used for this or some other purpose. Likewise, if a later law transferred or reprogrammed any extra funding to another purpose, the limits would be adjusted down. In other words, the amount of expiring units, though quite hard to estimate in advance, is ultimately a matter of fact, not of Congressional policy–Congress cannot create extra costs simply by choosing to increase the appropriation.

In section 13560, (contained in title XIII of the House bill), a new adjustment for fiscal year 1994 and 1995 is created to cover appropriation increases for Medicare administrative costs related to enforcement. The purpose is to reduce erroneous or fraudulent payments. This provision was also included last session in H.R. 11, a bill vetoed by President Bush. This provision is similar to the IRS adjustment in that it is made only if appropriations bills fund this activity above the existing baseline level, is limited to the amount of the increase, and is further limited to not more than an amount specified in the provision.

In section 251(b)(7), current law is repeated; it provides that the limits are adjusted for any appropriation that is designated as an emergency by the President and Congress. Congress must designate by statute, and the President may independently designate some or all of the amount Congress designates. When funds are designated as an emergency, the limits are increased by the amount so designated; when funds previously designated as emergency are rescinded, the limits are decreased. Current law is modified only by dropping an obsolete provision relating to Operation Desert Shield, and by requiring presidential designations to be made in writing.

****1633*944** As discussed above, the bill deletes the current section 251(b)(2)(E)(i) and (ii), the "Special Budget Authority Allowance."

In section 251(b)(8)(A), which is akin to the current section 251(b)(2)(E)(iii), a budget authority estimating margin is provided, extending through fiscal year 1998. The estimating margin is set at no more than one-tenth of one percent of the amount of the budget authority limit for each fiscal years 1994–1998. The intent of the provision is to provide a margin if OMB's estimates of indefinite budget authority are higher than CBO's.

In section 251(b)(8)(B), which is akin to the current section 251(b)(2)(F), an outlay estimating margin is provided, extending through fiscal year 1998. Under current law, the outlay estimating margin for fiscal years 1994 and 1995 equals $6.5 billion less the amount of outlays flowing from the "Special Budget Authority Allowance." In the bill, current law is extended through 1998; calculation of the subtraction associated with the "Special Budget Authority Allowance" is likewise extended through fiscal year 1998 (as though it had applied through that year and had not been repealed); and the total amount of the outlay estimating margin is further limited to no more than one percent of the outlay limit for each fiscal years 1994–1998. As with the budget authority margin, the intent of the provision is to provide a margin if OMB's estimates of outlays are higher than CBO's.

In section 251(c)(1), the bill establishes a "scorecard" for discretionary amounts, as discussed above. While this is a new provision in law, it confirms to OMB's existing practice. OMB is allowed to correct erroneous entries to the scorecard; as noted, this codifies current interpretations. The scorekeeping related to the scorecard is derived from the current section 251(a)(7), with the language simplified and clarified without any change in its effect.

In section 251(c)(2), the bill provides for "lookback" enforcement of supplemental appropriations enacted after June 30–so late in the fiscal year that a sequestration might be infeasible. The effect of this provision is the same as section 251(a)(5) of current law, which penalizes breaches caused by a post-June supplemental by lowering the next year's limits. The bill accomplishes the same result by putting the post-June costs on the next year's scorecard. It is easier to conform Congressional scorekeeping to the approach in the bill than to conform budget resolution allocations to the current approach (since that could require reducing the allocations already made in a budget resolution). The bill also clarifies the treatment of any fiscal year 1993 "lookback breach"–current law requires the reduction of "that category" for the next year; the phrase is ambiguous in that the meaning of "category" changes between fiscal years 1993 and 1994.

In section 251(d) of the bill, sequestration is provided as the remedy in the event a discretionary limit is breached. This provision mirrors the current section 251(a)(1)–(4), except that a de minimis is provided–no sequestration is needed if a budget authority or outlay breach would otherwise require a budget authority sequestration of less than $50 million.

In section 251(d)(2), which sets forth the calculation of the percentage sequestration, the bill clarifies the treatment of offseting collections credited to discretionary appropriations; they are subject ****1634*945** to discretionary sequestration, not pay-as-you-go sequestration. Current law is ambiguous.

In section 251(d)(3), which allows the President to exempt some or all military personnel from sequestration, the language is simplified with no change in effect.

In section 251(e), which is akin to the current section 251(a)(6), a "within session" sequestration is provided for if a pre-July supplemental causes a breach. The language is simplified with no change in effect.

Senate Amendment

Section 12(a) of the concurrent resolution on the budget adopted in April of 1993 provides that "[t]he Senate declares that it is essential to ... extend the system of discretionary spending limits set forth in section 601 of the Congressional Budget Act of 1974." H. Con. Res. 64, 103d Cong., 1st Sess. S 12(a)(2), 139 Cong. Rec. H1747, 753 (daily ed. Mar. 31, 1993) (adopted). Section 12(b) set forth those limits for fiscal years 1996 through 1998 and created a point of order in the Senate to enforce them. See id. S 12(b).

In furtherance of the budget resolution, section 14002 of the Senate amendment continues the use of adjustable discretionary spending limits through fiscal year 1998. Unlike the House bill, the Senate amendment retains the current limits for fiscal years 1994 and 1995 without charge and establishes new limits for fiscal years 1996 through 1998. (See table below.) Section 14002 provides that the discretionary spending limits for fiscal years 1996 through 1998 are those set forth in section 12(b)(1) of the budget resolution, which the House also used. As is the case for fiscal years 1994 and 1995 under current law, the Senate amendment establishes separate limits each year for total discretionary budget authority and total discretionary outlays.

The Senate amendment retains, with minor technical and conforming changes, the current law's procedures for periodically adjusting the discretionary spending limits.

Conference Agreement

The conference agreement contains the Senate language.

The table below sets forth the proposed discretionary spending limits in the House bill, the Senate amendment, and the conference agreement.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

****1635*946** 3. PAY-AS-YOU-GO (PAYGO) REQUIREMENT (SECTION 252 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

The Budget Enforcement Act of 1990 established a pay-as-you-go (PAYGO) requirement for fiscal years 1991 through 1995 in section 252 of the Gramm-Rudman-Hollings Act. Under pay-as-you-go, direct (mandatory) spending and revenue legislation may not increase the deficit for these fiscal years. Sequestration enforces this requirement, if necessary, applying to selected direct spending programs. A sequester does not alter revenues, nor does it affect such direct spending programs as Social Security, net interest, Federal retirement, most veterans' benefits, low-income entitlements, and regular unemployment benefits. The pay-as-you-go process does not require any offsetting action when the spending increase or revenue decrease is due to the operation of existing law, such as greater-than-forecast increase in the number of persons participating in an entitlement program.

Spending for Social Security benefits and Federal deposit insurance commitments in effect at the time the Budget Enforcement Act of 1990 was enacted (whether from current law or new legislation), as well as emergency direct spending and revenue legislation (if so designated by the President and by Congress in statute), is exempted completely from pay-as-you-go accounting and enforcement.

The budgetary effects of direct spending and revenue legislation are tracked over the full five years of the process using a pay-as-you-go scorecard. Although it covers five fiscal years, pay-as-you-go is enforced one year at a time. In determining whether a pay-as-you-go sequester for a fiscal year is necessary, the pay-as-you-go deficit calculations must take into account enacted legislation affecting both that and the preceding fiscal year.

House bill

The House bill amends section 252 of the Gramm-Rudman-Hollings Act, extending the pay-as-you-go process for legislation enacted through fiscal year 1998 (including the effects of such legislation through fiscal year 2002). The bill retains the basic elements of the existing process, consolidating and clarifying some existing provisions, rebasing the pay-as-you-go scorecard to zero, and adding two new features. The pay-as-you-go process continues to involve ***947**1636** the sequestration of selected direct spending programs if there is a net increase for a fiscal year due to the enactment of direct spending and revenue legislation.

A significant feature of the House bill is that the pay-as-you-go scorecard is created anew and applies only to bills enacted after this reconciliation bill. In other words, the pay-as-you-go scorecard is rebased to zero. Rebasing has the effect of wiping out the surplus shown by OMB on the current pay-as-you-go scorecard, and of excluding all the additional deficit reduction from the scorecard as well. Put most simply, rebasing the pay-as-you-go scorecard guarantees that the net entitlement cuts and tax increases included in this reconciliation bill are 100% dedicated to deficit reduction. Any later attempt to spend those savings is illegal, and will create a completely offsetting sequestration.

Rebasing was a goal of the 1994 budget resolution, H. Con. Res. 64: section 11, a Sense of the House provision, and section 12(c), a new Senate point of order, both addressed this issue. As stated in the House report on the budget resolution, "the intent is that later legislation not undo the deficit reduction this budget resolution calls for." Following through, rebasing guarantees that later legislation not undo the deficit reduction this reconciliation bill achieves. This provision reinforces the effect of the 1994 budget resolution, which provided no room for future deficit increasing legislation.

The first new feature of the bill is the establishment of a pay-as-you-go scorecard and "five-year rolling enforcement." The scorecard captures amounts for the budget year and the ensuing four fiscal years. For example, under the "fixed" approach established by the Budget Enforcement Act of 1990, a measure enacted for fiscal year 1995 would be scored only for that one year, since pay-as-you-go expires after 1995 under current law. Under the Senate amendment, a measure enacted for fiscal year 1995 is scored through fiscal year 1998, since the Act is extended through that year. Under the House bill, the same measure would be scored for five years, fiscal years 1995–1999. Thus, the pay-as-you-go scorecard established by the House bill will include amounts through fiscal year 2002. A pay-as-you-go sequester could occur during fiscal years 1999 through 2002, based on pay-as-you-go legislation enacted in fiscal year 1998 and earlier years. In sessions after that for budget year 1998, no new entries would be made on the scorecard. The intent of the House bill is to provide a greater incentive for new pay-as-you-go legislation, in net, to conform to the norm of deficit neutrality.

The second new features is a de minimis rule, comparable to the one for discretionary spending, that sets aside the requirement for a sequester if the violation is less than $50 million.

In specific, the House bill provides for the following:

In section 252(a)(1), a pay-as-you-go scorecard is established, as noted. While this is new to the statute, it is current OMB practice. OMB is allowed to correct erroneous entries to the scorecard; as noted, this codifies current interpretations. The scorekeeping related to the scorecard is derived from the current section 252(d), with the language simplified and clarified without any change in ****1637*948** its effect. The bill clarifies that costs or savings are measured relative to baseline.

The bill also codifies and clarifies what to do if expiring direct spending programs or taxes, assumed to be extended, actually expire (see section 257(b)). The budgetary effects of a Congressional decision to allow such an expiration should be entered on the scorecard, and at the end of session in which the provision expires.

The bill also codifies the current treatment of debt service; only the costs or savings of a direct spending or revenue bill count, not the effect that the costs or savings will have on the government's interest payments.

The bill also codifies a scorekeeping convention for legislation that has incidental effects on the intragovernmental receipts of Federal retirement trust funds. Excluding those incidental effects is current practice. Under this rule, only the retirement effects of retirement legislation are entered on the pay-as-you-go scorecard; if the effects on intergovernmental receipts were scored, the result could be that a bill cutting retirement benefits would be shown as increasing the deficit, and vice versa.

Legislative provisions whose purpose is to alter agency payments to retirement trust funds are not "incidental" and so are not covered by this rule. If Congress desires to hold the appropriations process harmless for such an alteration in required agency payments, the legislative provisions should be identified by Congress as a change in accounting concepts, so that the discretionary caps would be automatically adjusted.

In section 252(a)(2) of the bill, 5-year rolling scorekeeping through 2002 is established, as discussed above.

In section 252(a)(3) of the bill, the "lookback" feature of current law is simplified and corrected. Lookback was included in the Budget Enforcement Act of 1990 amendments because it was considered infeasible to administer within-session sequestrations each time a pay-as-you-go bill increasing the current-year deficit was enacted. Under lookback, such current-year effects were instead controlled by adding them to the budget-year effects; the sum is enforced when the end-of-session sequestration report is made. But through a drafting error in Budget Enforcement Act of 1990, lookback not only counts (in the budget year) the current-year effects of current-year legislation, but also the current-year effects of prior legislation. The House bill corrects the error.

In section 252(a)(4), current law is repeated; it provides that the scorecard exclude any costs/savings provision of a direct spending or revenue law that is designated as an emergency by the President and Congress. Congress must designate by statute, and the President may independently designate. Current law is modified only by requiring presidential designations to be made in writing.

In section 252(b)(1), akin to the current section 252(a), sequestration is provided if Congress ends a session with a net deficit increase on the scorecard for the budget year. As noted, a $50 million deminimis is provided by the House bill.

In section 252(b)(2), the sequestration calculation and process is set forth; the provisions are akin to the current section 252(b). The bill clarifies the current treatment of the three so-called "Automatic ***949** Spending Increase" (ASI) programs: the maximum reduction is made if any sequestration is needed. The bill also moves sequestration of the guaranteed student loan program from step 2 (where it is covered by a special rule) to step 3 (where it is sequestered across-the-board, as needed). The same treatment is provided for the new direct student loan program.

In section 252(b)(3), the bill simplifies accounting and prevents over-sequestering. The sequestration of some programs provide savings (or in rare cases, costs) in the first outyear. Under current law, those extra savings are not counted toward meeting a budget-year overage. This results in a higher sequestration percentage, and necessitates putting the outyear

sequestration savings on the next year of the pay-as-you-go scorecard. An exception is made for CCC, for which about half of the savings occur in the first outyear; those savings are counted toward offsetting a budget-year overage, and are not placed as a credit on the pay-as-you-go scorecard. The House bill simplifies the Act by adopting the CCC model across the board, thus preventing over-sequestration and eliminating any need to make extra entries on the scorecard.

Senate Amendment

Section 12(a) of the concurrent resolution on the budget adopted in April of 1993 provides:

> (a) Purpose.–The Senate declares that it is essential to–
>
> (1) ensure compliance with the deficit reduction goals embodied in this resolution;
>
> ***
>
> (3) extend the pay-as-you-go enforcement system;
>
> (4) prohibit the consideration of direct spending or receipts legislation that would decrease the pay-as-you-go surplus that the reconciliation bill pursuant to section 7 of this resolution will create under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. ***
>
> H. Con. Res. 64, 103d Cong., 1st Sess. S 12(a), 139 Cong. Rec. 747, 753 (daily ed. Mar. 31, 1993) (adopted).

The Senate amendment amends section 252 of the Gramm-Rudman-Hollings Act, extending the pay-as-you-go process for legislation enacted through fiscal year 1998. The pay-as-you-go scorecard ends with fiscal year 1998; the effects of enacted direct spending and revenue legislation in fiscal year 1999 and beyond are not taken into account. Additionally, the Senate amendment requires that the yearly pay-as-you-go balances be adjusted for deficit reduction achieved by the Omnibus Budget Reconciliation Act of 1993.

Section 12(c) of the budget resolution establishes a new point of order in the Senate that supplements the pay-as-you-go process under the Gramm-Rudman-Hollings Act. The point of order bars consideration of any legislation affecting direct spending or revenues (with certain exceptions) that would increase the deficit above the levels for fiscal years 1994 through 1998 set in the budget resolution for fiscal year 1994. The point of order also applies to any such increases in deficit levels for fiscal years 1999 through 2003. While this new prohibition applies to individual pay-as-you-go ****1639*950** measures as they are considered, the pay-as-you-go requirement under the Gramm-Rudman-Hollings Act, in contrast, is applied at the end of a session to all pay-as-you-go measures enacted into law.

Conference Agreement

The conference agreement contains the Senate language.

4. DEFICIT TARGETS OR “MAXIMUM DEFICIT AMOUNTS” (SECTION 253 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

The Budget Enforcement Act of 1990 revised the deficit targets (maximum deficit amounts). The Act revised the deficit targets for fiscal years 1991 through 1993 and established new targets for fiscal years 1994 and 1995 (the targets for fiscal years 1991 through 1995 were set forth in section 601(a)(1) of the Congressional Budget Act of 1974). The sequestration procedures for enforcing the deficit targets are set forth in section 253 of the Gramm-Rudman-Hollings Act. Section 253 also provides for the periodic adjustment of the deficit targets.

The deficit targets were required to be adjusted for fiscal years 1992 and 1993, and are adjustable at the President’s option for

fiscal years 1994 and 1995. The President has chosen to make the 1994 adjustment, and will decide whether or not to adjust the fiscal year 1995 targets next year. Whenever a deficit target is adjusted, it is set at the level consistent with the discretionary spending limits and the pay-as-you-go requirement. Therefore, when adjusted, the deficit target provides no constraint beyond the appropriations caps and pay-as-you-go requirement, so no deficit sequester can occur.

Section 605 of the Congressional Budget Act of 1974 establishes a point of order in the Senate against the consideration of any measure that would cause the deficit target for the coming fiscal year to be exceeded. Section 606, in subsections (b) and (c), prohibits the consideration in the House and Senate of a budget resolution recommending a deficit in excess of the applicable deficit target.

House Bill

The House bill retains the procedures in section 253 of the Gramm-Rudman-Hollings Act for enforcing the deficit targets through fiscal year 1995. It also retains the feature in current law which allows the President to adjust the deficit targets again when he submits his budget for fiscal year 1995 early next year. The only amendments to section 253 are conforming; the intent is that section 253 remain in effect through 1995.

Senate Amendment

The Senate amendment contains no such changes.

Conference agreement

The conference agreement contains no such changes.

****1640*951** 5. SEQUESTRATION REPORTS AND ORDERS (SECTION 254 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

Under the Gramm-Rudman-Hollings Act, as amended, there are several basic requirements for sequestration reports and orders set out in section 254: (1) sequestration is triggered by a report from the OMB Director; (2) the OMB Director must issue a preview sequestration report with the President's budget submission, an update sequestration report by August 20, and a final sequestration report 15 days after the end of a session; (3) if a sequester is required, the President must issue a sequestration order, on the same day that the final OMB sequestration report is issued, that conforms strictly with the report; (4) the CBO Director must also issue such reports, five days before the OMB Director's reports are issued, and OMB must explain its differences with CBO; and (5) the contents of sequestration reports are prescribed in the Act.

In addition, the OMB Director must use for each sequestration report issued for a fiscal year the same economic and technical assumptions that underlie the President's most recent budget submission.

House Bill

The House bill retains the basic requirements for sequestration reports and orders set forth in section 254, with two changes: (1) the elimination of the update sequestration reports, currently required to be issued by OMB and CBO in August of each year; and (2) the weekly issuance by the OMB Director of reports on the discretionary and pay-as-you-go scorecards, beginning the second Wednesday in September.

Specific provisions include:

In section 254 (a) and (c), the bill deletes the January 21 date for the President to announce his decision on adjusting the

maximum deficit amount. For fiscal year 1994, that provision has been executed; for fiscal year 1995, the President's decision comes with his budget submission.

In section 254(b) (2) and (3), sequestration reports are required to include bill scoring to date, which is current OMB practice.

In section 254(e), a new requirement for bill cost reports is set forth, replacing similar requirements in the current section 251(a)(7) and section 252(d).

In section 254(f), a new requirement for weekly scorecard reports, starting the second week in September, is created, as noted. This is current OMB practice.

Also as noted, the current section 254(f), the annual update report, is deleted; it is made unnecessary by the scorecard reports.

Senate Amendment

The Senate amendment contains no such changes.

****1641*952** Conference Agreement

The conference agreement contains no such changes.

6. OTHER MATTERS

Current Law

The Gramm-Rudman-Hollings Act, as amended, contains additional sections that relate to the sequestration process.

Section 255 lists programs and activities that are exempt from sequestration.

Section 256 provides exceptions, limitations, and special rules that determine the manner in which sequestration is applied to certain programs and activities.

Section 257 prescribes the methodology for constructing baseline estimates for purposes of measuring appropriations bills and comparing direct spending and revenue bills to the baseline.

Section 258 and 258A-C contain certain "fast-track procedures" dealing with suspension of budget enforcement procedures in the event of war or low economic growth (section 258); the modification of a presidential sequestration order (section 258A); presidential authority to propose modifications in a sequester of defense programs, projects, and activities (section 258B); and a special reconciliation process (in the Senate only) for responding to an anticipated or actual sequester (section 258C).

Section 274 of the Gramm-Rudman-Hollings Act provides for expedited judicial review of cases involving the operation of the Act and establishes a "fallback procedure" for triggering sequestration through the legislative process.

Section 275 provides effective dates and expiration dates for sections of the Gramm-Rudman-Hollings Act.

House Bill

The House bill makes technical and conforming changes in the following sections of the Gramm-Rudman-Hollings Act: 255,

256, 257, 258, and 258A–C.

The list of exempt programs and activities in section 255 is recodified to bring it up to date. Specifically:

In section 255, the lists of accounts or activities exempt from sequestration are repeated with technical changes. Many accounts have had name changes and/or account number changes since 1990. Some accounts have expired. The bill also codifies exemptions that are freestanding provisions of law (conservation reserve; vaccine compensation). But there are no changes in what is exempt.[1]

In section 255(g)(1)(A), the bill exempts credit liquidating and financing accounts: financing accounts because they are non-budgetary; liquidating accounts because they pay only for prior legal obligations of the government, which are exempt ****1642*953** under the current section 255(g)(2). As a result of this single listing, credit accounts are no longer listed under section 255(g)(2).

The bill deletes as unnecessary the current section 255(f), exempting the base amounts of Automatic Spending Increase programs from sequestration. The base amounts of the ASI programs are still exempt, and only the increase is subject to sequestration.

In the new section 255(f) created by the bill, the current optional exemption for military personnel is set forth. This corrects an error of current law, which contains two subsection (h)'s. The language also removes an obsolete reference to a "snapshot date."

In section 5181 of the House bill (contained in title V), section 2161 of the Public Health Service Act contains an exemption from sequestration for the new National Childhood Immunization Trust Fund.

The bill also makes corrections or clarifications to section 256 of the Gramm-Rudman-Hollings Act, which provides special rules for sequestration. Specifically:

In section 256(a), "budget-year sequestration," the 1st sentence clarifies existing practice–that a sequestration shall start with the date of the presidential order and apply to a program for the remainder of the fiscal year, unless the Act specifies otherwise. This makes unnecessary the current section 256(1)(4).

The second sentence is a conforming amendment. It takes the idea of crediting outyear effects to the sequestration (as explained in the discussion of section 252) and (1) treats section 253 sequestration the same way for purpose of calculating sequestration percentages, and (2) credits section 252 sequestrations against the maximum deficit amount the same way to prevent inadvertent section 253 sequestrations when the maximum deficit amount has been fully adjusted.

The current section 256(b), relating to the sequestration of the guaranteed student loan program, is deleted, for the reasons explained above under section 252. A new section 252(l) sets forth the mechanism for providing across-the-board sequestration of that program and the new direct student loan program. Sequestration is accomplished by raising the origination fees by an amount that reduces loan costs by the standard sequestration percentage applicable to all direct spending programs in the "across-the-board" category. This may be the most logical way to sequester from those programs even in the absence of a special rule.

In section 256(e), the bill deletes obsolete provision applicable to fiscal year 1986.

In section 256(h)(4), the bill deletes a double listing of Office of Thrift Supervision and the no longer extant REFCORP.

In section 256(j), the special rule for CCC sequestration, the bill deletes as redundant the current paragraph (5)–CCC is not an Automatic Spending Increase program (only those specifically listed under section 256(b) are), and so is not subject to a double reduction. The bill inserts a new paragraph (5), ****1643*954** which simply incorporates existing sequestration rules for the diary program, found in the Agricultural Act of 1949, into the text of the Budget Enforcement Act.

In section 256(k), the special rule for sequestration of the AFDC JOBS program, the bill makes a purely technical

correction to the formula allocation by state of AFDC amounts that should apply after the program is cut by the full amount of a sequestration.

The bill also clarifies existing rules relating to the computation of a baseline.

For discretionary programs, the baseline follows historical practice in assuming inflation adjustments until an appropriation for the fiscal year is enacted. There are three separate reasons for the baseline to reflect inflation rather than the discretionary limits imposed by section 251. (1) A "capped" baseline contains only a discretionary aggregate–it has no programmatic detail. There are a number of legal requirements in this Act (for example, the requirement to adjust the discretionary limits by the baseline amount of a program when there is a change in accounting classifications) that can only occur with a baseline that has account-level detail. (2) The lack of programmatic detail in a "capped" baseline makes it impossible to analyze discretionary policy except in aggregate; it is for this reason that CBO's annual listing of budget reduction options analyzes each option relative to the inflated baseline. (3) The spending limits imposed by section 251 require cutbacks in real (inflation-adjusted) resources. Such cutbacks might have many different results: project cancellations, reductions in Federal military or civilian personnel levels, base closings, reductions in the number of research grants, delays in maintenance schedules, etc. It is useful to the public to show the numerical extent of such cutbacks, and the individuals who are directly affected will certainly feel them as cutbacks.

The bill makes specific changes in the language of section 257:

In section 257(a) and (b)(1), the baseline is modified to include the extension of "discretionary regulations" without assumed change.[2] This has been CBO's baseline practice, and was also the Gramm-Rudman-Hollings requirement before the amendments made by Budget Enforcement Act of 1990. By assuming that discretionary regulations continue unchanged (as opposed to OMB's current approach of assuming future changes consistent with administration policy), congressional prerogatives in establishing policy are not made subservient to those of the administration.

In section 257(b)(2)(A), the bill makes two changes. First, it switches from $50 million in outlays to $50 million in gross budget authority the threshold that a direct spending program must attain before the baseline should assume its continuation past its scheduled expiration date. Second, the bill clarifies how to project a direct spending program that is assumed to continue after its scheduled expiration: where the program is driven by substantive provisions of authorizing law, assume ****1644*955** that the program continues as in effect just before its expiration.[3] Expiring programs funded by backdoor definite budget authority have that budget authority inflated as though it were discretionary.

In section 257(b)(2)(A), the bill clarifies the intent of existing law: that the percent increase in veterans compensation is assumed to be the same percent as the automatic increase in veterans pensions. This does not mean that the veterans compensation baseline follows other aspects of pension law such as rounding down.

The current section 257(b)(3), relating to the treatment of Health Insurance Trust Fund, is deleted. See the discussion under section 250(b)(1) and (20).

In section 257(b)(3), the bill establishes a cutoff date after which the baseline will no longer assume the extension of certain expiring law. This codifies and makes explicit the existing implicit treatment if Congress allows a program or tax to expire.

In section 257(c), covering the projection of discretionary programs, the wording change recognizes that all spending is either direct spending or discretionary–there is no third type.

In section 257(c)(2), concerning the projection of expiring housing contracts, the bill clarifies that expiring contracts include prepayments as well (because prepayments are simply a form of expiration; the contracts expire because the budget authority runs out rather than because a time limit is reached.)

In section 257(c)(3), the bill includes OSADI administrative expenses in the special baseline rule that allows caseload changes to be taken into account; this inclusion reflects OMB's treatment of these costs as part of the Gramm-Rudman-Hollings system.

The bill deletes the current section 257(c)(4), providing for pay annualization and an offset to absorption. The reference to absorption is dropped since OMB and CBO agree it is not a meaningful concept in the absence of routine spring "pay supps." Annualization is covered automatically by the wording in the new section 257(c)(4) whereby inflation covers average rates of pay for a fiscal year.

In section 257(c)(4), the bill conforms the inflator for civilian and military personnel to the pay rate increases required by existing law. It also changes the reference for non-pay inflation from GNP to GDP.

In section 257(c)(5), the bill codifies the existing treatment of annualizing part-year budget-year appropriations, not just part-year current-year appropriations. This prevents any disjunction between the amount sequestered (which is based on a full-year scoring under section 251(d)(4)) and the amount scored, which follows baseline rules.

In section 257(c)(5), the bill allows the scoring of permissive transfers to be updated for those accomplished by the submission of the midsession review. But this change does not ****1645*956** override the Gramm-Rudman-Hollings requirement to use budget technical assumptions of prior-year outlays in scoring bills; it applies only in the very unlikely case in which Congress adjourns without enacting even a temporary continuing appropriation to cover a set of accounts. It also applies to unofficial baseline projections made after the midsession review.

In section 257(e), the bill rewrites the treatment of asset sales to conform to existing practice: asset sales count for the budget (they are not a "means of financing"), but the proceeds of asset sales newly enacted in a session don't count in that session as negative spending, so can't be used to meet targets or cover other spending.

The bill also makes technical corrections to the "fast-track" procedures provided in section 258 and section 258A–C. Specifically:

The bill repeals the first of the two section 258's. It was intended to have been repealed by Budget Enforcement Act of 1990, and was replaced in Budget Enforcement Act of 1990 by section 258A.

In section 258A, B, and C, the bill conforms cross-references.

In the second of the two section 258's, the bill clarifies that the 1st sentence of section 258(a)(4) applies only to the Senate, as intended.

In section 258C, a conforming amendment makes this fast-track procedure triggered by receipt of a scorecard report rather than the deleted update report.

The House bill revises section 274 to make conforming amendments that should have been made in Budget Enforcement Act of 1990. Further, the fallback procedure, which was written in Gramm-Rudman-Hollings I in anticipation that it might be ruled unconstitutional (as it was), is deleted.

Finally, the House bill retains the current expiration date for section 253, extends the expiration date for sections 251, 257, and 258B to the end of fiscal year 1998, and extends the expiration date for sections 250, 252, 254, 255, 256, 258, 258A, and 258C to the end of fiscal year 2002.

In section 275, the bill provides that any part of the Act that touches pay-as-you-go sequestration is extended to 2002. The remaining parts are extended to 1998 (but this does not supersede provisions within various sections specifying a shorter application, such as the cap adjustment for IRS funding).

In section 15111(b), effective dates are set forth. The provisions of the bill are effective immediately, but they alter procedures or otherwise make changes with respect to reports, orders, calculations, etc. first applicable to fiscal year 1994. For fiscal year 1993, the current Gramm-Rudman-Hollings is deemed to remain in place.

Senate Amendment

The Senate amendment extends the expiration date of sections 250 through 258C (except for section 253, which pertains to the enforcement of the deficit targets) from the end of fiscal year 1995 to the end of fiscal year 1998.

****1646*957** Conference Agreement

The conference agreement contains the Senate language.

THE CONGRESSIONAL BUDGET PROCESS

Subtitle B of Title XV (Budget Process) of the House-passed bill amends the Congressional Budget Act (CBA) of 1974 (P.L. 93–344, as amended) and related Standing Rules of the House of Representatives to make various changes in the congressional budget process. (In addition, Subtitle B extends the discretionary spending limits in the CBA of 1974, which are used for purposes of sequestration under the Gramm-Rudman-Hollings Act, through fiscal year 1998; these changes are discussed elsewhere).

Title XIV (Enforcement Procedures) of the Senate amendment amends the CBA of 1974 only the purpose of extending certain procedures in Title VI of that Act (including the discretionary spending limits).

The conference agreement includes the Senate language. The House conferees believe that the recommended changes in the House proposal are useful and important and therefore intend to pursue these changes in another forum.

1. BUDGET RESOLUTION COVERAGE AND ENFORCEMENT

Current Law

The Budget Enforcement Act of 1990 put in place temporary provisions in Title VI of the Budget Act to make the congressional budget process fit with the sequestration scheme that was also a part of the 1990 Budget Enforcement Act. These provisions were only temporary since Congress was venturing into new procedural territory and needed to see how the changes would play out. Titles III (Congressional Budget Process) and VI of the CBA of 1974 establish the requirements for the coverage and enforcement of the budget resolution. Each year, Congress adopts a concurrent resolution on the budget setting forth levels of spending, revenues, the deficit, and the public debt that reflect broad congressional budget policies and priorities. In general, budgetary legislation first effective in a fiscal year may not be considered until the budget resolution for that year has been adopted, with different exceptions specified for the House and Senate–including an exception in the House for regular appropriations measures considered after May 15.

The budget resolution is enforced principally through two means: (1) points of order under the CBA of 1974, which may be raised against legislation in violation of budget resolution levels or other CBA requirements, and (2) reconciliation instructions to House and Senate committees to bring existing spending, revenue, and debt limit laws within their jurisdiction into conformity with budget resolution levels.

In particular, procedures under Section 302 and Section 311 of the CBA of 1974 (and under Section 602 for fiscal years 1991 through 1995 (see below)) are prominent in the enforcement of budget resolution spending levels by points of order, especially with respect to the consideration of annual appropriations measures.

****1647*958** Under Section 302, once the budget resolution is adopted, all committees with spending jurisdiction receive an allocation of spending under the resolution for programs within their jurisdiction. (In the House, allocations are made for new budget authority, entitlement authority and outlays; in the Senate, allocations are made for new budget authority and outlays.) Committees then are required to subdivide amounts allocated to them among their subcommittees or by program. The Appropriations Committees must subdivide by subcommittee. In general, the House or Senate may not consider spending legislation for a fiscal year that would cause any committee subdivision of spending for that year to be exceeded. Outlay subdivisions are not enforced by point of order in the House.

Under Section 311, the House and Senate may not consider spending or revenue measures that would cause the aggregate levels of spending and revenues in the budget resolution to be violated. An exception is provided in the House for instances in which the spending measure would not cause the pertinent committee's allocation of new discretionary budget authority or new entitlement authority to be exceeded. Section 311 also provides a procedure only in the Senate for the enforcement of spending and revenue levels for Social Security.

Title VI of the CBA of 1974, enacted as part of the Budget Enforcement Act (BEA) of 1990, sets forth temporary requirements for budget resolution coverage and enforcement for fiscal years 1991 through 1995. Budget resolutions and committee allocations are required to cover five fiscal years (rather than three fiscal years, as required under permanent law). Enforcement procedures under Section 302 are superseded through fiscal year 1995 by temporary requirements established in Section 602, including requirements that: (1) direct spending legislation is subject to a point of order if it breaches a spending allocation in the budget year or over the 5-year period covered by the allocation; (2) only the Appropriations Committees must make subdivisions of spending of amounts allocated to them under the budget resolution; and (3) if Congress has not adopted a budget resolution by April 15, the House Budget Committee must make an allocation of spending to the House Appropriations Committee consistent with the discretionary spending limits. Title VI also provides 1-year and 5-year enforcement of revenue legislation.

Under Section 310 of the CBA of 1974, reconciliation instructions in a budget resolution typically are used to reduce mandatory spending (particularly entitlements) and increase revenues, thereby reducing the deficit. Under Section 310(g), provisions making any change in Social Security may not be included in reconciliation legislation. (Provisions relating to the timing of action on reconciliation measures are discussed in Section 4 below.)

With respect to other elements included in a budget resolution, Section 710 of the Social Security Act requires that the receipts and disbursements of the Hospital Insurance Trust Fund be placed off budget, beginning in 1993. However, section 606 of the CBA of 1974 requires that a budget resolution not exceed the maximum deficit amount as determined under section 601(a)(1). The receipts and disbursements of the Hospital Insurance Trust Fund (HI) must ****1648*959** be included in deficit calculations, notwithstanding any other provision of law, for purposes of determining the maximum deficit amount under section 601(a)(1). So, for the last several years, the budget resolution has included a separate display of the receipts and disbursements of the Hospital Insurance Trust Fund–and two separate deficit amounts, one including and one excluding the HI amounts–in order to comply with the requirement to place HI off-budget and the requirement not to exceed the maximum deficit amount including HI. Further, the CBA of 1974 requires that credit amounts (new direct loan obligations and new primary loan guarantee commitments) be provided on a functional basis–even though the Federal Credit Reform Act of 1990 (incorporated into the CBA of 1974 as a new Title V) rendered these amounts less relevant or significant.

House Bill

In light of Congress' experience since 1990 with the Budget Enforcement Act, the House bill proposes changes that: make 5-year budget resolutions and 1-year/5-year enforcement permanent; focus points of order on the deficit impact of legislation; reduce the need for technical waivers to the congressional budget process; and rewrite points of order so that they apply only to the language that is actually before the House when it considers a bill.

Under the House bill, various changes are made in permanent provisions of the CBA of 1974, and the temporary provisions of the Act (except for the ones dealing with the discretionary spending limits) either are revised and made permanent, or are repealed. The term "budget authority" is redefined so that all types of spending including grants, loans, and entitlements compete on a level playing field. The term "direct spending" is defined so that salary and basic pay are more properly controlled as discretionary items.

The procedures for making and enforcing spending allocations to committees (in Sections 302 and 602) and for enforcing aggregate spending and revenue levels (in Section 311) are revised. In essence, the old enforcement system is replaced by an expanded enforcement procedure that focuses on committee responsibility and deficit impact.

The House bill modifies procedures for enforcing committee allocations and subdivisions in a new Section 302, which applies solely to the House and Senate Appropriations Committees, and a new Section 311, which applies to committees with jurisdiction over direct (mandatory) spending and revenues. Both provisions clarify the way points of order are applied.

Under this proposal, points of order would only apply to the language that is actually before the House when it considers a bill.

Under the new Section 302, the Committees on Appropriations would receive an allocation of spending (for new budget authority and outlays), which they then would subdivide among their subcommittees. Appropriations legislation that would cause an allocation or subdivision of new budget authority to be exceeded would be out of order. The prohibition does not apply to current-year supplemental appropriations measures as long as the total allocation to the Committee is not exceeded. Outlay allocations would not be enforced in either chamber.

****1649*960** Under the new Section 311, committees other than the Appropriations Committees would be allocated a "deficit impact number" (or "surplus impact number") for the first fiscal year and the total for all fiscal years covered by the budget resolution. The deficit impact number (or surplus impact number) reflects the change in the deficit (or surplus) assumed under the budget resolution for direct spending or revenue legislation within a committee's jurisdiction. Legislation increasing the deficit (or lowering the surplus) in any fiscal year covered by the budget resolution that also produces a higher deficit (or lower surplus) than the committee's first-year or five-year impact number would be out of order.

Certain changes also are made by the House bill with respect to the reconciliation process under Section 310. First, spending directives may cover only direct spending, affirming the current practice that reconciliation is not applied to discretionary appropriations. Second, the current prohibition against making changes in Social Security in reconciliation legislation is changed to a prohibition against reducing Social Security benefits. Third, reconciliation instructions can either direct separate targets for revenues and spending changes or a combined deficit reduction amount. Under current law, a committee "complies" with its instructions so long as it does not exceed or fall below the separate revenue and spending targets by more than 20%. Under the House proposal, there is no wiggle room.

In addition, the following temporary requirements in Title VI are retained and made permanent: (1) that budget resolutions cover five fiscal years; and (2) that the House Budget Committee make an allocation of spending to the House Appropriations Committee consistent with the discretionary spending limits if the budget resolution is not adopted by April 30 (the House bill also retains the current law deadline of April 15 for adoption of the budget resolution).

The House bill modifies the prohibition under Section 303 against considering legislation for a fiscal year before the budget resolution for that year is adopted. Under the proposed procedure, any spending or revenue legislation first effective in the last fiscal year covered by the most recently agreed to budget resolution or in any subsequent fiscal year is out of order (i.e., the fifth year covered by the budget resolution and subsequent fiscal years). No exceptions are specified.

Finally, the House bill also makes changes in the required and optional elements of the budget resolution. It clarifies a requirement that the budget resolution include the receipts and disbursements of the Old Age Survivors and Disability Insurance (OASDI) trust funds solely for the purpose of Senate points of order. It specifies that the receipts and disbursements of the Hospital Insurance trust fund shall be included in the budget resolution. It also deletes the requirement that budget resolutions include direct loan and loan guaranty amounts; this requirement is no longer necessary in light of the credit reform provisions in Title V and the new definition of budget authority. Finally, the bill deletes the deferred enrollment procedure from the list of optional budget resolution elements.

****1650*961** Senate Amendment

The Senate amendment, in Section 14002(3)(B), extends all of the temporary enforcement procedures in Title VI of the CBA of 1974 through the end of fiscal year 1998 without change.

The conferees note that in the context of the other changes made by the conference agreement, the extension of section 601(b)(1) will codify a point of order in the Senate identical in effect to that created by section 12(b)(2) of the concurrent resolution adopted in April of 1993. (H.Con.Res. 64, 103rd Cong., 1st Sess., section 12(b)(2), 139 Cong. Rec. 747, H1753 (daily ed. Mar. 31, 1993)(adopted)).

Conference Agreement

The House recedes to the Senate. The House conferees believe that the recommended changes in the House proposal are useful and important and therefore intend to pursue these changes in another forum.

2. TIMING OF CONGRESSIONAL BUDGET ACTION

Current Law

The timetable in Section 300 provides that the House of Representatives should complete action on all of the regular appropriations bills for the coming fiscal year by June 30. (Section 300 also provides that the House Appropriations Committee should report all of the regular appropriations bills for the coming fiscal year by June 10.) In furtherance of this objective, Section 309 of the Act prohibits the House of Representatives from considering a resolution that provides for an adjournment of more than three days in July until it has passed all of the regular appropriations bills for the coming fiscal year.

The timetable in Section 300 also provides that the House of Representatives should complete action on any required reconciliation legislation for the coming fiscal year by June 15. Section 310(f) of the Act prohibits the House of Representatives from considering a resolution that provides for an adjournment of more than three days in July until it has passed the required reconciliation legislation.

Section 402 of the Act, as originally framed in 1974, required that authorizing measures for a fiscal year be reported by May 15 preceding the fiscal year; this requirement was repealed (and the original language of section 402 was replaced with an unrelated provision) by the GRH Act of 1985.

House Bill

The House bill retains the June 30 deadline in Section 300 of the CBA of 1974 for the completion of House action on the regular appropriations bills for the coming fiscal year and changes the deadline for completed House action on required reconciliation measures from June 15 to June 30. Further, the House bill repeals the prohibitions against House consideration of a July adjournment resolution if either of these conditions have not been met. In Section 309, the current language dealing with the prohibition against ****1651*962** adjournment in July is replaced by language that encourages (but does not require) the reporting of pertinent authorizing measures by May 15.

Senate Amendment

The Senate amendment contains no such changes.

Conference Agreement

The House recedes to the Senate. The House conferees believe that the recommended changes in the House proposal are useful and important and therefore intend to pursue these changes in another forum.

3. OTHER CHANGES IN THE CONGRESSIONAL BUDGET ACT OF 1974 AND RELATED HOUSE RULES

Current Law

Title IV of the CBA of 1974 contains provisions that control “backdoor spending” (borrowing, contract, and entitlement authority) and new credit authority (in Sections 401 and 402, respectively), require the Congressional Budget Office to prepare cost estimates for legislation and the General Accounting Office to study on a continuing basis permanent forms of spending (in Sections 403 and 405, respectively), require that certain previously off-budget entities be included in the budget

(in Section 406), and establish in the House a Member User Group to study budgetary scorekeeping rules and practices (in Section 407). (Section 404 amended House and Senate rules with regard to the jurisdiction of the Appropriations Committees.)

Title V, referred to as the Federal Credit Reform Act of 1990, establishes procedures for accounting for credit transactions on a subsidy basis and requiring subsidy costs to be appropriated annually for most credit programs.

Title VII amended the Legislative Reorganization Acts of 1946 and 1970 (in Sections 701 and 702) to provide for continuing program review and evaluation by House and Senate committees and by the Comptroller General and (in Section 703) required the House and Senate Budget Committees to engage in continuing study of budget process reform proposals. Section 701 was executed upon enactment in 1974, Section 702 was repealed by Public Law 97–278 (96 Stat. 1082), which revised and codified Title 31 (Money and Finance) of the United States Code, and Section 703 remains in effect.

Title VIII amended the Legislative Reorganization Act of 1970 (in Section 801) to provide for the establishment and standardization of information systems for fiscal and budgetary control and set up a consultative procedure for changes in functional categories of the budget (in Section 802). Both sections were repealed by Public Law 97–278 (96 Stat. 1082).

House Bill

The House bill amends Title IV of the CBA of 1974 by: (1) revising Section 401 and making it apply only to borrowing and contract ***963**1652** authority (entitlement authority is controlled under the House bill by revised procedures in Title III); (2) making technical changes in Section 402; (3) redesignating Sections 403 and 406 as Sections 202(f)(5) and 403, respectively; and (4) repealing Sections 405 and 407.

The House bill makes largely technical changes to Title V dealing with credit budgeting.

The House bill amends Title VII by repealing Sections 701 and 702 and redesignating Section 703 as Section 701.

The House bill creates a new Title VIII (Social Security Protection), redesignating Sections 13301(a) (which deals with the off-budget status of Social Security) and 13302 (which deals with a point of order in the House maintaining the Social Security trust fund balances) of the BEA of 1990 as Sections 801 and 802, respectively.

Additionally, the House bill also makes certain technical changes in the House rules and adds a new Clause 7 to House Rule XI. Clause 7 permits a committee, by majority vote, to invoke a requirement of deficit-neutrality for amendments to direct spending or revenue legislation under consideration in that committee. Clause 7 is similar in effect to a requirement in Section 310(d) of the CBA of 1974 pertaining to floor amendments offered to reconciliation measures.

Senate Amendment

The Senate amendment contains no such changes.

Conference Agreement

The House recedes to the Senate. The House conferees believe that the recommended changes in the House proposal are useful and important and therefore intend to pursue these changes in another forum.

DEFICIT REDUCTION TRUST FUND PROVISION

Current Law

Current law includes no analogous provision.

The House Bill

The House bill creates the Deficit Reduction Trust Fund, an account to identify the reduced outlays and increased receipts achieved through reconciliation. Under the requirements of reconciliation and the terms of the Trust Fund, the legislative savings could not be spent and are solely reserved for deficit reduction. The Deficit Reduction Trust Fund would provide a quantitative display of the level of deficit reduction achieved through the adoption of the President's policies in reconciliation.

The Trust Fund would operate in the following manner: 1) an amount equal to the net deficit reduction estimated to result from reconciliation is transferred to the Trust Fund within 10 days of enactment; 2) amounts in the Trust Fund are unavailable for appropriation, obligation, transfer or expenditure, and may only be used to pay off maturing public debt obligations; 3) amounts in the ****1653*964** Trust Fund are excluded from Pay-As-You-Go budget enforcement and cannot finance new spending or tax reductions; and 4) the President's budget request is required to include a separate statement of funds held by the Trust Fund.

The Senate Bill

The Senate adopted no analogous provisions.

The Conference Agreement

The conference agreement does not include the House provisions. The House conferees agreed to recede to the Senate, based on their understanding that inclusion of the Deficit Reduction Trust Fund would make the entire conference report subject to a point of order in the Senate and thereby endanger final enactment of the reconciliation bill, and based on their further understanding that President Clinton has agreed to establish a Deficit Reduction Trust Fund by Executive Order.

ENTITLEMENT REVIEW

Current Law

Current law includes no analogous provision for monitoring and budgeting federal expenditures for entitlement and mandatory programs.

The House Bill

Federal spending for entitlements and other mandatory programs represent, along with interest on the national debt, the fastest growing area of federal spending. The Congressional Budget Office projects outlays for entitlement and mandatory programs to increase by 6.4% per year (FY 1993–98). However, Congress is acutely aware that entitlement programs represent important commitments to the public in vital areas such as health, income security and economic stability.

Growth in entitlement spending has resulted in large part from the explosion in health care costs throughout society. National spending on health care currently represents more than 14% of the nation's total economic output and is projected to rise to 18% of Gross Domestic Product by the year 2000 if corrective action is not taken. Through its various programs, the federal government pays approximately 25% of the nation's health care costs, primarily through the medicare and medicaid entitlement programs. The social security, medicare and medicaid programs represent nearly 70% of all entitlement spending.

The House is concerned with our ability to project, monitor and pay for rising health care costs within the federal budget. Federal spending for entitlements and other mandatory programs is expected to total approximately $770 billion in 1993, representing one-half of federal outlays and more than 12% of our nation's Gross Domestic Product.

The House, acknowledging the acute budgetary pressure placed on the federal government through rising health care costs, ****1654*965** created an entitlement review process requiring the following action on the part of the President:

(1) Following enactment of reconciliation, the Office of Management and Budget sets targets for the total level of entitlement spending, excluding interest and deposit insurance. These targets would be equal to the spending levels expected to result from enactment of reconciliation.

(2) The targets would be adjusted annually for:

(a) Increases in the number of beneficiaries for direct spending programs in which the number of beneficiaries is a variable in determining costs (e.g., Social Security, Medicare, Medicaid, Food Stamps, Unemployment Compensation, Federal Civilian/Military Retirement and Veterans' Pensions/Compensation).

(b) Subsequently enacted legislation increasing or decreasing revenues and legislation designated as an "emergency" measure under the Balanced Budget and Emergency Deficit Control Act of 1985.

(3) The President's budget must include annual review of actual and projected costs for direct spending and revenues (FY 1994–97). The report shall include: total outlays for direct spending programs and projections for the following five fiscal years; the basis of any variance from the targets, including permissible adjustments; and information regarding major categories of fiscal receipts, including any variance between projected and actual receipts.

(4) If actual outlays for direct spending programs for the prior fiscal year or projected outlays for the current fiscal year or budget year exceed the targets, the President is required to propose measures to address any overage, either through spending cuts, revenue increases or outlay target increases. However, no proposal is required if projected outlays exceed the targets by ½% estimating margin of error or less.

(5) The President and Congress should "seriously consider" all other proposals (outlay target/revenue increases, discretionary cuts or non-means tested program cuts) prior to considering reductions for means-tested programs.

The entitlement review also requires the following action on the part of Congress:

(1) If the President identifies an overage and recommends legislation to recoup or eliminate it, the budget resolution must incorporate a title to address the overage through reconciliation. The reconciliation directive can reflect any combination of spending cuts or revenue increases, but must achieve legislative savings equal to or greater than the amount recommended by the President (up to the amount of the overage).

(2) If the budget resolution recommends recouping less than the full overage, the House Budget Committee must report a House resolution directing that the outlay target shall be increased by the amount which is not offset.

(3) If the House resolution requires raising the outlay targets, the House must vote directly on the issue by a separate vote on the House resolution. If the House rejects raising the ****1655*966** target, the budget resolution may not be considered as reported.

(4) Points of order are created: (a) The House cannot consider the budget resolution conference report unless the overage has been fully addressed, either by increasing the target or reporting reconciliation instructions to eliminate the overage or both; (b) No appropriations bills may be considered unless a budget resolution complying with this act has been adopted for the current fiscal year. However, this point of order may be waived by vote or resolution for all appropriations bills for the fiscal year.

The Senate Bill

The Senate bill adopts no analogous provisions.

The Conference Agreement

The conference agreement does not include the House entitlement review provisions. The House conferees agreed to recede to the Senate, based on their understanding that inclusion of the entitlement review provisions would make the entire conference report subject to a point of order in the Senate and thereby endanger final enactment of the reconciliation bill, and based on their further understanding that President Clinton has agreed to establish by Executive Order a mechanism for monitoring entitlement outlays and making recommendations to address overages.

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

Martin Olav Sabo,
Richard Gephardt,

As additional conferees from the Committee on the Budget, for consideration of title I and section 9005(a)–(c) and (f) of the House bill, and title I and sections 5001, 5002(a), (b), and (d), and 5003 of the Senate amendment, and modifications committed to conference:

Charlie Stenholm,
Earl Pomeroy,
Dale E. Kildee,

As additional conferees from the Committee on the Budget, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference:

Louise Slaughter,
Alan Mollohan,
Bart Gordon,

As additional conferees from the Committee on the Budget, for consideration of title III of the House bill, and title III (except section 3003(b)) of the Senate amendment, and modifications committed to conference:

Barney Frank,
Lucien E. Blackwell,
Lynn C. Woolsey,
Rick Lazio,

****1656*967** As additional conferees from the Committee on the Budget, for consideration of title IV and sections 5117, 13233, 13263, 13270, 13420, and 14402(d) of the House bill, and sections 7904, 12001–50, 12061, 12071, 12101, and 12301–02 of the Senate amendment, and modifications committed to conference:

Dale E. Kildee,
David E. Price,
Barbara B. Kennelly,

As additional conferees from the Committee on the Budget, for consideration of sections 5000–187, 13234, 13242, 13264, 13400–571, and 14411 of the House bill, and sections 7000–501, 7601(c), 7801, 7802(b) and (c), 7904, 7951, 12101–02, and 12321 of the Senate amendment, and modifications committed to conference:

Tony Beilenson,
Louise Slaughter,
Harry Johnston,

As additional conferees from the Committee on the Budget, for consideration of sections 5200–44, 5301, and 9006–07 of the House bill, and sections 4001–11 and 6001 of the Senate amendment, and modifications committed to conference:

John Bryant,
William J. Coyne,
Jerry F. Costello,

As additional conferees from the Committee on the Budget, for consideration of title VII and that portion of section 4002 which adds a new section 455(j) to the Higher Education Act of 1965, section 4025(7) and that portion of section 5203

which adds a new section 309(j)(8) to the Communications Act of 1934, and section 5187(b) of the House bill, and title XI, section 4008(c), that portion of section 12011 which adds a new section 455(j) to the Higher Education Act of 1965, sections 12045(7), 12047(a), and 12105 of the Senate amendment, and modifications committed to conference:

Michael A. Andrews,
Alan Mollohan,
Lynn C. Woolsey,

As additional conferees from the Committee on the Budget, for consideration of title VIII and section 9004 of the House bill, and section 4051 of the Senate amendment, and modifications committed to conference:

Barbara B. Kennely,
Jerry F. Costello,
Patsy T. Mink,

****1657*968** As additional conferees from the Committee on the Budget, for consideration of title IX and sections 1402, 5301, and 11002 of the House bill, and titles V and VI and section 1503 of the Senate amendment, and modifications committed to conference:

John Bryant,
Patsy T. Mink,
Lucien E. Blackwell,

As additional conferees from the Committee on the Budget, for consideration of titles VI and X and sections 13702 and 13704 of the House bill, and title IX and X and sections 12103–04 of the Senate amendment, and modifications committed to conference:

Howard L. Berman,
Michael A. Andrews,
Bart Gordon,

Provided, that for consideration of title VI and sections 10001 and 10002 of the House bill, and title IX of the Senate amendment, Mr. Pomeroy is appointed in lieu of Mr. Berman; Messrs, Cox and Smith of Michigan are appointed in lieu of Messrs. Kolbe and Miller of Florida.

Earl Pomeroy,

As additional conferees from the Committee on the Budget, for consideration of title XI and sections 8002 and 9005(a) of the House bill, and sections 5002(a) and 6002 of the Senate amendment, and modifications committed to conference:

Bob Wise,
Jerry F. Costello,
Howard L. Berman,

As additional conferees from the Committee on the Budget, for consideration of title XII of the House bill, and title XIII (except section 13008(b)) and section 7901(b) and (c) of the Senate amendment, and modifications committed to conference:

David E. Price,
William J. Coyne,
Harry Johnston,

As additional conferees from the Committee on the Budget, for consideration of sections 4032, 4033(3), 8002, 9004, 11001, 12004(b), 13001–20, 13201–84, 13601–02, and 13604–705 of the House bill, and sections 1106, 1403, 1504, 3003(b), 7433, 7601–03, 7701–02, 7901(a) and (c), 7902–03, 7950–54, that portion of section 12011 which adds a new section 457 to the Higher Education Act of 1965, 12055, 12203(d), 12025, 13008(b), 15001, and 15002 of the Senate amendment, and modifications committed to conference:

William J. Coyne,
Tony Beilenson,

As additional conferees from the Committee on the Budget, for consideration of title XV and XVI, section 1405(c) of the

House bill, those portions of section 4002 which add new sections 453(a)(3) and 456(a)(2) to the Higher Education ****1658*969** Act of 1965, section 4029, those portions of section 5181 which add new sections 2158(b)(3)(B) and 2161(b) to the Public Health Service Act, 9008, and 13560 of the House bill, and title XIV, that portion of section 1201 which adds a new section 305(c)(4) to the Rural Electrification Act, those portions of section 12011 which add new sections 453(a)(4) and 456(a)(2) to the Higher Education Act of 1965, of the Senate amendment, and modifications committed to conference:

Charlie Stenholm,
Bob Wise,
Barney Frank,

As additional conferees from the Committee on Agriculture, for consideration of title I and section 9005(a)–(c) and (f) of the House bill, and title I and sections 5001, 5002(a), (b), and (d), and 5003 of the Senate amendment, and modifications committed to conference:

Kika de la Garza,
Charlie Rose,
Dan Glickman,
Harold L. Volkmer,
Timothy J. Penny,

As additional conferees from the Committee on Armed Services, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference:

Ronald V. Dellums,
G.V. Montgomery,
Pat Schroeder,
Earl Hutto,
Ike Skelton,

Provided, for consideration of section 12009 of the House bill, and section 13003 of the Senate amendment, Mr. McCurdy is appointed in lieu of Mr. Montgomery, and Mr. Hunter is appointed in lieu of Mr. Stump.

Dave McCurdy,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of title III of the House bill, and title III (except section 3003(b)) of the Senate amendment, and modifications committed to conference:

Henry B. Gonzalez,
Steve Neal,
John J. LaFalce,
Bruce F. Vento,
Charles Schumer,
James A. Leach,
Marge Roukema,

****1659*970** As additional conferees from the Committee on Education and Labor, for consideration of title IV and sections 5117, 13233, 13263–64, 13270, 13420, and 14402(d) of the House bill, and sections 7904, 12001–50, 12061, 12071, 12101, and 12301–02 of the Senate amendment, and modifications committed to conference:

William D. Ford,
William L. Clay,
George Miller,
Austin J. Murphy,
Pat Williams,

Solely for purposes of sections 4201–4203 of the House bill and sections 12301 and 12302 of the Senate amendment:

William F. Goodling,
Thomas E. Petri, (Except for sections 5117, 13233, 13263, 13264, 13270, and 13420, of the House bill and sections 7904 and 12101 of the Senate amendment)

Solely for purposes of sections 4201–4203 of the House bill and sections 12301 and 12302 of the Senate amendment:

Marge Roukema,

As additional conferees from the Committee on Energy and Commerce, for consideration of [communications] sections 5200–44 of the House bill, and sections 4001–11 of the Senate amendment, and modifications committed to conference:

John D. Dingell,
Edward J. Markey,
Billy Tauzin,
Thomas J. Manton,
Lynn Schenk,
Carlos J. Moorhead,
Jack Fields,
Michael G. Oxley,

As additional conferees from the Committee on Energy and Commerce, for consideration of [health] sections 5000–5091, 5100–87, 13010 (a) and (c), 13413(e), 13234, 13242, 13264, 13431–13571, and 14411 of the House bill, and sections 1105(b), 7000, 7201–7501, 7601(c), 7801, 7802(b) and (c), 7904, 7951, 12101–12205, and 12321 of the Senate amendment, and modifications committed to conference:

John D. Dingell,
Henry A. Waxman,
Ron Wyden,
Edolphus Towns,
Jim Slattery,

****1660*971** As additional conferees from the Committee on Energy and Commerce, for consideration of [energy] sections 5301 and 9006–07 of the House bill, and section 6001 of the Senate amendment, and modifications committed to conference:

John D. Dingell,
Philip R. Sharp,
Craig A. Washington,
Mike Kreidler,
al Swift,
Carlos J. Moorhead,
Mike Bilirakis,
Joe Barton,

As additional conferees from the Committee on Foreign Affairs, for consideration of title VI and sections 10001 and 10002 of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

Lee H. Hamilton,
Howard L. Berman,
Eni Faleomavaega,
M.G. Martinez,
Robert E. Andrews,
Benjamin A. Gilman,
Olympia Snowe,
Henry J. Hyde,

As additional conferees from the Committee on Government Operations, for consideration of section 1405(c) of the House bill, and that portion of section 1201 which adds a new section 305(c)(4) to the Rural Electrification Act, of the Senate amendment, and modifications committed to conference;

John Conyers, Jr.,
Glenn English,

Collins C. Peterson,
Tom Barrett,
Craig A. Washington,

As additional conferees from the Committee on Government Operations, for consideration of those portions of section 4002 which add new sections 453(a)(3) and 456(a)(2) to the Higher Education Act of 1965, and sections 4029 and 13560 of the House bill, and those portions of section 12011 which add new sections 453(a)(4) and 456(a)(2) to the Higher Education Act of 1965, of the Senate amendment, and modifications committed to conference:

John Conyers, Jr.,
Cardiss Collins,
Edolphus Towns,
Henry A. Waxman,
John M. Spratt, Jr.,

****1661*972** As additional conferees from the Committee on Government Operations, for consideration of those portions of section 5181 which add new sections 2158(b)(3)(B) and 2161(b) to the Public Health Service Act, of the House bill, and modifications committed to conference:

John Conyers, Jr.,
John M. Spratt, Jr.,
Mike Synar,
Donald M. Payne,

As additional conferees from the Committee on Government Operations, for consideration of section 9008 of the House bill, and modifications committed to conference:

John Conyers, Jr.,
Cardiss Collins,
John M. Spratt, Jr.,
Mike Synar,
Craig A. Washington,

As additional conferees from the Committee on Government Operations, for consideration of title XVI and sections 15001–111, 15206, and 15301 of the House bill, and title XIV of the Senate amendment, and modifications committed to conference:

John Conyers, Jr.,
John M. Spratt, Jr.,
Henry A. Waxman,
Cardiss Collins,
Mike Synar,

As additional conferees from the Committee on the Judiciary, for consideration of title VII of the House bill, and title XI and section 12047(a) of the Senate amendment, and modifications committed to conference:

Jack Brooks,
William J. Hughes,
Don Edwards,
John Conyers, Jr.,
Mike Synar,
Carlos J. Moorhead,
Howard Coble,
Hamilton Fish, Jr.,

As additional conferees from the Committee on the Judiciary, for consideration of that portion of section 4002 which adds a new section 455(j) to the Higher Education Act of 1965, section 4025(7), and that portion of section 5203 which adds a new section 309(j)(8) to the Communications Act of 1934, of the House bill, and section 4008(c), that portion of section 12011 which adds a new section 455(j) to the Higher Education Act of 1965, and section 12045(7) of the Senate amendment, and modifications committed to conference:

Jack Brooks,
John Conyers, Jr.,
Mike Synar,
Pat Schroeder,
Howard L. Berman,
Hamilton Fish, Jr.,

****1662*973** As additional conferees from the Committee on the Judiciary, for consideration of section 5187(b) of the House bill, and section 12105 of the Senate amendment, and modifications committed to conference:

Jack Brooks,
John Bryant,
Dan Glickman,
Barney Frank,
Howard L. Berman,
George W. Gekas,
Jim Ramstad,
Hamilton Fish, Jr.,

As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of title VIII and section 9004 of the House bill, and section 4051 of the Senate amendment, and modifications committed to conference:

Gerry E. Studds,
Billy Tauzin,
William O. Lipinski,
Solomon P. Ortiz,
Thomas J. Manton,
Jack Fields,

Provided, for consideration of title VIII of the House bill, and section 4051 of the Senate amendment, Mr. Inhofe is appointed: for consideration of section 9004 of the House bill, Mr. Saxton is appointed.

James M. Inhofe,
Jim Saxton,

As additional conferees from the Committee on Natural Resources, for consideration of title IX and sections 1402, 5301, and 11002, of the House bill, and titles V and VI and section 1503 of the Senate amendment, and modifications committed to conference:

George Miller,
Bruce F. Vento,
Ron de Lugo,
Richard Lehman,
Bill Richardson,

As additional conferees from the Committee on Post Office and Civil Service, for consideration of title X and sections 13702 and 13704 of the House bill, and titles IX and X and sections 12103–04 of the Senate amendment, and modifications committed to conference:

William L. Clay,
Pat Schroeder,
Frank McCloskey,
Eleanor H. Norton,
Barbara-Rose Collins,
Constance Morella,

As additional conferees from the Committee on Public Works and Transportation, for consideration of title XI and sections 8002 and 9005(a) of the House bill, and sections ****1663*974** 5002(a) and 6002 of the Senate amendment, and modifications committed to conference:

Norman Y. Mineta,
Jim Oberstar,
Douglas Applegate,
Nick J. Rahall II,
Robert A Borski,
Bud Shuster,
Bill Clinger,
Sherwood L. Boehlert,

As additional conferees from the Committee on Rules, for consideration of title XVI and sections 13560, 13605, and 15201–15212 of the House bill, and title XIV of the Senate amendment, and modifications committed to conference:

John Moakley,
Butler Derrick,
Tony Beilenson,
Martin Frost,
David Bonior,

As additional conferees from the Committee on Veterans' Affairs, for consideration of title XII of the House bill, and title XIII (except section 13008(b)) and section 7901 (b) and (c) of the Senate amendment, and modifications committed to conference:

G.V. Montgomery,
Lane Evans,
J. Roy Rowland,
Jim Slattery,
George E. Sangmeister,
Bob Stump,

As additional conferees from the Committee on Ways and Means, for consideration of title XIV (except sections 14402(d) and 14411) and section 13603 of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
Charles B. Rangel,

As additional conferees from the Committee on Ways and Means, for consideration of sections 13001–20 of the House bill, and modifications committed to conference:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
Andrew Jacobs, Jr.,

As additional conferees from the Committee on Ways and Means, for consideration of sections 13201–84 of the House bill, and sections 7601–03 and 7802 of the Senate amendment, and modifications committed to conference:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
Harold Ford,

****1664*975** As additional conferees from the Committee on Ways and Means, for consideration of title XVI of the House bill, and modifications committed to conference:

Dan Rostenkowski,
Pete Stark,

As additional conferees from the Committee on Ways and Means, for consideration of sections 4032, 4033(3), 5000–91, 5117, those portions of section 5181 which add new sections 2161 and 2173(b) to the Public Health Service Act, sections 5181(b), 8002, 9004, 11001, 12004(b), 13400–571, 13601–02, 13604–705, 14402(d), 14411, and 15301 of the House bill, and sections 1106, 1403, 1504, 3003(b), 7000–305, 7433, 7701–02, 7901(a) and (c), 7902–04, 7950–54, that portion of section 12011 which adds a new section 457 to the Higher Education Act of 1965, sections 12055, 12101–02, that portion of section 12202 which adds a new section 2148(b) to the Public Health Service Act, sections 12203(d), 12025, 13008(b), 15001, and 15002 of the Senate amendment, and modifications committed to conference:

Dan Rostenkowski,
Sam Gibbons,
J.J. Pickle,
Charles B. Rangel,
Pete Stark,
Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

Patrick J. Leahy,

From the Committee on Banking, Housing, and Urban Affairs:

Don Riegle,
Paul Sarbanes,

From the Committee on the Budget:

Jim Sasser,
Ernest F. Hollings,
J. Bennett Johnston,

From the Committee on Commerce, Science, and Transportation:

Ernest F. Hollings,
Daniel K. Inouye,
John Breaux,

From the Committee on Energy and Natural Resources:

J. Bennett Johnston,
Dale Bumpers,
Wendell Ford,

From the Committee on Environment and Pubic Works:

Max Baucus,
Daniel Patrick Moynihan,

****1665*976** From the Committee on Finance:

Daniel Patrick Moynihan,
Max Baucus,
Bill Bradley,
George J. Mitchell,
David Pryor,
Don Riegle,
John D. Rockefeller IV,

From the Committee on Foreign Relations:

Claiborne Pell,
John F. Kerry,

From the Committee on Governmental Affairs:

John Glenn,
Carl Levin,
David Pryor,
From the Committee on the Judiciary:

Dennis DeConcini,
From the Committee on Labor and Human Resources:

Edward M. Kennedy,
Claiborne Pell,
Christopher J. Dodd,
Paul Simon,
Tom Harkin,
Barbara A. Mikulski,
Jeff Bingaman,
Paul Wellstone,
Harris Wofford,
From the Committee on Veterans' Affairs:

Jay Rockefeller,
Dennis DeConcini,
Managers on the Part of the Senate.

1 Taxpayers may alternatively elect to claim a reduced research credit amount in lieu of reducing deductions otherwise allowed (sec. 280C(c)(3)).

2 Basis in common stock of a corporate SSBIC is not reduced for purposes of calculating the gain eligible for the 50 percent exclusion for qualified small business stock under new section 1202 as provided in the House bill.

3 A taxpayer's otherwise allowable deduction for clinical testing expenses is reduced by the amount of any orphan drug tax credit allowed for the taxable year (sec. 280C(b)).

4 The conferees intend, however, that the interest of a governmental unit will be disregarded under the recapture restriction if the governmental unit's interest is structured so as to capture any amount otherwise subject to Federal recapture e.g. by allocating to the governmental unit an amount of gain on disposition greater than the proportionate amount of the total subsidy to the homebuyer that is provided by the subordinated mortgage loan.

5 As under present law, a leaseback to a disqualified person is subject to the prohibited transaction rules set forth in section 4975.

6 For this purpose, financial institutions include financial institutions in conservatorship or receivership, certain affiliates of financial institutions, and government corporations that succeed to the rights and interests of a receiver or conservator.

7 IRS Notice 88–121, 1988–2 C.B. 457. See also Treas. Reg. sec. 1.501(c)(2)–1(a).

8 See Rev. Rul. 66–151, 1966–1 C.B. 151.

9 Moreover, as under present law, any investment by a pension trust must be in accordance with the fiduciary rules of the Employee Retirement Security Act ("ERISA") and the prohibited transaction rules of the Code and ERISA.

10 A separate provision of the conference agreement extends the 2.5-cents-per-gallon rate through September 30, 1999, and transfers applicable highway-related revenues to the Highway Trust Fund for the extended period. (See section 13244 of the conference agreement, Item II.D.4., below.)

11 See section 14241 of the House bill, Item II.D.1., below.

12 See sections 14242-14243 of the House bill, Item II.D.3., below.

13 See section 8241 of the Senate amendment, Item II.D.2., below.

14 See section 8242 of the Senate amendment, Item II.D.3., below.

15 See section 13241 and sections 13242 and 13243 of the conference agreement, Items II.D.2. and II.D.3. below.

16 The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)).

17 Section 170(e)(3) provides an augmented deduction for certain corporate contributions of inventory property for the care of the ill, the needy, or infants.

18 Form 8283 must be attached to an income tax return (Form 1040) in all cases where total noncash contributions exceed $500, but the Form 8283 need not be signed by a qualified appraiser unless the $5,000 threshold per item or group of similar items is exceeded. In the case of donated art for which a deduction of $20,000 or more is claimed, a complete copy of the signed appraisal must be attached to the Form 8283.

19 Contributions of inventory or other ordinary income property, short-term capital gain property, and certain gifts to private foundations continue to be governed by present-law rules.

20 The provision is effective for contributions of tangible personal property made after June 30, 1992, and of other property made after December 31, 1992. Thus, the conferees wish to clarify that the relief provided by the provision does not apply to any carryover from a contribution made prior to the applicable effective date (see Rev. Rul. 90–111, 1990–2 C.B. 30).

21 If the claimed deduction for a noncash gift exceeds $5,000 per item or group of similar items (other than certain publicly traded securities), a qualified appraiser must sign the Form 8283. In addition, an authorized representative of the donee charity must sign the Form 8283, acknowledging receipt of the gift and providing certain other information. In certain situations, information reporting by the donee charity is required if it subsequently disposes of donated property (sec. 6050L).

22 See, e.g., Rev. Rul. 67–246, 1967–2 C.B. 104.

Under current IRS practice, certain small items and token benefits (e.g., key chains and bumper stickers) that have insubstantial value are disregarded, such that the full amount of the contribution is deductible. Rev. Proc. 90–12, 1990–1 C.B. 471, provides that tokens or benefits given to the donor in connection with a contribution will be considered to have insubstantial value if (1) the payment occurs in the context of a fundraising campaign in which the charity informs patrons how much of their payment is a deductible contribution, and (2) either (a) the fair market value of all the benefits received in connection with the payment is not more than two percent of the payment, or $50, whichever is less, or (b) the payment made by the patron is $25 or more (adjusted for inflation) and the only benefits received in connection with the payment are token items (e.g., key chains or mugs) that bear the organization's name or logo and that (in the aggregate) are within the limits for "low-cost items" under section 513(h)(2). See also Rev. Proc. 92–49, 1992–26 I.R.B. 18 (amplifying Rev. Proc. 90–12, by allowing charities to distribute certain low-cost items to contributors without affecting the deductibility of the contribution).

23 However, Schedule A to the Form 1040 and the accompanying instructions inform taxpayers that if they made a contribution to a charity and received a benefit in return, the value of the benefit must be subtracted in calculating the charitable contribution deduction.

24 However, the disclosure requirement of section 6113 does not apply to an organization the gross receipts of which in each taxable year are normally not more than $100,000, nor does the disclosure requirement apply to any solicitation made by letter or telephone call if such letter or call is not part of a coordinated fundraising campaign soliciting more than 10 persons during the calendar year (sec. 6113(b)(2)(A) and (c)(2)).

25 See section 6033(a)(2) and Rev. Proc. 83–23, 1983–1 C.B. 687.

26 See section 6033(b)(5) and Treas. Reg. sec. 1.6033–2(a)(2)(ii)(f). The names and addresses of substantial contributors to a public charity must be reported to the IRS but are not subject to public inspection (sec. 6104(e)(1)(C)).

27 Separate payments generally will be treated as separate contributions and will not be aggregated for the purposes of applying the $750 threshold. In cases of contributions paid by withholding from wages, the deduction from each paycheck will be treated as separate payments.

28 In addition, the House bill provides that the Secretary of the Treasury shall issue regulations as may be necessary to carry out the purposes of the substantiation provision, including regulations that may provide that some or all of the requirements of the provision do not apply in appropriate cases.

29 Separate payments generally will be treated as separate contributions and will not be aggregated for the purposes of applying the $250 threshold. In cases of contributions paid by withholding from wages, the deduction from each paycheck will be treated as a separate payment. However, the Senate committee explanation states that it is expected that the Secretary of the Treasury will issue anti-abuse rules to prevent avoidance of the substantiation requirement by writing multiple checks on the same date.

30 If the donee organization provided no goods or services to the taxpayer in consideration of the taxpayer's contribution, the written substantiation is required to include a statement to that effect. The substantiation need not contain the taxpayer's social security number or taxpayer identification number (TIN).

31 In the case where a taxpayer makes a noncash contribution claimed by the taxpayer to be worth $250 or more, the taxpayer is required to obtain from the charity a receipt that describes the donated property (and indicates whether any good or service was given to the taxpayer in exchange), but the provision specifically provides that the charity is not required to value the property it receives from the taxpayer.

32 The provision requires that the written acknowledgment provide information sufficient to substantiate the amount of the deductible contribution, but the acknowledgment need not take any particular form. Thus, for example, acknowledgments may be made by letter, postcard, or computer-generated forms. Further, a donee organization may prepare a separate acknowledgment for each contribution, or may provide donors with periodic (e.g., annual) acknowledgments that set forth the required information for each contribution of $250 or more made by the donor during the period. The Senate committee explanation states that it is intended that a charitable organization that knowingly provides a false written substantiation to a donor may be subject to the penalties provided for by section 6701 for aiding and abetting an understatement of tax liability.

33 In addition, the Senate amendment provides that the Secretary of the Treasury shall issue regulations as may be necessary to carry out the purposes of the substantiation provision, including regulations that may provide that some or all of the requirements of the provision do not apply in appropriate cases.

34 This exception does not apply, for example, to tuition for education leading to a recognized degree, travel services, or consumer goods. However, the Senate committee explanation states that it is intended that de minimis tangible benefits furnished to contributors that are incidental to a religious ceremony (such as wine) generally may be disregarded.

35 The Senate committee explanation states that it is intended that the disclosure be made in a manner that is reasonably likely to come to the attention of the donor. For example, a disclosure of the required information in small print set forth within a larger document might not meet the requirement.

36 For purposes of the $75 threshold, separate payments made at different times of the year with respect to separate fundraising events generally will not be aggregated. However, the conferees intend that the Secretary will issue anti-abuse rules to prevent avoidance of the quid pro quo disclosure requirement by writing multiple checks for the same transaction.

37 The Senate committee explanation states that no inference is intended, however, regarding the full or partial deductibility of any payment outside the scope of the quid pro quo disclosure provision or substantiation provision under the present-law requirements of section 170.

38 The Senate committee explanation states that it is intended that, following enactment of the bill, the Secretary of the Treasury will expeditiously issue a notice or other announcement providing guidance with respect to the substantiation and

disclosure provisions. In this regard, it is expected that such Treasury guidance will urge charities to assist taxpayers in meeting the substantiation requirement.

39 As under the Senate amendment, charities are not required to make any disclosure under the quid pro quo disclosure provision when no benefit other than an intangible religious benefit is furnished to the donor.

40 Except that stock also is treated as personal property in defining a straddle for purposes of the conversion transaction provision.

41 Or, in the case of a bond issued with original issue discount (OID), a price that is less than the amount of the issue price plus accrued OID.

42 The additional five percent rate applies to the taxable transfers of a nonresident noncitizen in excess of $10 million only to the extent necessary to phase out the graduated rates and unified credit actually allowed, either by statute or by treaty (where applicable).

43 Kenneth D. Smith, 24 TCM 899 (1965).

44 The provision does not modify the present-law requirement that, in order to be deductible, compensation must be reasonable. Thus, as under present law, in certain circumstances compensation less than $1 million may not be deductible.

45 Of course, if the executive is no longer a covered employee at the time the options are exercised, then the deduction limitation would not apply.

46 Discretion does not exist merely because the outside directors have the authority to interpret a compensation plan, agreement, or contract in accordance with its terms.

47 Of course, as discussed below in the text, the grandfather ceases to apply if the plan is materially amended.

48 These figures equal 50 percent of the difference between the present law thresholds for 50-percent Social Security benefit inclusion and the proposed second-tier thresholds for 85-percent Social Security benefit inclusion.

49 Prior to 1963, Treasury Department regulations (originally dating back to 1915) provided that all expenditures for lobbying purposes, for the promotion or defeat of legislation, for political campaign purposes, or for propaganda (including advertising) related to any such purposes, were not deductible as "ordinary and necessary" business expenses. See Cammarano v. United States, 358 U.S. 498 (1959) (upholding validity of regulation denying deduction for lobbying expenses, even if expenses related to proposed legislation that affected the very survival of the taxpayer's business). In response to the Cammarano decision, Congress enacted, as part of the Revenue Act of 1962, the statutory rule contained in section 162(e)(1) specifically allowing a deduction for certain "direct lobbying" expenses.

50 See Regan v. Taxation With Representation, 461 U.S. 540 (1983) (upholding constitutionality of section 501(c)(3) lobbying restriction on grounds that legislature is not required to subsidize lobbying through a tax exemption or deduction).

51 See Rev. Rul. 70–79, 1970–1 C.B. 127;Rev. Rul. 70–449, 1970–2 C.B. 111;Slee v. Commr, 42 F.2d 184 (2d Cir. 1930).

52 Under the section 4911 regulations, "nonpartisan analysis, study, or research" means an independent and objective exposition of a particular subject matter, including any activity that is "educational" within the meaning of Treasury Regulation section 1.501(c)(3)–1(d)(3). Thus, "nonpartisan analysis, study, or research" may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. The mere presentation of unsupported opinion does not qualify as "nonpartisan analysis, study, or research." Nonpartisan analysis may be made available to the general public, a segment thereof, or governmental bodies. Communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue (Treas. Reg. sec. 56.4911–2(c)(1)).

Furthermore, a Treasury regulation under section 4911 provides that "[e]xaminations and discussions of broad social, economic, and similar problems are neither direct lobbying communications . . . nor grass roots lobbying communications . . . even if the problems are of the type with which government would be expected to deal ultimately. Thus, . . . lobbying

communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation" (Treas. Reg. sec. 56.4911–2(c)(2)).

53 Under this exception, the request for assistance or advice must be made in the name of the requesting governmental body, committee, or subdivision rather than an individual member thereof; and the response to such request must be made available to every member of the requesting body, committee, or subdivision. Treasury regulations further provide that because such assistance or advice may be given only at the express request of a governmental body, the oral or written presentation of such assistance or advice need not qualify as nonpartisan analysis, study or research. The offering of opinions or recommendations will ordinarily qualify under this exception only if such opinions or recommendations are specifically requested by the governmental body or are directly related to the materials so requested (Treas. Reg. secs. 56.4911–2(c)(3) and 53.4945–2(d)(2)).

54 For purposes of the provision, the term "legislation" has the same meaning as under section 4911(e)(2), which, in turn, defines "legislation" as including "action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure."

Treasury regulations provide that "legislation" for purposes of section 4911(e)(2) includes action by legislative bodies but does not include action by "executive, judicial, or administrative bodies" (Treas. Reg. sec. 56.4911-2(d)(3)). Treasury regulations further provide that "administrative bodies" includes school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive (Treas. Reg. sec. 56.4911-2(d)(4)). Thus, communications with, and attempts to influence, members of a local zoning board (acting in their capacity as members of that board, regardless of whether or not such members are elected to their position) will not be affected by the provision.

55 The Senate amendment applies to the costs of communications with the following Federal executive branch officials: (1) the President; (2) the Vice President; (3) any officer or employee of the Executive Office of the President other than a clerical or secretarial employee; (4) any officer or employee serving in an Executive level I, II, III, IV, or V position, as designated in statute or Executive order (such as Secretaries, Deputy Secretaries and Assistant Secretaries, Directors, and Commissioners); (5) any officer or employee serving in a Senior Executive Service position as defined under 5 U.S.C. section 3232(a)(2); (6) any member of the uniformed services whose pay grade is at or in excess of O–7 under 37 U.S.C. section 201; and (7) any officer or employee serving in a position of confidential or policy-determining character under Schedule C of the excepted service pursuant to 5 U.S.C. section 7511. Under the Lobbying Disclosure Act of 1993 (S. 349), as passed by the Senate on May 6, 1993, such Federal executive branch officials are referred to as "covered executive branch officials," communications to whom are subject to the Act's reporting requirements.

56 Thus, if a taxpayer communicates with any executive branch official or employee (regardless of rank) in an attempt to influence the official's or employee's participation in the Federal or State legislative process, then costs incurred in connection with the communication are nondeductible. Under present-law section 4911 regulations, "legislation" does not include actions of Federal or State administrative or special purpose bodies, whether elective or appointive (Treas. Reg. sec. 56.4911–2(d)(4)).

57 The conferees intend that direct communications include all written and oral communications with covered executive branch officials. A communication will be considered to be a direct communication with a covered executive branch official if such official is the intended primary recipient of the communication, regardless of whether the communication is formally addressed to the official.

58 See 5 U.S. Code sec. 5312.

59 In the case of councils or other agencies within the Executive Office of the President with respect to which the President, Vice President or one or more Cabinet members serve as ranking members, the covered officers include the two most senior administrative officers (other than the ranking members) of the council or agency.

60 The conference agreement provides that, for purposes of the section 162 lobbying rules, a tribal government of an Indian reservation will be treated as a "local council or similar governing body." Thus, lobbying with respect to such tribal

governments continues to be governed by present-law rules.

61 Under present law, at the local government level, lobbying expenses are deductible only if incurred in direct connection with communications to government officials (or an organization of which the taxpayer is a member) with respect to local legislation of direct interest to the taxpayer (and to the organization). Expenditures for grass roots lobbying with respect to local legislation or for participation in local elections are not deductible.

62 The conference agreement includes a de minimis rule primarily to provide administrative convenience to taxpayers. Therefore, if, during a taxable year, a taxpayer incurs in-house expenditures in excess of $2,000, then the full amount of its lobbying expenses must be determined and such amount (including the first $2,000 of in-house expenditures) is subject to the disallowance rule.

63 In addition, the conferees intend that the Secretary of the Treasury will permit taxpayers to adopt reasonable methods for allocating expenses to lobbying (and related research and other background) activities in order to reduce taxpayer recordkeeping responsibilities.

64 Payments that are similar to dues include voluntary payments made by members and special assessments imposed by the recipient organization to conduct lobbying activities. This is comparable to the treatment of special assessments for grass roots lobbying or campaign expenses under present-law Treasury Regulation section 1.162–20(c)(3).

65 The conferees intend that such notice be provided in a conspicuous and easily recognizable format. See section 6113 and the regulations issued thereunder for guidance regarding the appropriate format of the disclosure statement.

66 In this case, the conference agreement grants the Secretary of the Treasury authority to waive the proxy tax otherwise imposed if an organization agrees to adjust its notice of estimated lobbying expenditures provided to members in the following year. Further, the conferees intend that the Secretary will prescribe regulations governing the treatment of organizations that incur actual lobbying expenditures below the estimated amount.

67 For example, if during a taxable year, an organization receives $100,000 in dues, spends $150,000 on lobbying and elects to pay the proxy tax (rather than provide flow-through disclosure to members), the proxy tax for that year would be imposed on $100,000 of lobbying expenditures. The remaining $50,000 of lobbying expenditures would be carried forward to the subsequent year, during which the organization could comply with the disclosure requirements outlined above or elect to pay the proxy tax with respect to such amount, as well as any additional lobbying expenditures incurred during that subsequent year.

68 Examples of such organizations include organizations that receive 90 percent or more of their dues monies from members that are tax-exempt charities or who are individuals not entitled to deduct the dues payments in determining taxable income because the payments are not ordinary and necessary business expenses. Another example would be a union that establishes to the satisfaction of the Secretary that 90 percent or more of its dues monies are paid by individuals who do not deduct such dues because of the operation of the two-percent floor on miscellaneous itemized deductions (sec. 67).

69 See, e.g., section 6652(c)(1)(A)(ii).

70 The conference agreement does not alter present-law rules under sections 501(c)(3) and 4911 regarding the impact of lobbying on a charity's tax-exempt status. Thus, even if a contributor is subject to the anti-avoidance rule in a particular case because its payment to a charity is made with a principal purpose of funding "lobbying" as defined under section 162, the charity's tax-exempt status will not be jeopardized if its activity qualifies as non-partisan analysis or does not constitute "substantial lobbying" under the present-law section 501(c)(3) or section 4911 standards.

71 Possessions to which special tax rules presently apply include Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

72 In contrast to the foreign tax credit, the section 936 credit is a "tax sparing" credit. That is, the credit is granted whether or not the electing corporation pays income tax to the possession.

73 A special allocation of research and development expenses as required by section 936(h)(5)(C)(ii)(II) can cause the

proportion of the combined taxable income which is allocable to the possession corporation to be less than 50 percent.

74 The amount of tax allowable for purposes of the credit is limited to 75 percent of possessions tax paid in order to correspond to the portion of a dividend from a possession corporation that would be included in the recipient shareholder's AMTI as a result of the ACE adjustment.

75 Unlike the PFIC rules of present law, the House bill offers no option to measure assets by fair market value.

76 Under the present-law ordering rules for the attribution of actual distributions or income inclusions to years of earnings, earnings from more recent years are treated as distributed or included before earnings from earlier years. Thus, the pre-acquisition earnings, which operate as a limit to the exclusion of certain U.S. property acquired before the foreign corporation became a controlled foreign corporation, will not be treated as distributed or included until actual distributions or income inclusions from the controlled foreign corporation carry out all more recent earnings.

77 P.L. 99-514, sec. 1201(a) (1986).

78 Former Treas. Reg. sec. 1.904-4(b).

79 Rev. Rul. 83–51, 1983–1 C.B. 48.

80 See, e.g., Dorzback v. Collison, 195 F.2d 69 (3d Cir. 1952).

81 Certain additional exceptions to this general rule apply only in the case of a corporate recipient of interest. In such a case, the term portfolio interest generally excludes (1) interest received by a bank on a loan extended in the ordinary course of its business (except in the case of interest paid on an obligation of the United States), and (2) interest received by a controlled foreign corporation from a related person.

82 Treas. Reg. sec. 1.897–1(h). FIRPTA applies in the case of a "disposition" of a USRPI. Treasury Reg. sec. 1.897–1(h) generally defines a disposition as a transaction that gives rise to gain under section 1001 of the Code. Section 1001 does not apply to interest received on indebtedness.

83 For purposes of determining whether interest is contingent interest under the House bill, the term related person means any person who is related to the borrower under Code section 267(b) or 707(b)(1). In addition, a related person, for this purpose, includes a party to an arrangement undertaken for a purpose of avoiding the application of this provision of the House bill.

84 See, e.g., Commissioner v. Court Holding Co., 324 U.S. 331 (1945).

85 56 T.C. 925 (1971), acq. on another issue, 1972–2 C.B. 1.

86 Rev. Rul. 84–152, 1984–2 C.B. 381;Rev. Rul. 84–153, 1984–2 C.B. 383.

87 Rev. Rul. 87–89, 1987–2 C.B. 195.

88 Tech. Adv. Mem. 9133004 (May 3, 1991).

89 Special motor fuels include benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, and any other liquid (other than kerosene, gas oil, fuel oil, or gasoline) sold for use in motor vehicles or motorboats.

90 See Item II.D.4., below, for the extension and transfer of the deficit reduction tax rate.

91 No. 2 residual fuel oil can be used either as diesel fuel or as home heating oil.

92 In general, information returns are required regarding payments to a corporation engaged in providing medical and health care services or engaged in billing and collecting payments with respect to medical and health care services.

93 An "understatement" of income tax is the excess of the tax required to be shown on the return over the tax imposed which

is shown on the return (reduced by any rebates of tax).

94 In the case of a position contrary to a regulation, the position taken must also represent a good faith challenge to the validity of the regulation.

95 In the case of a position contrary to a regulation, the position taken must also represent a good faith challenge to the validity of the regulation.

96 Lenders are generally required to report any foreclosure or other acquisition of property in satisfaction of a debt secured by that property (sec. 6050J). Such events may effect a discharge of indebtedness. The conferees intend that the Treasury Department issue guidance to coordinate reporting under this section with reporting on foreclosures and abandonments under section 6050J.

97 The date of discharge is required to facilitate the use of such information returns with respect to fiscal year taxpayers.

98 With respect to these entities, any return required by the provision shall be made by the officer or employee appropriately designated to make these returns.

99 In the case of intentional disregard of the filing requirements, the penalty is not less than $100 per failure and the $100,000 annual limitation does not apply.

1 In the case of a short taxable year, the amortization deduction is to be based on the number of months in such taxable year.

2 Insurance expirations are records that are maintained by insurance agents with respect to insurance customers. These records generally include information relating to the type of insurance, the amount of insurance, and the expiration date of the insurance.

3 See below for a description of the exceptions for certain patents, certain computer software, and certain interests in films, sound recordings, video tapes, books, or other similar property.

4 As under present law, the portion of the purchase price of an acquired trade or business that is attributable to accounts receivable is to be allocated among such receivables and is to be taken into account as payment is received under each receivable or at the time that a receivable becomes worthless.

5 See below, however, for a description of the exception for certain rights to receive tangible property or services from another person.

6 A right granted by a governmental unit or an agency or instrumentality thereof that constitutes an interest in land or an interest under a lease of tangible property is excluded from the definition of a section 197 intangible. See below for a description of the exceptions for interests in land and for interests under leases of tangible property.

7 Section 1253(b)(1) of the Code.

8 Only the costs incurred in connection with the renewal, however, are to be amortized over the 14-year period that begins with the month that the franchise, trademark, or trade name is renewed. Any costs incurred in connection with the issuance (or an earlier renewal) of a franchise, trademark, or trade name are to continue to be taken into account over the remaining portion of the amortization period that began at the time of such issuance (or earlier renewal).

9 Section 1253(d)(1) of the Code.

10 A temporal interest in property, outright or in trust, may not be used to convert a section 197 intangible into property that is amortizable more rapidly than ratably over the 14-year period specified in the bill.

11 See below for a description of the treatment of assumption reinsurance contracts.

12 For example, a data base would not include a dictionary feature used to spell-check a word processing program.

13 See Associated Patentees, Inc., 4 T.C. 979 (1945); and Rev. Rul. 67–136, 1967–1 C.B. 58.

14 The bill provides that a sublease is to be treated in the same manner as a lease of the underlying property. Thus, the term "section 197 intangible" does not include any interest as a sublessor or sublessee of tangible property.

15 The lease of a gate at an airport for the purpose of loading and unloading passengers and cargo is a lease of tangible property for this purpose. It is anticipated that such treatment will serve as guidance to the Internal Revenue Service and taxpayers in resolving existing disputes.

16 In no event is the present value of the fair market value rent for the use of the tangible property for the term of the lease to exceed the fair market value of the tangible property as of the date of acquisition. The present value of such rent is presumed to be less than the value of the tangible property if the duration of the lease is less than the economic useful life of the property.

17 For purposes of this exception, the term "interest under any existing indebtedness" is to include mortgage servicing rights to the extent that the rights are stripped coupons under section 1286 of the Code. See Rev. Rul. 91–46, 1991–34 I.R.B. 5 (August 26, 1991).

18 See, e.g., INDOPCO, Inc. v. Commissioner, 112 S. Ct. 1039 (1992).

19 For example, an emission allowance granted a public utility under Title IV of the Clean Air Act Amendments of 1990 is a right that is limited in amount within the meaning of this provision, because each allowance grants a right to a fixed amount of emissions. It is expected that the Treasury Department will provide guidance regarding the interaction of section 461 with these provisions. No inference is intended that would require the Treasury Department to disturb the result in Rev. Proc. 92–91, 1992–46 I.R.B. 32.

20 For this purpose, the abandonment of a section 197 intangible or any other event that renders a section 197 intangible worthless is to be considered a disposition of a section 197 intangible.

21 These special rules do not apply to a section 197 intangible that is separately acquired (i.e., a section 197 intangible that is acquired other than in a transaction or a series of related transactions that involve the acquisition of other section 197 intangibles). Consequently, a loss may be recognized upon the disposition of a separately acquired section 197 intangible. In no event, however, is the termination or worthlessness of a portion of a section 197 intangible to be considered the disposition of a separately acquired section 197 intangible. For example, the termination of one or more customers from an acquired customer list or the worthlessness of some information from an acquired data base is not to be considered the disposition of a separately acquired section 197 intangible.

22 The termination of a partnership under section 708(b)(1)(B) of the Code is a transaction to which this rule applies. In such a case, the bill applies only to the extent that the adjusted basis of the section 197 intangibles before the termination exceeds the adjusted basis of the section 197 intangibles after the termination. (See the example below in the discussion of "Treatment of certain partnership transactions.")

23 No inference is intended whether any asset treated as a section 197 intangible under the bill is eligible for like kind exchange treatment.

24 This discussion is subject to the application of the anti-churning rules which are discussed below.

25 An assumption reinsurance transaction is an arrangement whereby one insurance company (the reinsurer) becomes solely liable to policyholders on contracts transferred by another insurance company (the ceding company). In addition, for purposes of the bill, an assumption reinsurance transaction is to include any acquisition of an insurance contract that is treated as occurring by reason of an election under section 338 of the Code.

26 The amount paid or incurred by the acquirer/reinsurer under an assumption reinsurance transaction is to be determined under the principles of present law. (See Treas. Reg. sec. 1.817–4(d)(2).)

27 There is no intention to codify any aspect of the existing regulations under section 1060 or other provisions. Furthermore,

it is expected that the Treasury Department will review the operation of the regulations under sections 1060 and 338 in light of new section 197.

28 However, with certain exceptions, an amortization deduction is not to be allowed under the bill for goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill if: (1) the section 197 intangible is acquired after July 25, 1991; and (2) either (a) the taxpayer or a related person held or used the intangible on July 25, 1991; (b) the taxpayer acquired the intangible from a person that held such intangible on July 25, 1991, and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible on July 25, 1991. See below for a more detailed description of these "anti-churning" rules.

29 It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

30 It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

31 Amounts that are properly deductible pursuant to section 1253 under present law are to be treated for purposes of the anti-churning provision as amounts for which depreciation or amortization is allowable under present law.

32 In addition to these rules, it is anticipated that rules similar to the anti-churning rules under section 168 of the Code will apply in determining whether persons are related. (See Prop. Treas. Reg. 1.168–4 (February 16, 1984).) For example, it is anticipated that a corporation, partnership, or trust that owned or used property at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and that is no longer in existence will be considered to be in existence for purposes of determining whether the taxpayer that acquired the property is related to such corporation, partnership, or trust.

As a further example, it is anticipated that in the case of a transaction to which section 338 of the Code applies, the corporation that is treated as selling its assets will not to be considered related to the corporation that is treated as purchasing the assets if at least 80 percent of the stock of the corporation that is treated as selling its assets is acquired by purchase after July 25, 1991.

33 Consistent with both the House and Senate bills, purchased mortgage servicing rights are not depreciable to the extent that the rights are stripped coupons under section 1286 of the Code. To the extent that the rights are stripped coupons under section 1286 of the Code, they will not be amortized on a straight line basis over 108 months. See Rev. Rul. 91–46, 1991–2 C.B. 358.

34 For example, assume the following facts. Corporation P is the parent of an affiliated group filing a consolidated return that includes subsidiary S. The P group files its consolidated return on the basis of the calendar year. S acquires certain intangible assets on August 1, 1991. The stock of S is sold to corporation X on December 31, 1992, in a transaction in which S's adjusted basis in its assets is not changed. Corporation X is also the parent of an affiliated group filing a consolidated return that now includes S. S remains in the X group. Under the conference agreement, if the X group makes the July 25, 1991 election, such election does not require the P group also to make the election. If the P group makes the July 25, 1991 election, the election will affect the amortization deductions allowed on the P group's 1991 and 1992 consolidated returns with respect to the assets acquired by S on August 1, 1991. Such election does not require the X group also to make the election.

35 For example, such rules would apply if a corporation that is a member of an affiliated group filing a consolidated return acquires property after July 25, 1991 and then, before August 2, 1993 becomes a member of another group in a transaction that does not affect the basis of that corporation's assets. In such a case, the first group could make the election for periods when the corporation was included in that group's consolidated return. In addition, the second group could make the election because the corporation was related to the second group on August 2, 1993.

36 E.g., sections 401(c)(2) and 911(d) of the Code and old section 1348(b)(1)(A) of the Code.

37 If the employer chooses not to use the 20-percent method, withholding may be computed by aggregating the supplemental payments with regular wages paid within the same calendar year for the last preceding payroll period or the current payroll period. The employer would then use withholding tables to determine the total tax on this aggregate amount. The amount to

be withheld for the supplemental wages is the total tax less any amount already withheld for regular wages included in the aggregate amount.

38 An area will be treated as nominated by a State or local government if it is nominated by such other entity as may be specified by an Enterprise Board (to be established in the future).

39 For purposes of the House bill, a "rural area" means any area which is (1) outside a metropolitan statistical area as defined by the Secretary of Commerce, or (2) determined by the Secretary of Agriculture to be a rural area. The term "urban area" means any area which is not a rural area.

40 Under the House bill, the term "Indian reservation" means a reservation as defined in (1) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or (2) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

41 An area's designation may be revoked only after a hearing on the record at which officials of the State and local governments are given an opportunity to participate.

42 The poverty rate is to be determined by the 1990 census or subsequent census data. If areas are not tracted as population census tracts, the equivalent county divisions as defined by the Bureau of the Census for purposes of defining poverty areas would be treated as population census tracts.

43 With respect to an area nominated to be an empowerment zone, the appropriate Secretary may reduce one of these poverty criteria by five percentage points for not more than 10 percent of the population census tracts (up to a maximum of five population census tracts) in the nominated area. With respect to an area nominated to be an enterprise community, the appropriate Secretary may reduce one of the poverty criteria as described in the preceding sentence or, as an alternative, may reduce the 35-percent poverty threshold by ten percentage points (i.e., to 25 percent) for up to three population census tracts.

44 The appropriate Secretary has no discretion to reduce the 35-percent poverty rate threshold for tracts located in a central business district that is part of an empowerment zone or to reduce the 30-percent poverty rate threshold for tracts located in a central business district that is part of an enterprise community.

45 In the case of an Indian reservation, the reservation governing body is deemed to be both the State and local governments with respect to such area.

46 The House bill provides that the required strategic plan may not include any action to assist any business in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through establishment of a new branch, affiliate, or subsidiary is permitted if (1) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and (2) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

47 The House committee report indicates that it is intended that employers will undertake reasonable measures to verify an employee's residence within the zone, so that the employer will be able to substantiate a wage credit claimed under the House bill.

48 To prevent avoidance of the $20,000 limit, all employers of a controlled group of corporations (or partnerships or proprietorships under common control) would be treated as a single employer.

49 Employers would be required to take reasonable steps to notify all qualified zone employees of the availability to eligible individuals of receiving advance payments of the earned income tax credit (EITC).

50 The wage credit is not available with respect to any individual employed at any facility described in present-law section 144(c)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises). In addition, the wage credit is not available with respect to any individual employed by a

trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) and (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of assets of the farm exceed $500,000.

51 For this purpose, an individual is economically disadvantaged if he or she is a member of an economically disadvantaged family under present-law section 51(d)(11).

52 The TJTC expired on June 30, 1992, but it is to be extended until December 31, 1994 by section 13102 of the conference agreement.

53 The restrictions regarding employees with respect to whom the wage credit can be claimed also apply here. Thus, for example, the credit for savings contributions is not available with respect to any individual employed at certain facilities. See the discussion under the wage credit for further explanation.

54 This requirement does not apply to a business carried on by an individual as a proprietorship.

55 For this purpose, the term "employee" includes a self-employed individual (within the meaning of section 401(c)(1)).

The House committee report indicates that it is intended that the Secretary of the Treasury will prescribe regulations to determine the appropriate treatment of part-time employees for purposes of calculating whether 35 percent of the employees are residents of the empowerment zone.

56 However, the House bill specifically provides that a "qualified business" does not include (1) any trade or business consisting of the operation of any facility described in present-law section 144(c)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or (2) any trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of assets of the farm exceed $500,000.

57 Thus, used property may constitute qualified zone property so long as it has not previously been used within the empowerment zone.

58 Qualified zone property does not include any property to which the alternative depreciation system under section 168(g) applies, determined (1) without regard to section 168(g)(7), and (2) after application of section 280F(b).

59 The low-income housing credit expired on June 30, 1992, but is permanently extended by section 13142 of the Conference agreement.

60 The conference agreement does not include section 15001 of the Senate amendment (the sense of the Senate resolution).

61 The conference agreement provides that, if six urban empowerment zones are designated, not less than one urban empowerment zone must be designated in an area the most populous city of which has a population of 500,000 or less, and not less than one urban empowerment zone shall be a nominated area (1) with a population of 50,000 or less, and (2) which includes areas located in two States.

62 The conference agreement does not provide for the creation of an Enterprise Board which, under the House bill, was to participate in the designation of eligible areas as empowerment zones and enterprise communities. In addition, the conference agreement does not provide a procedure for the revocation of an area's designation as an eligible zone or community. However, the conferees intend that (i) the Secretary will promulgate rules regarding both the selection and revocation processes and (ii) a designation will be revoked only after a hearing on the record involving officials of the State and local governments. The conferees further intend that, if an area's zone or community designation is revoked, the relevant Secretary shall not designate another area as a zone or community in lieu thereof.

63 With respect to an area nominated to be an enterprise community, the appropriate Secretary may reduce one of the poverty criteria by five percentage points for not more than 10 percent of the population census tracts (up to a maximum of five population census tracts) in the nominated area, or, as an alternative, may reduce the 35-percent poverty threshold by 10

percentage points (i.e., to 25 percent) for up to three population census tracts.

64 The conferees intend that, in the case of an urban empowerment zone located in two States, the nominating States and local governments shall provide written assurances satisfactory to the Secretary of HUD that the incentives afforded the zone on the account of the designation will be distributed equitably between the two States.

65 The conferees intend that employers will undertake reasonable measures to verify an employee's residence within the zone, so that the employer will be able to substantiate a wage credit claimed under the conference agreement.

66 To prevent avoidance of the $15,000 limit, all employers of a controlled group of corporations (or partnerships or proprietorships under common control) will be treated as a single employer.

67 The conferees intend that employers take reasonable steps to notify all qualified zone employees of the availability to eligible individuals of advance payments of the earned income tax credit (EITC).

68 The wage credit is not available with respect to any individual employed at any facility described in present-law section 144(c)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises). In addition, the wage credit is not available with respect to any individual employed by a trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) and (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of assets of the farm exceed $500,000.

69 For example, an establishment which is part of a national chain could qualify as an enterprise zone business for purposes of the tax-exempt financing incentive, provided that such establishment would satisfy the definition of an enterprise zone business if it were separately incorporated.

70 The contribution of the CDC must be available for use by the CDC for up to a 10-year period, but need not meet the requirements of a "contribution or gift" for purposes of section 170. In other words, a contribution eligible for the credit under the bill may be made in the form of a 10-year loan (or other long-term investment), the principal of which is to be returned to the taxpayer after the 10-year period. However, in the case of a donation of cash made by a taxpayer to an eligible CDC, the taxpayer would be allowed to claim a charitable contribution deduction (subject to the present-law rules under section 170) and, in addition, could claim the credit under the bill's provisions.

71 The House bill defines "qualified low-income assistance" as assistance (1) which is designed to provide employment and business opportunities to individuals who are residents of the operational area of the CDC, and (2) which is approved by the Secretary of HUD.

72 Under the conference agreement, at least eight of the selected CDCs must operate in rural areas.

73 For purposes of the Indian employment and investment incentives, the term "Indian reservation" means a reservation as defined in (1) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), as in effect on the date of enactment of the provision, or (2) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), as in effect on the date of enactment of the provision.

74 The Indian unemployment rate is to be based on the number of Indians unemployed and able to work and is to be certified by the Secretary of the Interior.

75 A special rule applies to qualifying property that has (or is a component of a project that has) an estimated construction period of more than two years or a cost of more than $1 million. With respect to such property, the relevant unemployment rate is the rate during the calendar year in which the taxpayer enters into a binding agreement to make a qualified investment (or, if earlier, the first calendar year in which the taxpayer has expended at least 10 percent of the qualified investment) or during the immediately preceding calendar year.

76 The active conduct of a trade or business for purposes of the Indian reservation credit includes the rental to others of real property located in an Indian reservation. In addition, the credit for new reservation construction property is allowed with

respect to otherwise qualifying property that is used to furnish lodging.

77 The limitation applies to class I, II, or III gaming as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703), as in effect on the date of enactment of the provision.

78 If, for the entire taxable year of the employer, at least 85 percent of the employees of the employer are enrolled members of an Indian tribe or spouses of enrolled members of an Indian tribe, then the amount of the credit for such taxable year is to be determined by using a 30-percent rate rather than the 10-percent rate.

79 Wages are not eligible for the credit if attributable to services rendered by an employee during the first year he or she begins work for the employer if any portion of such wages is taken into account in determining the targeted jobs tax credit (TJTC) under present-law section 51.

80 In the case of a short taxable year, the qualified wages and the qualified health insurance costs paid or incurred by the employer are to be annualized and the limitation for such taxable year is to equal the otherwise applicable limitation determined using such annualized amounts multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

81 For this purpose, an Indian tribe is defined as any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.), as in effect on the date of enactment of the provision, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

82 The limitation applies to class I, II, or III gaming as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703), as in effect on the date of enactment of the provision.

83 No portion of the unused business credit for any taxable year that is attributable to the Indian employment credit may be carried back to a taxable year ending before the date of enactment of the provision.

84 As under the Senate amendment, the term “Indian reservation” means a reservation as defined in (1) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), as in effect on the date of enactment of this provision, or (2) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), as in effect on the date of enactment of this provision.

85 The conference agreement treats the rental of real property located within a reservation as an active trade or business.

86 In addition, the conference agreement provides that accelerated depreciation is not available for any property to which the alternative depreciation system under section 168(g) applies (determined without regard to subsection 168(g)(7) and after application of section 280F(b)).

87 For this purpose, gaming activities include class I, II, or III gaming, as defined in section 4 of the Indian Regulatory Act (25 U.S.C. sec. 2703), as in effect on the date of enactment of this provision.

88 The $30,000 amount for determining qualified employees is adjusted for inflation beginning after 1994.

89 Persons who received vaccines before the Program’s effective date of October 1, 1988 (“retrospective cases”) also may be eligible for compensation under the Program if they had not yet received compensation and elected to file a petition with the United States Claims Court on or before January 31, 1991. Under the Program, awards in retrospective cases are somewhat limited compared to “prospective cases” (i.e., those where the vaccine was administered on or after October 1, 1988). Awards in retrospective cases are not paid out of the Vaccine Trust Fund but are paid out of funds specially authorized by Congress. See 42 U.S.C. sec. 300aa–15 (i), (j) (appropriating $80 million for fiscal year 1989 and for each subsequent year).

90 Compensation may not be awarded, however, if there is a preponderance of the evidence that the claimant’s condition or death resulted from factors unrelated to the vaccine in question.

91 42 U.S.C. sec. 300aa–15.

92 In most State proceedings, significant issues arise whether injuries suffered by an individual after immunization were, in fact, caused by the vaccine administered and whether the manufacturer was at fault in either the manufacture or marketing of the vaccine.

93 Title III, P.L. 99-660. This Act preempts State tort law to a limited extent by imposing limits on recovery from vaccine manufacturers. Among the limitations are a prohibition on compensation if the injury or death resulted from side effects that were unavoidable; a presumption that manufacturers are not negligent in manufacturing or marketing vaccines if they complied, in all material respects, with Federal Food and Drug Administration requirements; and limits on punitive damage awards.

94 The House committee report states that it is intended that the Secretary of the Treasury expeditiously (within 60 days of enactment) adopt rules for purposes of Code section 4221 for determining the conditions under which exported vaccines to be administered to individuals not eligible for compensation under the program are not subject to tax.

95 Principle residence is defined as under section 1034, except that renters receiving insurance proceeds as a result of the involuntary conversion of their property in a rented residence also qualify for relief under this provision to the extent the rented residence would constitute their principal residence if they owned it.

96 Section 6053(c)(4) is to be applied without regard to the number of employees.

97 A separate trade provision (sec. 13602 of the House bill and sec. 7701 of the Senate amendment) would extend the current Customs processing fee for three years, through September 30, 1998.

1 The thrift savings fund is not deleted from the list; rather, it is retained for redundancy even though the exemption is unnecessary because the Gramm-Rudman-Hollings Act does not apply to non-budgetary transactions. The bill also contains an erroneous deletion of interest payments to the Farm Credit System, Financial Assistance Corporation (FAC) from the list, and fails to include FAC, now an on-budget account, on the list.

2 A “discretionary regulation” is issued pursuant to a law that grants the executive branch discretion in setting some rate, date, or other feature that would affect the amount of costs or savings under a program.

3 In case of CCC, which reverts to older, very general authority, existing practice is to assume that authority would be used in the same manner as the just expired law.

H.R. CONF. REP. 103-213, H.R. Conf. Rep. No. 213, 103RD Cong., 1ST Sess. 1993, 1993 U.S.C.C.A.N. 1088, 1993 WL 302291 (Leg.Hist.)